

## PCM SYSTEMS LIMITED

# Standard Terms & Conditions Of Sale Of Computer Software, Services, And Equipment

## 1. Interpretation

1.1 In these Conditions, certain words and expressions have defined meanings which are denoted by such words starting with a capital letter. These definitions are set out at the end of these Conditions and form an integral part of the Contract.

1.2 In these Conditions headings will not affect the construction or meaning of the Conditions.

## 2. Application of Terms

2.1 These Conditions together with the Accepted Quote shall form the Contract to the exclusion of all other terms and conditions, including any terms or conditions which the Customer may purport to apply under any purchase order or other document.

2.2 The Contract may only be varied by supplementary agreement in writing between the Parties.

2.3 The Customer acknowledges that in entering into the Contract it is not relying on any representation or warranty, express implied or otherwise, which is not in writing and incorporated into the Contract.

## 3. Price and Payment

3.1 The Price for the Software and/or Equipment and/or Services shall be that set out in the Accepted Quote and, unless otherwise agreed in writing, shall be in pounds sterling and exclusive of value added tax which shall be applied at the appropriate prevailing rate at the time of each transaction.

3.2 Unless otherwise stated in the Accepted Quote, invoices shall be due for payment within 30 days from the date of each invoice.

3.3 Unless otherwise stated in the Accepted Quote, charges for monthly recurring Services are payable monthly in advance. Services shall be provided subject to all invoices for such services having been paid by the due date.

3.4 If any sum payable under the Contract is not paid within 7 days of the due date then (without prejudice to PCM's other rights and remedies) PCM reserves the right to:

3.4.1 suspend performance of any Services, installation or delivery of Equipment or Software, or other obligations until all amounts owed have been paid; and/or

3.4.2 charge interest on any overdue amounts on a daily basis from the due date to the date of actual payment at the rate of 1 per cent per month. Such interest shall be payable upon demand.

3.5 The Customer shall not be entitled to withhold payment, whether by way of set off, counterclaim, discount, or otherwise, of any amount due to PCM under the Contract by reason of any disputed claim by the Customer in connection with the Contract and the Customer shall make all payments due without any deduction.

3.6 The Customer agrees to pay all reasonable expenses for accommodation, subsistence, and travel incurred by PCM in supplying any Services at premises other than PCM's own premises.

## 4. Risk and Retention of Title

4.1 Risk of damage to or loss of any Equipment supplied under the Contract shall pass to the Customer at the time of delivery to the Customer's premises or designated site.

4.2 Notwithstanding delivery and the passing of risk in the Equipment, or any other provision of these Conditions, legal and beneficial title of the Equipment, and/or any Software supplied under the Contract, shall not pass to the Customer until PCM has received payment in full.

4.3 Until payment has been made to PCM in accordance with these Conditions, the Customer shall hold the Equipment as trustee and bailee for PCM and the Customer shall store the Equipment in an appropriate environment, shall ensure that it is identifiable as being supplied by PCM, and shall insure the Equipment against all reasonable risks.

4.4 In the event that the Customer sells or transfers the Equipment to a third party before legal and beneficial title has passed to the Customer under these Conditions, the proceeds of such sale or transfer (or such proportion as is due to PCM) shall be held by the Customer in trust on behalf of PCM. The Customer shall ensure that such moneys are held separately from, and are in no way mixed with, any other moneys or funds, and that all moneys held on PCM's behalf are identified as such.

4.5 The Customer shall not be entitled to pledge, or in any way charge by way of security for any indebtedness, any of the Equipment which remains the property of PCM, but if the Customer does so all money owing by the Customer to PCM in respect of such Equipment so encumbered shall (without prejudice to any other right or remedy of PCM) forthwith become immediately due and payable.

4.6 PCM reserves the right to repossess any Equipment, and to encrypt or remove any Software supplied under the Contract, in which PCM retains title without notice.

4.7 The Customer's right to possession of the Equipment or Software in which PCM maintains legal and beneficial title shall terminate if any of PCM's rights to terminate set out in clause 12.1 or 12.2 arise.

## 5. Performance by PCM

5.1 PCM shall use all reasonable endeavours to achieve installation of Equipment and/or Software by any specified or requested date, but each such date is to be treated as an estimate only and time shall not be of the essence. Where payment is to be made by the Customer before installation of the Equipment or Software, PCM may defer installation until all such payments have been made.

5.2 The Customer will co-operate with PCM to try to achieve installation by the relevant dates. If any delay is caused by the Customer and PCM incurs unavoidable costs, PCM shall be entitled to invoice the Customer for any such costs reasonably and unavoidably incurred.

5.3 Where the provision of Software and Equipment is specified by PCM on the Accepted Quote, it shall be PCM's responsibility to ensure that the Software will be compatible and will satisfactorily function with the specified Equipment, subject to the Customer ensuring all relevant information is made known to PCM in relation to the use and intended purpose of the Software. In all other cases, unless PCM's advice is specifically sought by the Customer in this respect, the Customer shall be responsible for ensuring that any Software supplied can be satisfactorily used on any Equipment supplied or on any of the Customer's existing equipment.

5.4 Unless PCM already provides data backup services to the Customer or data backup is specified as part of the Service Description on the Accepted Quote, it shall be the Customer's responsibility to ensure that reliable

backups are taken of all relevant data and software prior to PCM undertaking the Services or installation of Equipment.

5.5 Unless training is specified as part of the Service Description on the Accepted Quote, PCM shall provide such training for the Customer and its staff in respect of the use of any Equipment or Software supplied as and when PCM deems necessary.

## 6. Support and Maintenance Services

Where PCM provides Support and Maintenance Services to the Customer, the additional terms and conditions set out in Schedule A to these Conditions shall apply.

## 7. Software and Website Content Developed by PCM

Where PCM develops Software or Website Content for the Customer, the additional terms and conditions set out in Schedule B to these Conditions shall apply.

## 8. Warranties

8.1 Subject to the provisions of Condition 5.3, PCM does not warrant the suitability or functionality of any Equipment supplied under the Contract.

8.2 In addition to any rights the Customer may have under the Sale of Goods Act, PCM shall transfer to the Customer the benefit of any warranty or guarantee given to PCM by the suppliers or manufacturers of any Equipment supplied under the Contract and shall procure the repair or replacement by the supplier or manufacturer of any such Equipment which is proven to be defective within the supplier's warranty period. PCM shall not otherwise be responsible for remedying any fault in or failure of the Equipment unless PCM provides Support and Maintenance Services to the Customer in respect of such Equipment.

8.3 Unless the Services specifically include a feasibility study, advice, or recommendation by PCM regarding third party Software, PCM does not warrant the functionality or suitability of such Software or that it will meet the Customer's needs.

8.4 The Customer acknowledges its responsibility to comply with the terms of the licence provided with any Software supplied under the Contract and will indemnify PCM against any losses, expenses, damages, or claims which PCM may suffer as a result of any breach of such licence by the Customer.

## 9. Confidentiality and Data Protection

9.1 Each Party agrees to maintain secret and keep confidential all Confidential Information of the other Party, provided that a Party shall be entitled to make any disclosure required by law or regulatory requirement subject to notifying the other Party as soon as possible of such disclosure requirement together with the information which is required to be disclosed under such legal request or regulatory requirement.

9.2 Each Party agrees not to seek to use any Confidential Information of the other Party for the purposes of generating business or to obtain a commercial, trading or other advantage or benefit to the other Party's detriment, or to assist or allow another party to do so.

9.3 Each Party shall comply with the requirements of the GDPR and DPA in relation to any data exchanged between or shared by the Parties.

9.4 It is understood by the Parties that the Customer shall, in using any Software, Equipment, and Services in relation to any personal data, operate as both data controller and data processor and that PCM shall not be acting as data controller or data processor in relation to any such data. The Customer shall be responsible for ensuring that the processing of such personal data complies with the GDPR. PCM shall not be responsible or liable for any acts or omissions of the Customer in relation to its data processing activities and its obligations under GDPR and DPA.

9.5 PCM shall keep secret and confidential all credentials relating to the Customer's servers, workstations, and websites to which it has access and shall promptly destroy all such data on the termination of this Contract or at the Customer's request.

## 10. Intellectual Property

10.1 Where PCM develops Software for the Customer, the copyright in such Software shall remain the property of PCM unless otherwise agreed by the Parties in writing.

10.2 The copyright or any other intellectual property rights in any third party Software, documents, materials, data, or other information in relation to such Software and/or Equipment shall, unless otherwise specified by PCM in writing, belong to the third party that supplies such Software or Equipment.

10.3 Each Party shall respect the other Party's trademarks, logos, copyright, and other intellectual property and waives any claims, rights, or title to such intellectual property of the other Party, whether registered or not.

## 11. Limitation of Liability

11.1 PCM's entire financial liability (including any liability for the acts and omissions of its employees, agents, and sub-contractors) to the Customer under the Contract shall, subject to Condition 11.2, be limited to the lesser of the Contract sum or £10,000, save that nothing in these Conditions excludes or limits the liability of PCM for death or personal injury caused by PCM's negligence or any acts of fraud.

11.2 If the Customer suffers any loss or damage which is recoverable under any relevant insurance policy held by the Customer, then PCM's liability shall be reduced by such sum as is so recoverable by the Customer under its insurance policies.

11.3 Notwithstanding the provisions of Conditions 11.1 and 11.2, neither Party shall be liable to the other in respect of any loss of profit, goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the other Party as a result of an action brought by a third party) even if such loss was reasonably foreseeable and the Party incurring the loss had notified the other Party of the possibility that such loss might be incurred.

11.4 Unless PCM supplies ant-virus/malware Software or monitoring as part of any Services, it is the Customer's responsibility to protect its systems against such malicious Software. Although PCM will take all reasonable precautions in accordance with good industry practice to protect against computer viruses and malware, the very nature of such malicious software means that it is not possible for PCM to warrant that any documents or files provided or transmitted to the Customer will be "virus free".

11.5 The Customer's financial liability to PCM under the Contract shall be limited to its obligations to make payment, and any interest arising, in accordance with the terms set out in Condition 3, save that nothing in these Conditions excludes or limits the liability of the Customer for death or personal injury caused by the Customer's negligence or any acts of fraud.

## 12. Termination

12.1 Either Party may terminate the Contract by giving written notice to the other Party in the following circumstances:

12.1.1 with immediate effect in the event that the other Party is declared bankrupt or insolvent, makes a composition with its creditors, is subject to a petition for winding up, or ceases to trade for whatever reason;

12.1.2 by 30 days notice in the event that either Party fails to comply with its respective obligations detailed in the Contract.

12.2 Notwithstanding the provisions of Condition 12.1, and subject to the provisions contained in Condition 13.4 in so far as they relate to termination, either Party may terminate the Contract by giving 3 months written notice to the other Party.

12.3 Any termination of the Contract howsoever caused:

12.3.1 shall not affect any rights, obligations, or liabilities of either Party which have accrued prior to the date of termination;

12.3.2 shall not affect the continuation of any provision of the Contract and these Conditions which is expressly or by implication intended to continue in force on or after such termination.

12.4 All payments due under the Contract shall become due immediately upon termination and PCM will issue the Customer with a final invoice (which shall also be immediately due and payable) covering any outstanding charges under the Contract.

## 13. General Provisions

13.1 Neither Party shall assign the Contract or any part of it without the prior written consent of the other Party, such consent not to be unreasonably withheld, except that PCM may sub-contract certain services where such services are required in order to fulfil the Contract but are not within PCM's field of expertise.

13.2 Any notice required to be given under the Contract shall be sufficiently given by either Party if sent to the other by registered "signed for" mail to the last known postal address of the other Party and every notice sent shall be deemed to have been received and given at the time when it was signed for.

13.3 Neither Party shall, and shall procure that its associates shall not, for the duration of the Contract and for a period of one year after its termination (unless agreed in writing by the other Party) employ, solicit or endeavour to entice away from the other Party any of the other Party's staff involved in providing the Services, or arrange the employment or engagement by any other person firm or company of any of the other Party's staff involved in connection with the Contract.

13.4 PCM reserves the right to vary the terms of the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of PCM including, without limitation, natural disaster, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 90 days, then the Customer shall be entitled to give not less than 30 days' notice in writing to PCM to terminate the Contract.

13.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed

severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.6 Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.7 Any waiver by either Party of any breach of, or any default under, any provision of the Contract by the other Party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

13.8 The Parties do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.9 This Contract is governed by, and shall be interpreted in accordance with, English Law. The Parties submit to the exclusive jurisdiction of the English Courts. PCM and the Customer shall use all reasonable endeavours to resolve any dispute arising in connection with the Contract. In the event that such a dispute cannot be resolved by negotiation or mediation, the matter shall be determined by the English Courts.

## 14. Defined Terms

In these Conditions the following expressions have the defined meanings:

- **'Accepted Quote'** - a quotation issued by PCM setting out the Computer Software and/or Equipment and/or Services to be supplied which has been accepted unconditionally by the Customer
- **'Customer'** - the person(s), firm, or company named as the customer on the Accepted Quote
- **'Conditions'** - the standard terms and conditions of sale as set out in this document
- **'Confidential Information'** - all information which has been disclosed by one Party to the other Party concerning its operations, processes, customers, suppliers, pricing, plans, intentions, trade secrets, market opportunities, and business affairs which is not in the public domain
- **'Contract'** - the Accepted Quote and these Conditions
- **'DPA'** – the Data Protection Act 1998
- **'Equipment'** - any equipment sold by PCM to the Customer
- **'GDPR'** – General Data Protection Regulation
- **'Party'** – PCM or the Customer
- **'Parties'** – PCM and the Customer
- **'PCM'** - PCM Systems Limited, a company incorporated in England & Wales under registration number 02452375 and having its registered office at 1 Antler Complex, Bruntcliffe Way, Morley, Leeds, LS27 0JG
- **'Price'** - the price to be paid by the Customer for the Computer Software and/or Equipment and/or Services as specified in the Accepted Quote
- **'Sale of Goods Act'** – collectively or any of The Supply of Goods (Implied Terms) Act 1973, The Sale of Goods Act 1979, The Supply of Goods and Services Act 1982, and The Sale and Supply of Goods Act 1994
- **'Services'** - the services to be provided by PCM to the Customer as set out in the Accepted Quote

- **'Service Description'** - a description of the Services to be provided by PCM as detailed in the Accepted Quote
- **'Software'** - any computer programs to be provided by PCM to the Customer, further details of which are set out in the Accepted Quote
- **'Support and Maintenance Services'** - the maintenance of Equipment and/or Software by PCM as more fully defined in Schedule A to these Conditions
- **'Website Content'** – website design and development services as more fully defined in Schedule B to these Conditions

# Schedule A

## Support And Maintenance Services

Where PCM provides Support and Maintenance Services to the Customer, the following additional terms and conditions shall apply.

### **A1. Scope of Support**

A1.1 The Equipment and Software for which PCM shall provide support and maintenance shall be listed in a schedule to the Accepted Quote (**'Supported Items'**).

A1.2 PCM shall provide Support and Maintenance Services to the Customer by means of accessible and unlimited telephone and remote support for Equipment or Software failures or malfunctions.

A1.3 The Support and Maintenance Services shall be made available by PCM to the Customer during the following business hours: Monday to Friday, 9am to 5.30pm, excluding public holidays. Where Support and Maintenance Services are requested by the Customer outside of the above business hours, additional charges may apply.

A1.4 Where issues cannot be resolved by the helpline or remote access to the Equipment or Software, on-site support may be arranged at PCM's prevailing hourly rate.

A1.5 In the event that PCM is unable to repair or remedy any Supported Items which have failed or malfunctioned, PCM shall expediently replace such Supported Items with the equivalent or better equipment or parts as quickly as practicable in the circumstances in order to minimise downtime to the Customer's computer systems. Such repairs or replacements shall be in addition to any manufacturers' "return to base" warranties.

### **A2. Excluded Maintenance**

A2.1 Support and Maintenance Services shall exclude any support, repairs, or maintenance rendered necessary by reason of any of the following:

(a) any unusually high level of damage caused in the reasonable opinion of PCM by accident, carelessness, or misuse of Equipment or Software by the Customer or a third party;

(b) any reasons outside of PCM's reasonable control for example, but not limited to, failure or variation of electricity supply, computer viruses or malware, loss of data;

(c) any repairs, maintenance, or modifications to Equipment or Software which have not been carried out or authorised by PCM;

(d) the use by the Customer of any Software which has been declared "end of life" and no longer supported by the supplier;

(e) an unusually high level of maintenance caused in the reasonable opinion of PCM by the age of the equipment or failure by the Customer to carry out appropriate levels of maintenance prior to PCM's engagement by the Customer;

(f) renewal of consumable supplies for example, but not limited to, removable media, printer cartridges, toners, laser printer consumables, batteries, cabling.

A2.2 Any intervention by PCM requested by the Customer in respect of the above excluded maintenance shall be chargeable to the Customer.

# Schedule B

## Software And Website Development Services

Where PCM develops Software and/or Website Content for the Customer, the following additional terms and conditions shall apply.

### **B1. Scope of Software and Website Development**

B1.1 Following a feasibility study of the Customer's needs and requirements, PCM shall prepare a specification detailing the objectives and functionality of the software and/or website to be developed together with a timeline and costing ('**Specification**'). Subject to amendment after discussion with the Customer, the finalised Specification shall be treated as a quotation capable of acceptance by the Customer as an Accepted Quote.

B.1.2 Any variation to the Specification shall be agreed by the Parties in writing.

### **B2. Development and Acceptance of Software and Website Development**

B2.1 PCM shall provide to the Customer a preliminary version of the Software or Website Content in accordance with the objectives, functionality, and timeline detailed in the Specification.

B2.2 The Customer shall carry out such acceptance testing as it considers necessary in order to satisfy itself that that the Software or Website Content complies with the Specification.

B2.3 PCM shall make such amendments to the Software or Website Content as identified by the Customer and are necessary in order to comply with the Specification prior to installation.

### **B3. Installation of Software**

B3.1 Unless PCM is to provide Equipment on which to run the Software, the Customer shall make available to PCM in a timely manner prior to installation computer hardware which complies with the minimum requirements detailed in the Specification.

B3.2 After acceptance testing and approval by the Customer, PCM shall deliver and complete the installation of the Software at the Customer's site and provide any training detailed in the Specification.

### **B4. Installation of Website Content**

B4.1 After approval by the Customer, PCM shall upload the Website Content to the Customer's website domain, for which the Customer shall provide to PCM the relevant security credentials.

B4.2 Unless the Specification includes hosting and maintenance of the Website Content by PCM, the Customer shall be responsible for such hosting and maintenance.

### **B5. Ownership of Software and Website Content**

B5.1 Unless otherwise detailed in the Specification or agreed in writing by the Parties, ownership in the Software and/or Website Content shall vest in the Customer.

B5.2 Notwithstanding the provisions of Condition B5.1, any software routines, procedures, or processes of a generic nature developed or used by PCM for the purposes of the Software or Website Content shall become or remain the property of PCM.

## Privacy Notice

Here at PCM Systems Ltd we take your privacy seriously and will only use your personal information to administer your account and to provide the products and services you have requested from us.

From time to time we will also contact you via email with details of other IT and development services, offer and news we provide via email. We may contact all of the employees at the business who use the products/services we deliver for you. You can update your permissions at any time.

Our full privacy policy can be found at <https://www.pcmsystems.co.uk/privacy-policy>