



Terms & Conditions of Business

1. **General**

"We" refers in all our terms of business to Southern Business Computer Solutions Limited and any associate company with whom "you", the client or customer do business. These terms apply to every agreement with us for the sale by us of computing equipment and other products and for the provision of software and services of whatever nature to you. These terms prevail over any terms put forward by you and supersede any previous agreements between you and us. These conditions may only be varied on the written authority of one of our directors. No other conduct on our part shall constitute acceptance of any term put forward by you.
2. **Selection of Computer Configurations, Packages and Services**
 - 2.1 We can help you to specify or choose computer configurations, software programs and/or other products but the assessment of your chosen equipment and its suitability for your purposes and the assessment and selection of software programs and other services as being suitable for your chosen configuration and purposes are your responsibility.
 - 2.2 You should accordingly ensure that you provide us with the fullest information about your requirements and give us every co-operation in relation to any project we agree to undertake for you.
 - 2.3 We undertake only that in giving such assistance we have acted in good faith and have not been wilfully misleading.
 - 2.4 Clause 10 contains the warranties which we give to you and sets out your rights to benefit from warranties given by equipment manufacturers and third party software suppliers. Accordingly, we do not warrant:
 - 2.4.1 that equipment, software programs, programming or other products supplied will operate in all combinations selected by you;
 - 2.4.2 that operation will be uninterrupted or error free; or that operation will meet your requirements. Therefore, except as expressly provided in Clause 10, all conditions and warranties (express or implied, statutory, or otherwise) are excluded including without limitation any implied warranty of suitability or fitness for purpose.
 - 2.5 Our entire liability to you and your remedies, whether in contract or in tort, are as set out and limited in Clause 14.
 - 2.6 Pre-contract representations made by or on our behalf may be relied upon by you (subject as provided in this Clause) only if they are made in writing and are expressly reproduced and incorporated in the written agreement between us and you.
3. **Proposals and Orders**
 - 3.1 Our proposals are submitted without commitment. We may vary or withdraw proposals at any time (notwithstanding any purported acceptance by you) before our acceptance of your order. In the absence of an order any proposal shall be deemed withdrawn 14 days after we have issued it.
 - 3.2 All orders shall be in writing on the order form supplied to you with our proposal and shall be signed by you or someone authorised to sign on your behalf.
 - 3.3 Before accepting an order we may check your creditworthiness.
4. **Commencement & Duration of Agreement**
 - 4.1 The agreement commences when a binding contract is made. This is when we have accepted in writing, on the terms of the agreement, your duly signed order.
 - 4.2 We may terminate the agreement and any licence forthwith on giving notice to you if:
 - 4.2.1 you fail to make any payment due under the agreement within 7 days after the date for payment;
 - 4.2.2 you commit any material breach of any terms of this agreement and (in the case of a breach capable of being remedied) fail, within 14 days after the receipt of a written request from us so to do, to remedy the breach; or
 - 4.2.3 you shall have a receiver or administrative receiver or administrator appointed over all or any part of your undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a solvent amalgamation or reconstruction on terms approved by us) or a court of competent jurisdiction shall make an order to that effect or if you (including any individual person if you are a partnership) shall enter into any voluntary arrangement with your creditors or suffer or take any similar action in consequence of debt.
5. **Charges, Costs & Expenses**
 - 5.1 All prices and charges are quoted exclusive of value added or other sales tax and, unless our quotation says otherwise, are for delivery of goods or services to you at our offices.
 - 5.2 We reserve the right:
 - 5.2.1 to charge for advice for feasibility studies and for the preparation of specifications and quotations for goods and services not included in our original proposal. Such charges shall be payable whether or not you then place an order;
 - 5.2.2 to make additional charges to cover expenses and third party costs, including the cost of computer time and data transmission;
 - 5.2.3 to increase any price quoted to take account of any extra costs we incur as a result of site conditions, incorrect information supplied by you or a failure or delay on your part in providing information; and
 - 5.2.4 when the price quoted is subject to the findings of any site survey carried out for the purpose of the order and/or the supply or installation of the equipment, software and/or services, to increase any price by written notice to you taking into account such findings.
 - 5.3 When work is carried out on your premises you shall provide without charge suitable office accommodation with the use of a telephone and general office and other facilities reasonably required by us for the purpose of carrying out our obligation to you.
6. **Payment**
 - 6.1 You shall pay the price of all equipment and other products, software and services in accordance with the terms of the accepted order and without making any deduction in respect of set off or counterclaim.
 - 6.2 Unless otherwise stated in the accepted order:
 - 6.2.1 30% of the contract price (including VAT) is payable on our acceptance of your order, and the balance of 70%, together with any other charges or items 'extra to contract', is payable on completion of installation and before commencement of any training, within 7 days after the date of our invoice.
 - 6.3 Prompt payment is a condition of our continuing to work for you under this or any other contract:
 - 6.3.1 We shall have the right to charge interest on late payments at 2% per month calculated on a daily basis and compounded monthly, to suspend work pending payment of all overdue amounts, and to treat non-payment or an overdue amount as repudiation by you of your agreement with us. Interest will be charged commencing after 7 days after the date of our invoice at our discretion.
 - 6.3.2 Should payment in full not be received within one month after the date of our invoice then we reserve the right to pass the outstanding account to a Credit Management Company for resolution to our satisfaction. Any costs incurred by the Credit Management Company will be added to the account as appropriate.
 7. **Taxes**

You shall pay to us, in addition to the price agreed, all taxes and duties required by law including, and not only, value added tax.
 8. **Delivery, Installation & Completion**
 - 8.1 If your order as accepted by us states the location for delivery the price includes delivery as stated. We will endeavour to meet your delivery requirement but accept no obligation to deliver equipment, software or other products or otherwise to complete work by any specified date. Delivery and completion dates quoted by us or included in any accepted order are for guidance only and without commitment.
 - 8.2 **Risk**
 - 8.2.1 When the order as accepted by us expressly states that we are responsible for delivery we will accept the risk of loss or damage to equipment and other products up to and including first physical delivery of equipment, software or other products to your premises. Thereafter all such risks shall be borne by you.
 - 8.2.2 If, with our agreement, you arrange for collection of equipment, software or other products from us, all risk of loss or damage shall pass to you upon such collection.
 - 8.3 **Supplier or Manufacturer Installation**
 - 8.3.1 When the order as accepted by us expressly states that we or the manufacturer are responsible for installation the following provisions will apply:
 - 8.3.2 you are responsible for providing a suitable environment for the installation and operation of equipment, software or other products as specified in the installation instructions issued by the equipment manufacturer;
 - 8.3.3 we will ourselves or we will procure that the manufacturer or our suppliers will install the equipment; but
 - 8.3.4 our obligation is subject to you paying the separate cost of installation (if any) stated in the accepted order.
 - 8.4 **Your Own Installation**

We shall have no obligation to install equipment or software or other products when the order as accepted states that installation is your responsibility and in that case you shall at your own risk and expense set up and install such equipment, software or other product in accordance with the instructions supplied.



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8.5	Feature & Model Conversion	10.2.3	the copyright owner's warranty is in lieu of all other warranties or conditions, express or implied (with the exception of those implied by section 12 Sale of Goods Act, 1979), including any implied conditions of suitability, merchantability or fitness for a particular purpose.
8.5.1	We will ourselves install or we will procure that the manufacturer or our suppliers will install features and model conversions supplied under the agreement on the serial-numbered machine specified by you at time of order.	10.3	If it is our belief that all hardware and software supplied under this agreement is millennium compliant: that is its functionality will be unaffected by the advent of year 2000. The limited warranty provided by this Clause 10 and the limitations of liability in Clause 14 nevertheless apply.
8.5.2	You warrant:	10.4	You have the option of entering into additional hardware and third party software maintenance agreements with us and, if you choose not to do so, you are accepting that the limited warranties contained in this Clause 10 are reasonable and sufficient.
8.5.2.1	that you are the owner of the equipment on which any feature or model conversion will be installed; or	11	Staff & Employment
8.5.2.2	that, if you are not the owner, then you have the authority of the owner to order the feature or model conversion and have it installed on the owner's equipment.	11.1	Because staff continuity is important to us and because our staff have access to confidential information, it is a condition of our agreement that you shall not employ or offer employment in any form to any member or former member of our technical or management staff for so long as they stay in our employment and (in the event of their leaving us) until they have been out of our employment for at least 12 months, and that you shall not attempt to persuade any member of our technical or management staff to leave our employment.
8.6	Software Delivery	11.2	If we agree to modify our software for you or to supply software to your specifications we will try to avoid changes in key staff allocated to your work.
	Software shall be deemed delivered when the software in machine-readable form (together with any software operating instructions) is supplied at your computer installation. Except for bespoke software written or modified to your special order (as to which see Clause 13 below) software is deemed to be accepted by you on delivery on the basis that it has first passed our standard acceptance test. Except where we specifically undertake in writing to do so and subject to these terms, we accept no obligation to provide program installation or maintenance services or any material obligation to provide program installation or maintenance services or any material other than machine-readable object code with human-readable operating instructions.	12	Confidentiality
9	Title & Licences		We will observe confidence in respect of all confidential information about your business disclosed to you and we require you similarly to observe confidence (and to require your staff to do so) in respect of all confidential information which we may disclose to you. These mutual obligations of confidence shall continue after completion of our contract with you for so long as the information disclosed remains outside the public domain, but shall not restrict our freedom to copy and to re-use programs and techniques developed by us for you or with you and whether or not based upon confidential information disclosed by you to us. "Confidential information" in this clause includes all technical and commercial information about you and us and your and our respective businesses, products, services, policies and prices and all other information expressly or by implication passed on in confidence.
9.1	Title to equipment shall pass to you on payment of the full price for it, all or any other sums due in respect of the accepted order under which the equipment was sold or supplied and other sums due under Clause 5.	13	Bespoke Systems Analysis & Programming Services
9.2	The installation of some feature and model conversions will involve the removal of parts which you agree shall become our property or, if we so direct, the property of the equipment manufacturer. You warrant that we or the manufacturer (as the case may be) will receive title to removed parts (either from you or from the owner of the equipment, if not you) free from all encumbrances.		When we agree to analyse existing systems or to design, write or modify software to your special order ("Bespoke Software") the following provisions shall apply:
9.3	Title to all software remains with us or with the owner of the intellectual property rights in programs and software packages other than our own. We grant to you only the right to use software on the terms of a separate Software Licence & Support Agreement.	13.1	You shall supply a specification of your requirements and you shall provide (and we shall be entitled to require and rely on) your assistance and co-operation in developing functional and detailed specifications of your requirements. You shall also provide such relevant information and such office, development and testing facilities at your computer and other installations and premises as we may reasonably require during the contract period.
9.4	Before we deliver to you any of our own software (including Bespoke Software) you shall enter into a non-exclusive non-transferable licence agreement with us in the form annexed to this agreement defining and limiting your rights and obligation in respect of the software and setting out circumstances in which we shall be entitled to terminate the licence.	13.2	Before we undertake the creation of Bespoke Software you shall prepare and provide comprehensive and accurate test data complying with all applicable current specifications for your projected software (and including the results you expect from processing such test data) against which we will test the Bespoke Software before delivery.
9.5	In the case of programs and software packages distributed but not owned by us you shall enter into a non-exclusive non-transferable licence agreement with the copyright owner or supplier defining and limiting your rights and obligations in respect of such programs and setting out the circumstances in which the copyright owner or supplier shall be entitled to terminate the licence. A copy of the form of licence of the copyright owner or supplier, where applicable, is available for inspection upon request.	13.3	Your approval of any specification prepared by us shall be deemed to have been given if you do not request in writing modification of the specification within 21 days of its delivery to you. An approved specification, or a specification deemed to have been approved under this provision, shall supersede all earlier specifications.
9.6	Title to the medium which contains software and to the associated printed materials shall pass to you on payment of the price and any other sums due under Clause 5 but no rights of ownership in or title to copyright or other intellectual property rights are transferred.	13.4	We accept no obligation to make any modification to a specification when a request for modification is made after approval or deemed approval of the specification by you, or to make any program amendment or correction not in accordance with the latest applicable current specification. Any such modification, amendment or correction which we may make shall be charged to you as an additional service outside the contract price but otherwise on the terms of these conditions.
9.7	If you fail to pay the price of equipment, software or any other product and/or other sums on the due date we shall have the right, without liability, to take possession of such equipment, software or other product with or without notice and at our option to avail ourselves of any legal remedy, including an action for the price of the equipment, software or other product and recovery of other sums due.	13.5	Bespoke Software shall be deemed to be accepted on processing of your data to yield the expected results specified in the test data or (if your test data is not available before delivery of the Bespoke Software or if you fail to make your computer available for test purposes) 14 days after delivery of the Bespoke Software to you. If for any other reason outside our reasonable control we are unable to run test data, acceptance shall be deemed 14 days after delivery of the Bespoke Software to you unless within that period you report to us in writing specific faults in the Bespoke Software (with documented examples of faulty output) by comparison with
10	Warranty		
10.1	In respect of all equipment:		
10.1.1	you shall have the manufacturer's warranty and warranty service (if any is provided by the manufacturer) subject to their terms, conditions and exclusions (if any); and		
10.1.2	the manufacturer's warranty is in lieu of all other warranties or conditions, express or implied, (with the exception of those implied by section 12 Sales of Goods Act, 1979) including any implied conditions of suitability, merchantability or fitness for a particular purpose.		
10.2	In respect of all programs and software packages other than our own:		
10.2.1	such programs and software packages are supplied by us subject to the conditions of use imposed by the copyright owner and/or supplier;		
10.2.2	you shall have the benefit of the copyright owner's or supplier's warranty and warranty service (if any is provided by the copyright owner or supplier) subject to their terms conditions and exclusions (if any); and		



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- the latest applicable current specifications approved or deemed to have been approved by you. Acceptance shall then be deemed when we have either corrected or disproved such faults as reported. Acceptance does not affect the provisions of Clause 14 relating to program faults.
- 13.6 We will provide consultancy services and advise in good faith, but the provisions of Clause 14 shall apply (inter alia) to Bespoke Software; and such services and advice.
- 13.7 You shall indemnify us against any claim made by a third party alleging that our compliance with your instructions in preparing Bespoke Software infringes any property or other right of any third party.
- 14 Limitation of Liabilities & Indemnity**
- 14.1 To the extent we may be found liable, we do not seek or limit or exclude liability:
- 14.1.1 for death or for personal injuries arising from our negligence;
- 14.1.2 for any breach of the terms implied by Section 12 Sales of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982.
- 14.2 You shall always inform us of any alleged default on our part and afford us and our manufacturer and supplier reasonable opportunity to investigate and correct any default including, without limitation, the option to substitute equipment, software or other product.
- 14.2.1 Neither we nor our manufacturer or supplier shall be liable for loss and expenses incurred:
- 14.2.1.1 after the date that we correct or procure correction of the default; or
- 14.2.1.2 more than twelve months after the date of the default; or
- 14.2.1.3 after the date on which you terminate the licence for any affected software; or
- 14.2.1.4 to the extent that we afford you reasonable opportunity to reduce your loss and expenses by providing alternative equipment, software, other products, services or personnel.
- 14.3 We shall not be liable for the following loss or damage however caused and even if foreseeable by us:
- 14.3.1 economic loss, which shall include loss of profits, business, revenue, goodwill or anticipated savings;
- 14.3.2 special, indirect or consequential loss;
- 14.3.3 loss arising from any claim made against you or penalty imposed on you or on any other person; or
- 14.3.4 loss or damage arising from your failure to fulfil your obligations under this or any other agreement with us or from any matter under your control.
- 14.4 Our entire liability for actual loss, damages and expenses in respect of any one default shall not in any event (except as provided in paragraph 14.1 above) exceed the sum of £10,000.
- 14.5 Both you and we shall be discharged of liability in respect of any claim arising out of any transaction subject to these terms, whether in contract or in tort, unless formal legal proceedings are begun within two years after the aggrieved party first becomes or should reasonably have become aware of the facts that constitute the cause of action, except in respect of liability under paragraph 14.1 above, to which the statutory limitation periods shall apply.
- 14.6 You shall indemnify us against any claim by a third party (including our personnel) which arises from our compliance with your instructions or which arises from or is occasioned by any act or default of yourself or the owner or occupier of any premises upon which our services are carried out.
- 14.7 This Clause 14 shall not affect any rights of termination specified elsewhere under these Terms of Business.
- 15 Intellectual Property Rights**
- 15.1 We shall, at your written request, defend and hold you harmless with respect to any and all claims filed against you in a court of competent jurisdiction, if and to the extent that such claims are based upon allegations that any current unaltered version of any equipment, software or other product sold or supplied under this agreement (including program documentation) infringes any patent or copyright or violates any trade secret or other proprietary rights in the confidential information of any person, firm or corporation provided that you shall have:
- 15.1.1 promptly notified us in writing of any such claim;
- 15.1.2 provided all reasonable assistance requested by us; and
- 15.1.3 permitted us, at our option, to defend or control the defence and or settlement (and all negotiation) or any such claims.
- 15.2 In the event that such a claim has been made, or may possibly be made, in respect of any of the items specified in paragraph 15.1 above, we may at our option, discretion and expense:
- 15.2.1 procure the right for you to continue using any affected item;
- 15.2.2 modify it so that it becomes non-infringing; or
- 15.2.3 replace any of it so that there is no infringement.
- 15.3 Notwithstanding the above, we shall have no liability under this Clause 15 for any claim where such a claim arises solely or substantially from the alteration or modification of any equipment, software or other product unless authorised by us in writing:
- 15.3.1 the use of other than a current unaltered release of any software or program where the use of that current unaltered release would have avoided the claim;
- 15.3.2 the combination, operation or use of any equipment, software or other product with equipment, data or programs or products not supplied by us; or
- 15.3.3 the use of any equipment software programs or other products in other than the applicable specified operating environment.
- 15.4 This Clause 15 sets out our entire obligation and liability with respect to infringement or alleged infringements of any patent, design registration, design right in original designs, oral right, copyright or any other intellectual property right.
- 16 Force Majeure**
Neither party shall be responsible for any delay or failure to fulfil its obligations under this agreement, apart from the payment of money, to the extent that this results from any cause beyond its reasonable control.
- 17 Partial Invalidity**
If any provision of an agreement between us and you is held to be invalid under any applicable statute, or rule of law, it is to that extent to be deemed omitted from such agreement.
- 18 Waiver**
No waiver by either party of any rights under this agreement on one or more occasions should prejudice its ability to enforce such rights on other occasions.
- 19 Assignment**
Any purported assignment, sub-licence or other transfer by you of all or part of any agreement with us will only be valid with our prior written consent.
- 20 Notices**
Any notice or consent to be given under this agreement shall be in writing and shall be delivered personally or be sent by post or fax to the other party at the address given herein and shall be deemed to have been given:
- 20.1 in the case of a letter sent by ordinary pre-paid first class post: forty-eight hours after posting; and
- 20.2 in the case of a fax: immediately following the date of despatch to the correct fax number of the addressee provided the hard copy of the facsimile is placed in the post on or as soon as practicable after the date of transmission, save that if notice is served outside of normal business hours notice shall be deemed served the next day.
- 21 Interpretation and Jurisdiction**
All our contracts are governed by English Law and you submit to the non-exclusive jurisdiction of the English Courts. The headings to these terms are included for convenience only and do not affect their interpretation.
- Note:** The licensing of software and its support and maintenance of hardware and software are subject to additional terms which shall prevail over any inconsistent provisions in these General Terms & Conditions of Business.

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