

Advance IT Limited Terms and Conditions

1. GENERAL

(a) The Supplier means Advance IT Limited and the Customer means the Company as named in the proposal.

(b) The Proposal means the written offer from the Supplier to the Customer.

(c) In these conditions, 'The Software' shall mean the Kappture system, all integral operational software and all other software provided in terms of this Order whether as an update or otherwise 'The Hardware' shall mean all goods and other materials or support materials, other than 'The Software' supplied in terms of this Order and any update thereof and 'The Equipment' shall mean 'The Hardware' and 'The Software' together.

(d) The Supplier, upon acceptance of these Terms and Conditions agrees:-

- (i) to sell to the Customer the Hardware; and
- (ii) to furnish the Customer in relation to the Software, with a non-exclusive, non-transferable licence to use the Software upon the terms herein contained;
- (iii) to provide maintenance for the Equipment ('The Maintenance') upon the terms and conditions specified herein.

(e) The Customer, upon acceptance of these Terms and Conditions, agrees:-

- (i) to accept delivery of the Equipment and the Maintenance;
- (ii) to be bound by the terms and conditions specified herein.

2. APPLICATION OF TERMS

(a) These terms and conditions shall supersede any arrangements made or existing between the parties prior to, simultaneously with or subsequent to conclusion of this Agreement and shall constitute the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment or modification of these terms and conditions shall be effective, unless in writing and signed or accepted by a Director of the Supplier.

(b) The Supplier shall not be bound by the placing of any order by the Customer until the Supplier has also provided written confirmation hereof or delivery of the Equipment has been effected.

3. PRICES

(a) The price of the Equipment is based on the cost prevailing at the date hereof. The Supplier reserves the right to adjust the price by giving 30 days' notice in writing.

(b) The price of the Equipment includes the licence fee for the Customer's right to use the Software.

4. PAYMENT

(a) All accounts are payable within 30 days following the date of the invoice for the Equipment or the Maintenance. Payment schedules are set out in the Proposal.

(b) If the Customer shall fail to take delivery of any Equipment under this order within twenty one (21) days of notification that it is ready for delivery, the Supplier shall have the right to present its invoice for payment at any time after the expiry of the said period and payment shall be due thereon as if delivery had been made.

(c) Should the Customer fail to make any payment when due, the Supplier shall have the right by notice in writing forthwith to suspend all further manufacture, deliveries, installation, maintenance or warranty service until the default be made good or, at the Supplier's absolute discretion, to determine any contract or agreement where goods remain to be delivered, without prejudice to any other remedies available.

5. DELIVERY

(a) Delivery dates are estimates only, unless the Supplier expressly agrees in writing to be bound by a delivery date as being of the essence of this order.

(b) The Customer shall provide at its own expense and be responsible for all proper accommodation and facilities necessary for the proper functioning of the Equipment, including correct environmental conditions, as directed and recommended by the Supplier. Any loss caused by failure so to do shall be the responsibility of the Customer.

(c) The Supplier accepts responsibility for damage, shortage or loss in transit if:-

- (i) the same is notified to the Supplier and the carrier (if not delivered by the Supplier) within three days of receipt of the Equipment by the Customer and (where applicable)
- (ii) the Equipment has been handled by the Customer in accordance with the Supplier's or the carrier's conditions of carriage or handling stipulations.

Where the Supplier accepts responsibility under this sub-clause, it shall, at its sole option, replace or repair (as the case may be) any such Equipment, provided it is proved to the Supplier's satisfaction to have been lost or damaged in transit.

6. TITLE TO EQUIPMENT AND PASSING OF RISK

(a) Delivery, installation and acceptance notwithstanding title to the hardware shall not pass to the Customer but shall be retained by the Supplier until full payment for the Hardware has been received by the Supplier.

(b) Notwithstanding the above, risk in the Equipment shall pass when the Equipment is delivered by the Supplier or its carriers to the Customer or its agent.

7. UPDATING

An update requiring only changes to the Software will be made free of charge provided always that the maintenance part of these conditions is in force. The Supplier shall not be obliged to provide any update of the Software to the Customer in the event of the Hardware being unsuitable for that purpose, as to which the Supplier shall be the sole judge.

8. SOFTWARE

The Customer hereby accepts a non-exclusive, non transferable licence to use the Software but that only in conformity with these terms and conditions and in particular the Customer undertakes not to copy, reproduce, translate, adapt, vary, tamper with, or modify the Software or any part thereof nor to communicate the same to any third party without the Supplier's prior written consent.

9. COPYRIGHTS, PATENTS, TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS

(a) The Customer acknowledges that any and all of the trademarks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the Equipment, in which the Supplier or the respective manufacturer, developer or third party has an interest, is and shall remain the sole property of the Supplier or such manufacturer, developer or third party.

(b) The Supplier agrees to protect and save harmless and defend at its own expense the Customer from and against any and all claims of infringements of patents, trade marks, industrial designs, copyrights or other property rights affecting the equipment PROVIDED THAT (i) the Customer shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any rights in any patent, trade mark or other rights as herein before provided, and (ii) the Customer shall have exercised a reasonable standard of care in protecting the same; failing which the Customer shall indemnify the Supplier against all actions, proceedings, costs, claims and expenses incurred in respect thereof.

(c) The Customer undertakes that the Supplier shall be given prompt notice of any claim that is made against the Customer and the Supplier shall have the right to defend any such claim and make settlements thereof at its own discretion and the Customer shall give such assistance as the Supplier may reasonably require to settle or oppose any such claims.

(d) In the event that any such infringement occurs or may occur, the Supplier may at its sole option and expense:

- (i) procure for the Customer the right to continue using the Equipment or infringing part thereof; or
- (ii) modify or amend the Equipment or infringing part thereof so that the same becomes non-infringing; or
- (iii) replace the Equipment or infringing part thereof by other Equipment of similar capability; or
- (iv) in relation to the Software, repay to the Customer the licence fee relating to the whole
- (v) or the infringing part thereof.

10. CONFIDENTIAL INFORMATION

(a) The Customer hereby acknowledges that all information, data, drawings, specifications, documentation, software listings, source or object codes and all other materials which the Supplier may have imparted and may from time to time impart to the Customer relating to the Software or support materials (including technical specifications and manuals) is proprietary and confidential. The Customer hereby agrees that it shall use the same solely in accordance with these terms and conditions and that it shall not at any time during or after the expiry or termination of these terms and conditions disclose the same, whether directly or indirectly, to any other party without the Supplier's prior written consent. The Customer further agrees that it shall not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or any supporting Software or other materials or have any software or other program written or developed for it based on the Software or other confidential information supplied to it by the Supplier.

(b) The Customer shall fully indemnify the Supplier from and against any loss or damage (including but not limited to loss of business opportunities and profits) suffered by the Supplier as a result of any breach of Conditions 8 or 10 hereof, whether such breach is by the Customer, its agents or employees, or attributable to the actions of the Customer, its agent or employees.

11. WARRANTY

(a) The Supplier warrants to the Customer that the Equipment marketed by the Supplier is believed to be free from defects of workmanship and materials and the Supplier undertakes, subject to paragraphs (c) and (d) below, to replace or, at its option, to repair the Equipment (other than rubber parts and/or printing heads and/or consumable items) found to be defective within 12 months of the date of delivery where such defects are a result of fault materials or workmanship.

(b) In the event of any claim presented under this warranty being found on investigation by the Supplier either to be outside the scope or duration of this warranty or the fault being unconfirmed, then any such call shall be deemed to be in terms of Condition 12 hereof.

(c) The Supplier shall not be liable at any time for damage or defects in the Equipment or parts caused by improper use, abuse, mismanagement of the Equipment or use outside the specific application of the Equipment.

(d) The above warranty is in lieu of and excludes all other expressed or implied warranties whether of merchantability or fitness for any particular purpose or otherwise. It shall not be assigned without the prior written consent of the Supplier.

12. SUPPORT

The Support shall be provided on the following terms and conditions:-

(a) The Support obligations of the Supplier (to maintain) and the Customer (to retain the Supplier's maintenance services) shall subsist for an initial period which is outlined in the proposal and thereafter the Maintenance shall continue unless terminated at any time by either party upon the giving of three months notice in writing to the other.

(b) Maintenance payments shall consist of the sum stipulated in the proposal and is payable in accordance with the payment terms set out in the proposal.

(c) Helpdesk. The Supplier will make available, a telephone helpdesk facility, as set out in the proposal, for the purposes of:

- (i) Assisting the Customer with the configuration of the Software where agreed in the Proposal.
- (ii) Determining the causes of errors and fixing errors in the Software.

(d) Hardware. All Hardware supplied by the Supplier is maintained under a return to base policy.

(i) Return to base warranty warrants the Hardware to the Customer, against defects in materials for the period set out in the proposal.

(ii) Under the return to base warranty the end user is responsible for the cost of shipping the machine to us, and the packaging of the machine. We are not liable if the machine is improperly packed resulting in damage during transit. Please retain all the packaging together with any additional enclosures, manuals, as this will assist in returning the product in the correct packaging.

(iii) The warranty covers the hardware, and we will rectify the fault within a reasonable amount of time from the point it is agreed the machine has a hardware fault with our Helpdesk team.

(iv) The Return to base warranty covers only those defects which arise as a result of normal use of product, and do not apply to any: Improper & inadequate maintenance or modification. Repairs carried out by non-authorised persons. Damage caused by lack of ESD protection. Software, interfacing, media, parts, or supplies not provided or supported by The Supplier. Operation outside the product specifications. Physical damage, accidental damage, neglect, or user abuse. Normal wear and tear.

(v) If there is no fault found or the problem has been caused by third party software, user error or physical damage and any of the reasons stated in section iv, a no fault found charge may be applied, you will be emailed and phoned to confirm this charge within 7 days of the item being tested, you will also be charged return carriage for return of your goods.

(e) the Supplier reserves the right to sub-contract in whole or in part its obligations under this maintenance agreement.

13. LIABILITY

(a) The Supplier shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising in connection with this agreement, the Equipment or its use, or otherwise, other than by the negligent act or omission of the Supplier, its sub-contractors or its employees.

(b) Notwithstanding the above, the Supplier hereby expressly excludes liability for all indirect or consequential loss or damage including but not limited to loss or damage to data or to other equipment or property, (whether or not the same may be in the Supplier's care, custody or control) or for loss of profit, business, revenue, goodwill, anticipated savings or any other special loss.

(c) In the event that any limitation or provision contained in this Agreement shall be held to be invalid for any reason or the Supplier becomes liable for loss or damage that would otherwise have been lawful to exclude, such liability shall be limited to £500,000.

(d) The Supplier does not exclude liability for death or personal injury to the extent that the same arises directly from the negligence of the Supplier, its sub-contractors, or employees.

14. TERMINATION

Notwithstanding any other right of the Supplier to terminate this agreement, the Supplier shall be entitled by notice in writing to repudiate this agreement either wholly or in part and to receive back in good condition the Equipment delivered or despatched to the Customer (in the event that the Equipment has not been fully paid for) in the event of:

(a) breach by the Customer of any term, condition or provision of these conditions or required by law;

(b) the Customer being apparently or absolutely insolvent, or any proceedings by or against the Customer in bankruptcy or insolvency or the appointment of an Administrator, Receiver or other assignee for the benefit of creditors;

(c) the Customer disputing that any or all of the trademarks, trade names, copyrights or other intellectual property rights used or embodied in or in connection with the Equipment in which the Supplier has an interest, is the property of the Supplier.

15. WAIVER

Failure or neglect by the Supplier to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Supplier's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Supplier's rights to take subsequent action.

16. ASSIGNMENT

The rights and obligations hereunder shall not be assigned by the Customer without the prior written consent of the Supplier.

17. FORCE MAJEURE

The Supplier shall not be under any liability to the Customer or to any other party in any way whatsoever for destruction, damage, delay or any other matters of the nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes; fire, explosion, earthquake, act of God, flood, drought or bad weather; the unavailability of deliveries, supplies, disks or other media or the requisitioning or other act or order by any government department, council or other constituted body.

18. GOVERNING LAW

The parties hereby agree that these conditions shall be governed by the Law of England