

## 1 DEFINITIONS

1.1 In these Terms and Conditions of Contract:  
"Company" means Southern Cross Consulting Ltd, including its operating divisions.  
"Customer" means the person, firm or company specified in the order to which these conditions apply.  
"Equipment" means the items sold by the Company to the Customer under the Contract to which these conditions apply, and includes any hardware or software supplied under this Contract.  
"Contract" means these conditions together with the details specified in the order to which these conditions apply.  
"Normal working hours" means from 0900 to 1730 hours Monday to Friday, excluding public holidays.

1.2 Where this Contract does not include installation by the Company, paragraphs 4.1, 5.2 and 9.2.1 shall not apply and references to installation shall be ignored and "taking over / taken over" shall be read as meaning "delivery / delivered to the customer".

## 2 CONTENT OF CONTRACT

2.1 No variation of these Conditions shall have effect unless agreed in writing by the Company and the Customer. These Conditions shall not be replaced by any contract terms proposed by the Customer.

2.2 No employee, agent or sub-contractor of the Company has authority to make any warranty statement or promises concerning the Equipment except in writing signed by a duly authorised officer of the Company.

2.3 Except where the Customer relies on the Company's written advice, it is the Customer's responsibility to satisfy himself as to the suitability of the Equipment for its needs.

2.4 The Company may make minor alterations to the specifications of the Equipment which do not affect the Equipment's performance.

## 3 CONNECTION TO NETWORK

Where the Equipment is to be connected to a telecommunications network circuit not arranged by the Company, it is the Customer's responsibility to arrange for such connections to be made. Irrespective of who arranges the connection, the Customer shall to pay any connection charges and comply with any conditions relating to connection. Installation of the Equipment under this contract does not include connection, unless explicitly specified and accepted in the order.

## 4 PREMISES – PREPARATION AND ACCESS

4.1 The Customer shall at its own expense provide full and convenient access to, and provision on the premises concerned, of a proper, safe and suitable working environment. This includes provision of all lighting, heating, electrical power supplies and welfare facilities during normal working hours.

4.2 Employees, agent or sub-contractors of the Company shall observe the Customer's reasonable site regulations previously advised in writing to the Company. In the event of any conflict between such site regulations and these Conditions the latter shall prevail.

## 5 TAKING OVER

5.1 Where a period or date for delivery is specified, such date shall be treated as a best estimate only. Although using its best endeavours to avoid any delays, the Company shall not be liable in any way for failure to meet the period or date. Time of delivery shall not be the essence of the contract.

5.2 Upon installation, the Company will carry out any tests necessary to ensure that the Equipment is in working order. The Equipment shall be deemed to be taken over by the Customer at either the date when the Company notifies the Customer that the Equipment is in working order or the date when the Customer begins to use the Equipment, whichever is the earlier.

5.3 Taking over shall not be prevented by minor faults which do not affect the Equipment's performance, but the Company shall remedy such minor faults within a reasonable time.

## 6 OWNERSHIP AND RISK

6.1 Any part of the Equipment delivered to the Customer's premises (or the premises to which the Equipment is delivered at the Customer's request) shall from the time of delivery be at the Customer's risk, whether or not installed, except as regards loss or damage caused by the negligence of the Company. Where the Contract does not include delivery and/or installation by the Company, risk passes when the Customer or his agent takes possession of the Equipment.

6.2 If the Company is delayed in or prevented from delivering or installing the Equipment by any date specified under paragraph 5.1 due to any delay or default on the part of the Customer, the Company may, in addition to any other remedies and on written notice to the customer, add to the Contract price a reasonable sum in respect of any additional costs thereby incurred.

6.3 Title to the Equipment shall not pass to the Customer until payment of the Contract price in full, including any interest payments due to late or extended payment, credit or warranty terms.

## 7 GUARANTEE

7.1 If during the period of 12 months (or any other period notified to the customer by the Company) from taking over the Equipment, the Company is notified of a fault in the Equipment which is due to faulty design, manufacture or materials, or the negligence of the Company, the Company will replace or (at its option) repair the faulty part free of charge provided that:

7.1.1 the Equipment has been properly kept, used and maintained in strict accordance with the manufacturer's or the Company's instructions, and has not been modified except with the Company's consent;

7.1.2 the fault is not due to accidental or wilful damage (including lightning and electrical damage); interference with maintenance or the Equipment by persons other than the Company;

7.1.3 if the Equipment has been manufactured to the Customer's designs, the fault is not due to faulty design by the Customer.

7.2 This guarantee does not cover fair wear and tear.

7.3 In the case of Equipment capable of being installed by the Customer, the Customer will normally be required to return faulty Equipment to the Company unless the Company agrees otherwise.

7.4 As it is not practicable for software to be tested in every possible permutation, the Company does not warrant that the software supplied under this Contract will be free of all faults or that its use will be uninterrupted but the Company shall remedy such defects which significantly impair performance within a reasonable time.

7.5 The Company may make a reasonable charge in respect of any visit at the Customer's request to repair the Equipment where either no fault is found, or the fault is not covered by this guarantee.

## 8 LIMITATION OF LIABILITY

8.1 Subject to the provisions of this Clause 8, the Company shall indemnify the Customer in respect of all damages or injury (including death) to any tangible property or person and against all actions, claims, demands, costs, charges and expenses, which may arise as a result of breach of these conditions, or is caused by the negligence of the Company, its employees or agents, but not otherwise.

8.2 The Company shall not be liable to the Customer for any loss, damage or injury to the extent that it is caused by or arises from any act, default or negligence of the Customer or of others (not being the Company's employees or agents).

8.3 The Company shall not be liable in contract, tort or otherwise for any loss, damage or expense arising from any loss of use, failure or deterioration of the Equipment or for any loss (whether direct or indirect) of profits, business, anticipated savings or of loss of contracts or for any other consequential loss whatsoever.

8.4 Except in respect of personal injury (including death) the liability of the Company whether in contract, tort or otherwise shall not exceed £500,000 (five hundred thousand pounds) for any act or default or any connected series of acts or defaults.

## 9 CHARGES AND PAYMENT

9.1 Unless the Company notifies the Customer otherwise, an invoice will be submitted upon taking over the Equipment. Payment is due within 14 days of the invoice date. The Company may charge daily interest on late payments at a rate equal to 5% per annum above the Base Lending Rate of The Bank of England.

9.2 Prices are exclusive of Value Added Tax which will be added to invoices at the prevailing rate.

## 10 SOFTWARE AND DOCUMENTS

10.1 Intellectual property rights in all software supplied to the Customer remain the property of the Company or its licensor. The Company grants the Customer a non-exclusive non-transferable licence to use the software for the purpose of using the Equipment and for no other purpose. The Customer shall not reproduce the software except to the extent strictly necessary for proper use of the Equipment and for back-up purposes; any such permitted reproduction being solely in object code form. The Customer shall keep the software and any operating manuals or other documentation associated therewith in confidence; any disclosure thereof by the Customer shall be made in confidence and only to the extent strictly necessary for the proper use of the Equipment. The Customer shall be responsible for ensuring that such disclosure does not lead to a breach of this paragraph. The Customer shall not make modifications to the software without the prior written consent of the Company; the intellectual property rights, including copyright, in any permitted modifications shall vest in the Company. This contract shall not apply to the extent that it is inconsistent with any separate software licence or agreement made between the Company and the Customer.

10.2 The Customer will sign any agreement reasonably required by the owner of intellectual property rights in all software supplied to the Customer under this Contract for the protection of that software.

10.3 The copyright in all documents, drawings and information supplied to the Customer in connection with this Contract shall remain vested in the Company. Such documents, drawings and information shall not be copied, disclosed or used (except for the purpose for which they were supplied) without the written consent of the Company.

## 11 INFRINGEMENTS

11.1 The Company shall indemnify the Customer against all claims and proceedings arising from infringement (or alleged infringement) of any patent, design or copyright enforceable in the United Kingdom, by reason of the Customer's use or possession of the Equipment. As a condition of this indemnity the Customer shall notify the Company promptly in writing of any allegation of infringement, make no admission relating to the infringement and allow the Company to conduct all negotiations and proceedings and give the Company all reasonable assistance.

11.2 If at any time an allegation of infringement of patent, design or copyright is made, the Company may at its own expense modify the Equipment so as to avoid the infringement, or may replace the Equipment with non-infringing goods provided that any such modification or replacement does not affect the Equipment's performance.

11.3 The indemnity in paragraph 11.1 does not apply to infringements occasioned by the Customer's use of the Equipment in conjunction with other apparatus or software not supplied by the Company, nor to infringements occasioned by designs or specifications made by the Customer. The Customer shall indemnify the Company against claims, proceedings and expenses arising from such infringements.

**12 TERMINATION OF CONTRACT**

Without prejudice to other rights, the Company shall have the right forthwith to terminate this Contract and to claim for any resulting losses or expenses if the Customer commits any act of bankruptcy; or compounds with its creditors; or a petition or receiving order in bankruptcy is presented or made against the Customer; or a petition for an administration order is presented in relation to the Customer or a resolution or petition to wind up the Customer is passed or presented (otherwise than for reconstruction or amalgamation) or a receiver or administrative receiver is appointed.

**13 ASSIGNMENT**

The Customer may not assign any of its rights or obligations under this Contract without the Company's written consent.

**14 FORCE MAJEURE**

The Company shall not be liable in respect of any breach of this Contract due to any cause beyond its reasonable control including; Act of God, inclement weather, flood, lightning or fire; industrial action or lockouts; the act of omission of Government, highways authorities, or other competent authority; war, military operations or riot; the act or omission of any party for whom the Company is not responsible.

**15 NOTICES**

Any notice or communication sent to the Customer shall be sufficient if sent to any address notified to the Company for that purpose or to the Customer's address last known to the Company.

**16 RE-EXPORT**

The Purchaser hereby agrees that it will not re-export any equipment supplied by the Company without the approvals required under UK or US or other countries' export laws or regulations.

**17 LAW**

17.1 These conditions and any Contract between the Customer and the Company shall be governed by and construed in accordance with the Laws of England.

17.2 The Customer acknowledges that these conditions contain the entire terms of the contract and supersedes all prior oral or written communications. They may not be amended except in writing signed by authorised representatives of the Company and of the Customer.

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