

## Hortisystems U.K. Limited General Terms and Conditions

### 1 Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions** means the terms and conditions set out in this document as amended from time to time in accordance with clause 15.6.

**Contract** means the contract between the Supplier and the Customer for the sale and purchase of the Equipment and/or Installation Services in accordance with these Conditions.

**Customer** means the person or firm who purchases the Equipment from the Supplier.

**Equipment** means the equipment set out in the Order but excluding the Software.

**Force Majeure Event** has the meaning given in clause 13.

**Installation Services** means the services of installing the Equipment provided by the Supplier in the manner and at the location agreed in the Contract.

**Order** means the Customer's order for the Equipment and/or Installation Services.

**Software** means any software incorporated into or provided for use with the Equipment by a third party.

**Specification** means any specification for the Equipment, including any related plans and drawings, that is agreed by the Customer and the Supplier.

**Supplier** means Hortisystems U.K Limited (registered in England and Wales with company number 2604179).

**Website** means the website of the Supplier as updated and amended from time to time.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 References to any one gender include all other genders, and references to the singular number shall include the plural number and vice versa.

1.2.4 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.6 A reference to **writing** or **written** includes faxes and e-mails.

### 2 Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Equipment and/or Installation Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by it is complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier confirms acceptance of the Order, or, if earlier, when the Equipment is delivered and/or the Installation Services are provided to the Customer.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or on the Website are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Equipment given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of twenty (20) Business Days from its date of issue.

2.7 All these Conditions shall apply to the supply of both the Equipment and Installation Services except where application to one or the other is specified.

### 3 Equipment

3.1 The Equipment is described in the Supplier's catalogue (available from time to time on the Website) as modified by any applicable Specification.

3.2 The Supplier reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.

### 4 Delivery

4.1 The Supplier shall deliver the Equipment to the Customer at the Customer's premises or to such other location as may be advised by the Customer prior to delivery (**Delivery Location**) within five (5) Business Days after the Supplier notifies the Customer that the Equipment is ready.

4.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.4 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment.

4.5 If the Customer fails to take delivery of the Equipment within three (3) Business Days of the Supplier notifying the Customer that the Equipment is ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Equipment was ready and the Supplier shall store the Equipment until delivery takes place.

4.6 If twenty (20) Business Days after the day on which the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken delivery of them, the Supplier may at its discretion resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.

4.7 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 5 Quality

5.1 The Supplier warrants that on delivery the Equipment shall:

5.1.1 conform in all material respects with its description and any applicable Specification;

5.1.2 be free from material defects in design, material and workmanship; and

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Upon delivery, the Customer shall thoroughly inspect the Equipment. If, after inspection the Customer considers that some or all of the Equipment is defective or does not correspond with its description and any applicable Specification, it shall within five (5) Business Days (**Notification Period**) of delivery, notify the Supplier in writing.

5.3 Any defects not notified to the Supplier in accordance with clause 5.2 above and which could not reasonably have been discovered in the Notification Period, must be notified to the Supplier immediately upon discovery and in any event, within thirty (30) Business Days from delivery of the Equipment.

5.4 Immediately upon discovery of any defects the Customer must:

5.4.1 cease to use or install the Equipment; and

5.4.2 allow the Supplier, its employees, agents or anyone authorised to act on its behalf reasonable access to inspect the Equipment.

- 5.5 Subject to the provisions set out in clause 5.2 to 5.4 above and if the Supplier agrees that the Equipment is defective the Supplier may at its option elect either to:
- 5.5.1 repair or replace the defective Equipment subject to the Customer returning the Equipment to the Supplier (during which time the risk in the Equipment shall remain with the Customer); or
- 5.5.2 terminate the Contract and refund the price of the defective Equipment to the Customer in full.
- 5.6 If the Customer exercises one of the remedies set out in clause 5.5 above, the Supplier shall be fully discharged from all of its warranty obligations set out in clause 5.1 and shall not be obliged to pay any further compensation or damages to the Customer.
- 5.7 The Supplier shall not be liable for Equipment's failure to comply with the warranties set out in clause 5.1 in any of the following events:
- 5.7.1 the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.2 or 5.3.;
- 5.7.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- 5.7.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- 5.7.4 the Customer alters or repairs such Equipment without the written consent of the Supplier;
- 5.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 5.7.6 the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- 5.7.7 the Equipment selected by the Customer was inappropriate for its intended use by the Customer.
- 5.8 Subject to the foregoing and with the exception of the condition and warranties implied by Section 12 of the Sale of Goods Act 1979, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect the Equipment are hereby excluded.
- 5.9 These Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier.
- 6 Title and risk**
- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment and any other Equipment that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- 6.3.1 store the Equipment separately from all other equipment held by the Customer so that it remains readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- 6.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for its full price from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.2; and
- 6.3.5 give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Equipment in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Equipment. However, if the Customer resells the Equipment before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Equipment shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 11.2, then, without limiting any other right or remedy the Supplier may have:
- 6.5.1 the Customer's right to resell the Equipment or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Supplier may at any time:
- (a) require the Customer to deliver up all Equipment in its possession which has not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.
- 7 Installation Services**
- 7.1 The Supplier will provide the Installation Services to the Customer in accordance with the Contract.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Installation Services agreed in the Contract, but any such dates shall be estimates only and time shall not be of essence for the performance of the Installation Services.
- 7.3 The Supplier shall have the right to make any changes to the Installation Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Installation Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Installation Services will be provided using reasonable care and skill.
- 8 Customer's installation obligations**
- 8.1 The Customer will:
- 8.1.1 afford the Supplier access to the Delivery Location;
- 8.1.2 afford the Supplier reasonable access to the Customer personnel; and
- 8.1.3 provide the Supplier with such facilities, information and assistance (ensuring that information is complete and accurate), in each case as required to allow the Supplier to perform the Installation Services;
- 8.1.4 co-operate with the Supplier and follow the Supplier's reasonable instructions in relation to the performance of the Installation Services;
- 8.1.5 obtain and maintain all necessary licences and consents for the performance of the Installation Services;
- 8.1.6 keep all documents, equipment, materials and other property of the Supplier (**Supplier Materials**) at the Delivery Location at its own risk and in no worse condition than they were in when they were supplied; and
- 8.1.7 not dispose of any Supplier Materials without prior written consent of the Supplier.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Installation Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Installation Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9 Third party software**
- If the Supplier provides Software to the Customer, the terms and conditions of the third party supplier of such Software will apply to the Customer.

## 10 Price and payment

- 10.1 The price of the Equipment and/or the Installation Services shall be the price agreed in the Contract, or, if no price is agreed, the price set out in the Supplier's published price list in force as at the date of delivery.
- 10.2 The price of the Equipment is exclusive of the costs and charges of packaging, insurance and transport of the Equipment which shall be invoiced to the Customer.
- 10.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Installation Services or Equipment at the same time as payment is due for the supply of the Installation Services or Equipment.
- 10.4 The Supplier may invoice the Customer for the Equipment and for the Installation Services on or at any time after the completion of delivery or, if applicable, on the completion of the Installation Services.
- 10.5 The Customer shall pay the invoice in full and in cleared funds within thirty (30) Business Days after the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 10.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 11 Termination and suspension

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 11.2 For the purposes of clause 11.1, the relevant events are:
- 11.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 11.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 11.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 11.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 11.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution,

sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

- 11.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.6 (inclusive);
- 11.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 11.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 11.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 11.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Equipment and/or supply of the Installation Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.2.1 to clause 11.2.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 12 Limitation of liability

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 12.1.4 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 12.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.2 Subject to clause 12.1:
- 12.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Equipment.
- 12.3 This clause 12 shall survive termination of the Contract.

## 13 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

#### **14 No partnership or agency**

Nothing in these Conditions is intended to, or shall be deemed to establish any partnership, joint venture or agency relationship (as defined in the Commercial Agents (Council Directive Regulations 1993)) between the parties or authorise any party to make or enter into any commitments for or on behalf of the other party.

#### **15 General**

##### **15.1 Assignment and other dealings.**

15.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

##### **15.2 Notices.**

15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax [or e-mail], one Business Day after transmission.

15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

##### **15.3 Severance.**

15.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

15.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

15.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).