

Terms & Conditions

1. Definitions & Effects of Sale

- (a) "The Company" means Panda Software (UK) Ltd.
- (b) These Conditions shall apply to and be incorporated into every Agreement between The Company and any person, Firm or Company ("The Customer") under which The Company supplies Goods or Services at the request of The Customer.
- (c) These Conditions shall supersede all earlier Conditions of The Company.
- (d) These Conditions shall take precedence over any Conditions of The Customer and shall not be altered without the written consent of a Director of The Company.

2. Price

- (a) Prices quoted are valid for 30 days or other period indicated on the quotation from the Company as per the specifications provided by the Customer and reflected by the Company in the quotation.
- (b) Unless otherwise stated, any prices quoted by the Company are:
 - i) Exclusive of Value Added Tax and any other taxes
 - ii) Exclusive of carriage, packing and insurance
 - iii) Exclusive of any release certificatesAnd the Company may, at its discretion, charge extra in respect of the above items.
- (c) Where call offs or other contractual quota agreed is not adhered to by the Customer, the Company reserves the right to amend pricing structures in accordance with the quantities delivered to include any extra costs incurred.
- (d) The price payable for goods or services, unless otherwise agreed in writing, is the price as per the quotation.

3. Delivery

- (a) Any delivery dates quoted whether verbally or otherwise are estimates, and will be adhered to on a reasonable endeavour basis.
- (b) Delivery of the Goods to the Customer's address or any other place as agreed shall constitute delivery and the risk therein shall pass upon such delivery to the Customer.
- (c) The Company will deliver as near as possible to the delivery premises as road conditions permits and to the ground floor only of such premises. The customer shall provide at its own expense the labour for unloading. Where such labour is not available the Company shall be entitled to charge the cost of unloading. Damage caused due to inadequate access or careless unloading shall be at the Customers risk.
- (d) The Company shall be entitled to make partial deliveries by instalments and these Conditions shall apply to each partial delivery unless the Customer specifically instructs the Company otherwise and in writing, at the time of commencement of trading with the Company.
- (e) Subject to clause 3(d), reasonable deviations in quantity of goods delivered from that stated in the agreement shall not give the Customer any rights to reject the goods or to claim damages. Also the Customer shall accept and pay at the contractual rate for the quantity of goods actually delivered.
- (f) The customer shall inspect all goods immediately upon receipt of delivery, and in the case of any loss or damage, shall notify the Company and the carrier separately in writing within 3 days of delivery.

4. Payment

- (a) The price is payable on demand but in any case must not be paid later than 30 days from date of invoice, unless agreed in writing by a Director of the Company.
- (b) The Company reserves the right to suspend deliveries where payment is not received in accordance with clause 4(a) or in accordance with alternative terms of payment agreed in writing.
- (c) Where payment is not made as per clause 4(a), the Customer will be liable to pay interest on any unpaid amounts calculated at 4% above Barclays Bank PLC's base rate calculated on a daily basis.
- (d) If the Company is only able to part deliver items against the Customer's order due to causes beyond its control (including but not limited to the example referred to in clause 5 below) the customer shall pay for such items as are delivered.
- (e) Invoice disputes must be notified in writing to the Company within 10 working days of invoice date.
- (f) The Customer shall indemnify the Company and keep it indemnified in respect of all cost including legal fees reasonably incurred in attempting to recover overdue accounts.
- (g) The Customer shall not withhold payment of any amount due to the Company in respect of any alleged breach of contract by the Company; nor shall the Customer be entitled to any right of set-off.

5. Force Majeure

If the Company is prevented at any time from performing any contractual obligations, or if any loss, damage, injury or delay in delivery is occasioned by or due to any cause beyond the Company's reasonable control including (but without prejudice to the generality of the foregoing expression), the commission of any criminal act, shortage of goods, act of war, civil commotion, accident, strike or lockouts, Act of God or any restriction imposed by any local, municipal or Government authority whether British or foreign, the Company shall be entitled forthwith to determine the contract and is to be discharged from all liabilities whatsoever to the Customer and shall not be liable for any such loss, damage, injury or delay.

6. Retention of Title

- (a) The risk in the goods shall pass to the Customer, who shall be solely responsible for their custody and maintenance, on delivery; but the ownership and property in the goods shall remain with the Company until such time as full payment has been received. The Company transfers no title to or ownership in goods to the Customer or any third party.
- (b) The Customer shall keep the goods as a fiduciary bailee for the Company and shall store the goods separately from its other chattels and in a manner that clearly shows the Company owns them.
- (c) Before the payment date the Customer will be entitled to sell the goods at the best obtainable price as principal vis-à-vis sub-buyers and not as an agent for the Company. The Company will be legally and beneficially entitled to the proceeds of sale and the Customer shall account for all such proceeds to the extent that the Company has not received payment of the price for such goods. Such proceeds are to be maintained in a separate bank account until payment has been made to the Company. The Customer will not use or deal in the proceeds of the sale in any way until the Company has been paid in full.
- (d) The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods that remain the property of the Company.
- (e) Until such time as the title in the goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the goods to the Company. If the Customer fails to do so, the Company may enter upon any premises without notice where the goods are stored and repossess the goods.

7. Guarantees

All goods supplied by the Company carry the relevant manufacturers' Warranties and Guarantees with the manufacturers' specific Terms and Conditions for supply of Goods.

8. Warranty and other Liability

The Company shall have no liability for any loss of profits or claims of third parties or any other consequential or indirect loss or damage whether arising out of breach of such warranty or of any other contractual or other obligations of the Company or otherwise.

9. Returned goods or cancellations

- (a) The following cancellation charges will be levied unless otherwise agreed in writing with the Company:
 - i) Orders cancelled over 30 days from scheduled and agreed delivery date - 45%
 - ii) Orders cancelled within 30 days of scheduled and agreed delivery date - 75%These charges are based upon the quoted price and calculated from date of receipt of written cancellation.
- (b) The Customer shall not return goods without the Company's previous written consent, and upon receipt of a valid return authorisation number. Such consent will not be granted where goods have been specifically purchased by the Company to meet the Customer's requirements.

10. OEM Products.

The Customer understands that it may only distribute OEM software products ("software") to OEM Distributors with whom Customer has entered into an OEM Registration and Distribution agreement (the "Agreement"). Accordingly, Customer agrees that it is authorised to resell and distribute the software subject to the following restrictions and requirements.

Master Installation – Customer may load or install the machine executable version of the software on the hard drive or other memory device of the OEM products.

Sale of the Software – Customer shall (i) sell the software only to customers ("OEM Customer") in EMEA (Europe, Middle East and Africa), (ii) deliver the software to OEM Customer with all packaging, warranties, disclaimers, and software agreements intact, as received by Customer from the Company and shall not alter the packaging of any software or related documentation, (iii) include correct trademark notices on all materials which used author's trademarks, and (iv) charge a single price for the OEM product and the software it is bundled with, and shall not distribute, market, or sell software separately or refer to separate value of the software. (v) single price must be greater than the SRP of retail version of OEM software

Warranties to Customers – The Company shall pass on the Customer the OEM's STANDARD END USER WARRANTY FOR THE SOFTWARE, BUT MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN THE SOFTWARE TO CUSTOMER.

With respect to resale of the software, the Company makes no warranties or representations as to the quality, performance, merchantability, fitness for a particular purpose, or any other aspects of the software being sold.

Technical Support - The publisher is responsible for 1st stage technical support on titles included in any bundles unless otherwise stipulated

Payment – The Customer shall remit payment for the software directly to the Company as set out in Clause 4 above.

Audit – The Customer will keep complete and accurate records of the number of copies of software shipped, and the OEM customer name and location to which the software was shipped. The Company shall have the right to audit the Customer's records twice per year to confirm proper payment.

Export Compliance – The Customer agrees to comply with all laws regarding export of the software and its documentation.

Confidentiality – Neither party shall disclose the terms or existence of this Agreement (other than distributor) or any confidential business or technical information of the other to any third party without advance written approval of the other party.

Termination The Company's right to distribute, market, and sell the software may be terminated for causes on seven (7) days notice, or without cause thirty (30) days notice. Termination shall not effect the Customer's payment obligations or confidentiality obligations. After termination, the Customer may continue to distribute its inventory of software for sixty (60) days subject to the terms of the agreement.

- 11. General** – (i) The Customer is an independent contractor and not an agent, partner, or joint venture partner of the Company. (ii) This agreement is not effective until executed by Author. (iii) Neither the submission by you of this agreement or of any funds or any purchase order or any other document, nor any receipt by you of any products, shall constitute acceptance (or modification) of this agreement. (iv) The Customer shall not be entitled to assign or transfer any of its rights or obligations without the previous written consent of the Company. (v) The Law of England shall govern all accepted orders and all contracts for the sale and supply of goods by the Company in all respect. (vi) The headings of these Terms and Conditions are for convenience only and shall not affect their interpretation.

Customer Signature _____

Date _____

Print Name _____

Position _____