

Standard Terms and Conditions

1. DEFINITIONS

“**Wisebusiness**” means the company or companies identified as Wisebusiness in our/your Invoice or other correspondence as the context requires.

“**Customer**” or “**Client**” means the legal entity accepting Wisebusiness’s written or oral quotation for the supply of Products or Services or whose order for Products or Services is accepted by Wisebusiness or the party otherwise commissioning the Services in each case as named on the Invoice.

“**Maintained Products**” means hardware, software, network, communication, or peripheral Products, in respect of which Services are either bundled with the Products or required under a Service Offering selected and ordered by the Customer, accepted by Wisebusiness and specified on the Invoice, and such additions or changes thereto as may from time to time be agreed in writing between the parties.

“**Invoice**” means the document sent by Wisebusiness to the Customer, demanding payment for the Products or the Services and containing, recording and evidencing contractual terms relating to the Agreement.

“**Service Offering(s)**” means the service options offered by Wisebusiness for Maintained Products.

“**Services**” means the Services to be performed by Wisebusiness pursuant to the Service Offering selected by the Customer.

“**Price**” means the charge for the Products or Services.

“**Products**” means goods sold by Wisebusiness pursuant to the Agreement, as specified on the Invoice.

“**Agreement**” means a contract for the supply by Wisebusiness to the Customer of the Products and/or the Services incorporating these terms and conditions and the terms of any Service Offerings selected by the Customer.

“**Third Party Products**” means Products not manufactured or assembled or authored by Wisebusiness and supplied to Wisebusiness by third parties for resupply by Wisebusiness.

“**Service Level Agreement**” means the document that contains the responsibilities of Wisebusiness and the Customer involved in the Agreement, and which defines the scope of the Services to be provided by Wisebusiness in the Agreement and the measures to be put in place against which the Services will be deemed as performing to meet the Agreement.

“**Support Contract**” means the document that contains the responsibilities of Wisebusiness and the Customer involved in the contract, and which defines the scope of the Services to be provided by Wisebusiness in the contract.

“**Hardware Support**” means the replacement or repair of physical components within a unit including where necessary the reinstallation of the operating system to a factory default condition.

“**Software Support**” means the provision of telephone, email, and/or remote support for nominated software applications and operating systems and/or connection to a network infrastructure.

2. PRODUCTS AND SERVICES

Wisebusiness shall supply and the Customer shall purchase, the Products and/or the Services as principals only, to the intent and with the effect that no other party shall have any rights or obligations, or be entitled to sue or liable to be sued, under the Agreement.

The Products and Services are supplied subject to the terms and conditions of this Agreement to the exclusion of any other terms or conditions of the Customer and variations or amendments must be confirmed by Wisebusiness in writing.

The supply of Services will start on the agreed date as shown on Wisebusiness’s Invoice.

3. DELIVERY, TITLE AND RISK

The Products or Services are delivered at the agreed delivery point.

Delivery dates are approximate.

Supply requirements may cause Products to be delivered by installments.

Risk passes on delivery.

Title to Products passes to the Customer when full payment is made and Wisebusiness shall be entitled at any time before title passes (without any liability):

- to terminate Customer’s right to use, sell or otherwise deal in Products
- to enter the premises of Customer and re-possess Products
- to use or sell Products

4. ACCEPTANCE OF PRODUCTS

Unless Customer shall, promptly after delivery, inspect the Products and notify Wisebusiness, in writing, of any defects found, the Products shall be deemed to have been accepted on delivery.

5. THE SERVICE OFFERINGS

Services are provided in accordance with the provisions contained in the Service Offering selected by the Customer, or the Service Level Agreement, as shown on the Invoice.

Wisebusiness will use reasonable endeavours to meet relevant response times.

Customer agrees that Wisebusiness shall not be liable for any direct, indirect or consequential losses occurring as a result of Wisebusiness's failure to meet relevant response times except as set out in Section 10.

The Customer may purchase extended service coverage in accordance with the current Wisebusiness policy.

Wisebusiness shall be under no obligation to supply the Services where, in Wisebusiness's reasonable opinion, these are needed because of improper or inadequate installation, use or maintenance; actions or modifications by unauthorised third parties or the Customer; or accidental or wilful damage.

The Services do not include the correction or avoidance of software defects or errors or the loading or reloading of Customers applications software or data or any reconfiguration of the Maintained Products beyond reloading the operating system software, unless a current Service Level Agreement and/or Support Contract is in effect with the Customer.

Wisebusiness reserve the right to charge at our normal commercial rate for any correction to, or failure of, Services which are deemed to have been caused by : horseplay, misuse, accident, any action resulting in gross misconduct charges against a person or persons, incompetence, or deliberate sabotage, by the Customer or its employees.

Wisebusiness reserve the right to charge at our normal commercial rate for support should the client, its employees or contractors fail to notify Wisebusiness in writing of any changes to software, or the supply of additional or relocation of IT equipment, and subsequent to the change equipment or software then fails to work or operate correctly, and Wisebusiness are required to provide additional support.

6. REPLACEMENT

Wisebusiness reserves the right to replace the whole or any part of the Maintained Products. Repairs may be carried out using reconditioned parts or Products which, whilst not necessarily identical to the faulty Maintained Products, are equivalent to new in functionality and appearance. Included in this replacement service is the removal and disposal of the replaced equipment unless otherwise explicitly requested not to do so by the customer.

7. CUSTOMERS OBLIGATIONS

Customers shall properly use the Maintained Products and shall provide Wisebusiness with all reasonable facilities and information to enable Wisebusiness to perform its duties.

Customer shall be responsible for complying with all Customer applicable regulatory requirements, including legally licenced software products. If the Customer cannot provide on demand legally licenced software products (CDs or DVDs) to enable Wisebusiness to perform its contracted obligations to the Customer, Wisebusiness are entitled to charge at its full commercial rate for any wasted time spent waiting for the supply of such media as required by Wisebusiness for the performance of its duties or obligations.

8. PRICE AND PAYMENT

Payment shall be made in full on or before supply of Products or Services or, if agreed at the time of the order, within 30 days of the date of the Invoice.

The Price of the Products and/or Services shall be Wisebusiness's quoted price or, where no Price has been quoted (or a quoted Price is no longer valid), the price listed in Wisebusiness's published price list current at the date of the Customers order and in any case as shown on the Invoice.

All prices quoted in writing are valid for 30 days except written quotations in respect of Third Party Products, which are valid for 10 days only. Oral quotations are valid only to the end of the business day upon which they are given.

All prices for the sale of products exclude Wisebusiness's charges for transport and insurance.

The price and any additional charges payable under the Agreement are exclusive of all Taxes including Value Added Tax.

Time for payment is of the essence. Wisebusiness reserves the right to charge interest on sums not paid within the stated period, on a day to day basis, as well after as before any judgement, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at the rate of 5% above the prevailing Bank of England base rate. Such interest shall be paid on demand.

If the client wishes to dispute any invoice or part thereof (time being of the essence) the client shall before the expiry of 10 working days of the invoice date deliver a notice in writing to Wisebusiness setting out the nature of the dispute otherwise Wisebusiness shall not be required to enter into negotiations concerning the disputed item or items and shall be entitled to recover the full amount due. Such notice shall in particular contain the following information: date and number of disputed invoice, amount in dispute, reason for dispute, and any supporting documentation as appropriate. Should a client have a dispute with a particular invoice this is not sufficient reason to delay payment of any undisputed invoices. In the event of a dispute arising out of or in connection with these terms or any contract between the client and Wisebusiness then the client agrees to attempt to settle the dispute by engaging in good faith with Wisebusiness in a process of mediation before commencing arbitration or litigation.

9. WARRANTY

In respect of Third Party Products, the Customer shall only be entitled to the benefit of any warranty or guarantee given by the third party manufacturer.

This warranty does not apply to defects resulting from improper or inadequate installation, use or maintenance, actions or modifications by unauthorised third parties or the Customer, or accidental or wilful damage.

Wisebusiness does not give any warranty that the Products or Services are fit for any particular purpose and this warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

10. LIABILITY

Wisebusiness shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Maintained Products or loss of or spoiling of any of the Customers programs or data) resulting from any breakdown of or fault in the Maintained Products, unless such breakdown or fault is caused by the negligence or wilful misconduct of Wisebusiness, its employees, agents or sub contractors, or to the extent that such loss or damage arises from any negligent delay by Wisebusiness in providing the relevant Services and then only to the extent not excluded by the Agreement.

Wisebusiness shall indemnify the Customer and keep the Customer fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of Wisebusiness, its employees, agents or sub contractors, or by any breach of its contractual obligations.

The Customer shall indemnify Wisebusiness and keep Wisebusiness fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub contractors or by any breach of its contractual obligations.

Notwithstanding anything else contained in the Agreement, Wisebusiness shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

Wisebusiness shall not be liable for any loss caused by the failure of any backup system or device. It is the responsibility of the client and/or their employees to check and ensure adequate and regular backups of computer based data is performed. If tape based media are used the client should ensure the media are stored either in a secure and fireproof safe or regularly taken to a secure location offsite.

11. FORCE MAJEURE

Neither party shall be liable for any delay in performance caused by circumstances beyond its reasonable control. The party in delay shall be entitled to a reasonable extension of time for performance.

12. EMPLOYMENT

Neither the client, nor clients partners, affiliates, heirs, or assigns, shall approach directly or indirectly any member of Wisebusiness staff for the purpose of offering employment without the express written permission of Wisebusiness. The restriction on the offering of employment shall cease 12 months after the services or contract with the client have been terminated.

13. INTELLECTUAL PROPERTY RIGHTS (IPR)

Each party will indemnify the other against all costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use or possession of the Products or Third Party Products or products supplied by the Customer for integration purposes (whether used separately or in combination) infringes the intellectual property rights (including without limitation any patent, copyright, registered design, design right or trade mark) of any third party.

14. CONFIDENTIALITY

Each party shall treat as it does its own trade secret information, all information obtained from the other pursuant to the Agreement which is marked "Confidential" or the equivalent or has the necessary quality of confidence about it.

15. TERMINATION

The Agreement will be of a fixed term and can be terminated by either party by giving 90 days (the notification period) written notice of intent prior to the contracted end date. Late notification of termination will cause the Agreement to be extended for the notification period. Should written notice of termination fail to be received at Wisebusiness before the contracted end date then the contract will rollover and continue as per the previous contract and also be subject to the current Wisebusiness standard terms and conditions.

Early termination of a fixed term agreement will incur a cancellation penalty. Upon termination all customer credit terms are revoked and invoices become due with immediate effect.

Termination will occur if one party commits any material breach of any of the terms of this Agreement and, if capable of remedy, shall have failed to do so within 30 days after the receipt of a request in writing from the other party to remedy the breach (such notice shall detail the breach and contain a warning of such party's intention to terminate).

Termination of the Agreement will occur if one party becomes insolvent or bankrupt or is otherwise unable to pay its debts as they fall due.

The Agreement will be terminated forthwith by written notice from Wisebusiness if the Customer fails to pay any sum due and such sum remains unpaid for 14 days after written notice from Wisebusiness that such sum has not been paid.

16. CANCELLATION

If the Agreement is cancelled by the Customer without due cause or Wisebusiness have to cancel the Agreement due to a breach of the contract terms and conditions by the client, then the following cancellation penalty will apply. These penalties are in addition to the normal termination notice period charges;

36 Month Contracts

- Cancelled within 12 months of the contracted start date – 50% of the total outstanding contract value will be levied.
- Cancelled between 12 and 24 months of the contracted start date – 33^{1/3}% of the total outstanding contract value will be levied.
- Cancelled after 24 months – No cancellation charge.

24 Month Contracts

- Cancelled within 12 months of the contracted start date – 50% of the total outstanding contract value will be levied.
- Cancelled after 12 months – No cancellation charge.

12 Month Contracts

- At any time during the 12 months contract period – 50% of the total outstanding annual contract value will be levied.

17. ENTIRE AGREEMENT

The Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof subject to individual amendments made between Wisebusiness and the Customer.

18. NOTICES

Notices must be in writing and sent to the address of the recipient set out in the Agreement or the recipient's registered office or other such address as the recipient may designate.

19. SEVERANCE

If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement and the remainder of the provisions in question shall not be affected.

20. MODIFICATION

Wisebusiness reserve the right to change or modify the Terms and Conditions without prior notice.