

TERMS AND CONDITIONS

Definitions

Supplier – the company supplying the equipment and providing support services, namely Myriad Digital Group. All references below to ‘Supplier’ are actually referring to Myriad Digital Group, or its’ agents, sub-contractor’s or employees.

Customer – the company or person that requires the equipment or services provided by Myriad Digital Group. All references below to ‘Customer’ are referring to the company or person which requires the equipment or services of Myriad Digital, and who has countersigned this document.

Products – any goods, services or support provided by Myriad Digital Group including, but not limited to, hardware and software items.

Point of Contract

1. This contract covers the supply of any Products to the Customer, and becomes valid and binding on acceptance of the order by the Supplier.

Suppliers Duties

1. The Supplier shall provide the equipment and support services as required by the Customer, and in accordance with the Terms and Conditions specified in this Agreement.

2. The Supplier shall take all reasonable steps as necessary to ensure the safety and confidentiality of the Customer’s software, data and documents, including any software, data or documents removed from the Customers’ premises for any purposes. This includes any backup of the Customer’s software, data or documents removed for off-site storage.

3. The Supplier shall take all reasonable steps as necessary to ensure the security of the Customer’s computer equipment and network, including not relaying the Customer’s passwords to any third party, unless agreed to by the Customer.

Customers Duties

1. The Customer agrees to pay the invoice or any outstanding amounts within 30 days of receipt of the invoice.

Liability

1. The Supplier shall not be held liable for any loss or damages, whatsoever, whether direct, indirect or consequential inclusive of (but not limited to) loss of work time or productivity, financial loss, existing or prospective Customer base, computer or network access and/or loss or damage to property, equipment, software, data or premises for any of the following reasons (but not limited to these only) :

- due to loss or change of any passwords or other security measures,
- due to any unauthorized network or computer access by any party,
- due to any virus infection of the Customer’s computers or network,
- due to fire, water, electrical fault, smoke whether caused by the equipment or not
- due to any computer or network downtime caused by equipment failure, virus infection, hardware or software failure,
- due to any other causes or reasons whatsoever excluding deliberate or negligent acts by the Supplier.

Where the Supplier accepts liability for any damages due to any deliberate or negligent act on the part of the Supplier, the liability shall be limited as specified in Clause 6 of this section.

2. Any Products supplied carries the standard manufacturer’s warranties. The Supplier cannot be held liable or responsible, in anyway whatsoever, for any failure of the Products supplied, or failure of the Products to meet expectations or purposes, or any other reason relating to the supply of the Products. Should the Supplier be held legally liable for any failure, or other reason, of any Products supplied, this shall be limited to the cost for the specific Products supplied as set out on the invoice. The Supplier is not responsible for the cost of labour or other expenses incurred in repairing or replacing of defective or non-conforming parts or products. Except as specifically set out in this clause 2 of Liability, the Supplier disclaims and excludes all other Warranties, whether express or implied, by statute or otherwise, including but not limited to the Warranties of Description, Design, Satisfactory Quality and Fitness for a specific purpose, or arising from any previous course of dealing or trade practice.

3. Any provision of equipment, software, applications or services are undertaken only after taking into account various factors including any limitations of the current system, software, applications or infra-structure; any other technical or design limitations with new software or applications; compatibility issues between hardware components and/or software components. There is, however, no guarantee that the system will perform as expected if the above factors have any negative influence or effect on the system. Additionally, there is no guarantee to any other company’s ability to enable their software and/or systems to function correctly after integration. The Supplier cannot be held liable for any losses (whether in contract, tort or otherwise) including financial, goodwill, loss of business or customer base or any other losses due to the failure of the equipment, software or system to function as expected due to the above factors..

4. After the successful sign-off of the supply and/or installation of any equipment (or the settlement of any invoice associated with that equipment), any work or travel requested or required (whether inside or outside of the manufacturer’s warranty) in order to diagnose or repair any faults, or to report any fault to the manufacturer, shall be chargeable at our standard rates.

5. Should any section or wording of this contract be held legally invalid, then this shall not affect any other section, or wording of the contract, which shall remain valid and binding.

6. Should the Supplier be held legally liable, for any reason whatsoever (whether in contract, tort or otherwise), then the total of this liability shall not exceed the invoice amount for the specific job or the monthly support amount as specified in this contract, in the month which the liability arose. The total liability for any death or injury caused by any negligent or deliberate act of the Supplier, shall not exceed the amount of £500 000, if it is proved that the death or injury was due to a deliberate or negligent act on the part of the Supplier. The total liability for any damage to property or equipment caused by any negligent or deliberate act of the Supplier, shall not exceed the total cost to repair the actual damage, or replace the damaged equipment if necessary, if it is proved that the damage was due to a deliberate or negligent act on the part of the Supplier.

7. Where the Supplier has arranged, supplied, installed or configured any online and/or offsite backup for the Customer’s systems or data, then the provision of such services is subject to the standard Terms and Conditions of the third party company providing the service. The Supplier cannot be held liable for any losses (whether in contract, tort or otherwise) including financial, goodwill, loss of business or customer base, or any other losses, in anyway whatsoever for any failure of any online or offsite back system, or failure of the backup system to meet expectations or purposes, or any other reason relating to the supply of the backup system. Should the Supplier be held legally liable for any failure, or other reason, of any part of the backup system, this shall be limited to the annual charge for the backup system.

8. Should any wording or section in this contract be misunderstood or contentious, then the meaning or definition attached to that wording or section, shall be the meaning as would have been obtained or understood by any reasonable person of sound mind.

Force Majeure

1. The Supplier shall not be held liable for any loss or damages, whatsoever, whether direct, indirect or consequential, and inclusive of (but not limited to) loss of work time or productivity, financial loss, existing or prospective Customer base, as a direct or indirect result of the Supplier being delayed, prevented or hindered in the performance or meeting of any of its obligations under this agreement by reason of any circumstances beyond its control including (but not limited to) act of God, fire, water, riots, strike, accident, etc.

Rates

1. Our onsite or remote support call charges are £50 per hour or part thereof. An additional call-out charge of £80 is applicable if same-day or urgent support is requested.
2. Mileage costs are at the rate of £0.50 per mile (or part thereof) based on the round trip from our office in Newton Abbot.
3. The acceptance of any order for equipment or software, or the provision of any support services, will be subject to the terms and conditions set out in this document.

General

1. All Products supplied, whether as new or replacement, shall remain the sole property of the Supplier until the associated invoice for the Products has been paid in full. Only after all outstanding monies has been paid shall ownership or entitlement pass to the customer.
2. Until such time as the property in the Products supplied passes to the Customer, the Customer shall hold all such Products as the Supplier’s fiduciary agent and bailee, and shall keep the Products properly stored, insured and marked as the supplier’s property. Until that time the Customer shall be entitled to use the Products during the normal course of business, but shall account to the Supplier for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or properties of the customer or other third party.
3. Until such time as the property in the Products supplied passes to the Customer, the Supplier shall be entitled at any time to require the Products to be delivered to the Supplier, and if the Customer fails to do so forthwith, to enter upon the premises of the Customer or any third party where the Products are stored and repossess the Products.
4. The Customer’s power of sale or right to use such Products that have not passed into their property shall immediately cease if an Administrative Receiver is appointed over all or any part of it’s assets or if it is adjudicated bankrupt or enters liquidation, whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986.
5. On termination of the Customer’s power of sale or right to use the Products the Customer will immediately hold the Products to the order of the Supplier.
6. Risk shall pass to the Customer at the time the Products are despatched by the Supplier, or any of it’s own suppliers. The Supplier accepts no liability for the loss or damage caused by the carrier.
7. This document supersedes and cancels all previous documents relating to the Terms and Conditions for the supply of Products or provision of services by the Supplier.
8. The failure on the part of either party to this Agreement to exercise or enforce any rights conferred by this document shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
9. These Terms and Conditions may be varied at any time and shall be effective if provided in writing or from the date posted on our website.
10. This Contract does not create a partnership, joint venture, agency or franchise relationship.
11. You may not sell, lease, sub-license, assign or otherwise transfer, whether in whole or in part, by operation of law or otherwise, the rights or obligations (including the Services) arising under these Terms and Conditions without our prior written consent.
12. Notwithstanding any provision to the contrary, nothing in these Terms will create or confer any rights or other benefits whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person other than the Customer or Supplier.
13. Any cancellation of the order must be within 24 hours of a placement of the order, otherwise a 25% cancellation and re-stocking charge shall be payable subject to our acceptance of such cancellation which shall solely be at our discretion. The notice of cancellation of the order must be in writing either by letter, FAX or E-Mail.
14. All invoices to be paid in full within 30 days unless prior arrangements have been made to extend the payment time. Any amounts not paid within 30 days shall be subject to interest charged at 8% above the Late Payment Reference Rate as per the Late Payment of Commercial Debts Act 1998. All invoices not settled within 30 days will incur charges to cover administration, postage and compensation for debt recovery costs in accordance with the Late Payment of Commercial Debts Act 1998.
15. Where payment is by an agreed credit account, or payment is made on a staged or installment basis, the Customer agrees that the Supplier is a Secured Creditor. For this purposes, any invoices or amounts not settled in full on the same day in which the Products are supplied shall be considered as having been provided on an agreed credit account.

Covering Law

1. Statutory rights remain unaffected.
2. The laws of England shall govern this contract, and both parties agree to the jurisdiction of the England courts.
3. This document is binding on both parties, and shall be provided to the Customer on request.