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## TERMS AND CONDITIONS FOR SYSTEM SUPPLY

### 1. Scope of project

- 1.1 We agree to sell and you agree to buy the System (being those items of Hardware, Software and Documentation as set out overleaf) or Systems subject to the terms of this Agreement.
- 1.2 For the purposes of this Agreement 'we' or 'us' means ipTEST Limited of 40 Alan Turing Road, Guildford, Surrey, GU2 7YF England. 'You' means the person, firm or company, full details of whom are set out in our quotation or PO acknowledgement.
- 1.3 In particular (but not limiting clause 2.1) we shall:
  - 1.3.1 develop, manufacture and install the Hardware and Software at the Installation Site (as specified overleaf);
  - 1.3.2 carry out installation tests of the System in accordance with clause 8;
  - 1.3.3 without prejudice to clause 6.1, sell the Hardware to you free from incumbrances;
  - 1.3.4 grant to you (or procure the grant to you, in the case of third party software) a non-exclusive, non-transferrable licence to use the Software and the Documentation as part of the System on the terms set out in clause 6.2;
  - 1.3.5 supply the Documentation;
  - 1.3.6 assist you during the Acceptance Tests in accordance with clause 8;
  - 1.3.7 provide such training as is set out overleaf (any additional training being chargeable at our standard rate).
- 1.4 We shall, if requested by you, enter into a separate contract for the supply of maintenance and support services for the System for the period after the warranty given by clause 9.2 has expired.

### 2. Change control

- 2.1 At any time before acceptance of the System (pursuant to clause 8.8) either you or we may recommend in writing changes to any part of the System.
- 2.2 We shall consider such proposed changes and notify you in writing within a reasonable period of the cost implications of such changes (if any), and within 10 days of receipt of such notice you will notify us in writing if you require such changes to be incorporated. Until any change is formally agreed, this Agreement shall continue in accordance with its terms and we reserve the right to make a reasonable charge for investigating proposed changes which are not subsequently implemented.

### 3. Customer responsibilities

- 3.1 You will provide us with such accurate and complete information about your organisation and its operations as we shall reasonably require to enable us to perform our obligations under this Agreement.
- 3.2 You will provide free of charge the following facilities during all reasonable hours:
  - 3.2.1 access to your employees, the Hardware and the Installation Site;
  - 3.2.2 all electric power, lighting, heating and air conditioning reasonably needed by us to perform our obligations under this Agreement;
  - 3.2.3 such office and work space as is reasonably required to enable us to perform our obligations at your premises, including the provision of normal office services, including first aid, photocopying, telephone, facsimile and bench facilities.
- 3.3 You will provide at your own expense such environmental conditions for the Hardware and all necessary cabling as specified in our Site Planning Guide, a copy of which has been provided to you.
- 3.4 Each of us will appoint a senior member of our staff to act as the principal point of contact for the purposes of this Agreement and regular progress meetings will be held.

### 4. Payment provisions

- 4.1 Where the System is to be sent overseas, payment of the Contract Price shall be by confirmed irrevocable letter of credit on a UK or US bank before shipment (unless otherwise agreed in writing).
- 4.2 The amounts, method and timing of payment of the Contract Price are set out overleaf. We reserve the right to increase the Contract Price if any fluctuations in exchange rates result in additional costs to us of more than 3%, where we have quoted a price for the System in currency other than sterling. In all other circumstance, any quotations given by us in writing are valid for 60 days, unless otherwise stated.
- 4.3 The Contract Price is on an ex works basis from our Guildford site unless otherwise agreed in writing, but we may arrange for carriage to you at your risk and cost at your request. Risk in the System will pass to you on the delivery to you or your carrier at our premises and you will be responsible for insuring and taking care of the System from that time.
- 4.4 Payment may not be withheld because of minor defects or omissions in the System which do not materially affect its use.
- 4.5 Where we agree to carry out services (including upgrades to the System after a period of one year from acceptance in accordance with clause 8.8) which are not part of the Contract Price such services will be carried out on a time and materials basis at our then standard fees, unless otherwise agreed.

- 4.6 Credit terms maybe granted at our discretion. In such cases all sums are payable under this Agreement within 30 days of your receipt of our invoice or by the due date, whichever is the later. The Contract Price does not include VAT or any similar sales tax, import or customs duties and similar duties and surcharges, which shall be paid additionally by you at the prevailing rate.
- 4.7 Where we have agreed staged payments of the Contract Price based on specific dates or events, payment will still fall due on such dates if our failure to adhere to any dates quoted to you is due to any act or omission by you, your agents and sub-contractors and not our fault.
- 4.8 We reserve the right to charge interest on any overdue sums at a rate of 4% per annum above the base lending rate of National Westminster Bank PLC, calculated on a daily basis from the due date until payment in full.
- 5. Retention of Title**
- 5.1 Without prejudice to the provisions of clause 6.1, title to each item of the Hardware and the media on which the Software is stored (but not the Software itself) will pass to you on payment in full of the Contract Price and of any other sums then owing to us.
- 6. Software and use of the System**
- 6.1 We shall provide and install the Software on the Hardware at the Site. The Software will comprise one copy of each item of Software in machine readable object code form only. For the avoidance of doubt, you acknowledge that the term 'Software' includes any firmware, software in embedded chips, or within the Hardware for the purposes of clauses 6.2, even if not specifically detailed overleaf.
- 6.2 Subject to clause 6.4, the copyright and all other proprietary rights whatever the Software, the Documentation and in all computer programs, documentation and other material developed specifically for you ('the Bespoke Software') will remain our absolute property. Upon acceptance or deemed acceptance of the System this Agreement will operate to grant you a non-exclusive non-transferrable licence to use the Software and the Bespoke Software for a period of 25 years from acceptance in accordance with clause 8.8 and on the Hardware only at the Installation Site only. If you wish to use the System or any part of it at another location our written permission is required, not to be unreasonably withheld or delayed.
- 6.3 You must not, or allow others to, decompile, reverse engineer to disassemble the Software, the Bespoke Software or any part, save as permitted by law
- 6.4 As regards Software over which any third party holds title or other rights, we will use our best endeavours to obtain for you the non-exclusive right to use that Software in the operation of the System, subject to you entering into a software licence agreement with such third party.
- 7. Target dates**
- 7.1 We will use all reasonable endeavours to adhere to any target dates agreed by us but you acknowledge that such dates are estimates only and time will not be of the essence.
- 7.2 If we reasonably incur any additional costs and expenses by reason of any delay, variation, interruption or suspension of work arising from any act or omission by you or your agents or subcontractors, we reserve the right to seek reimbursement of such sums from you, payable when invoiced by us.
- 8. Installation tests and acceptance testing**
- 8.1 We may carry out pre- shipment tests of the System on your behalf prior to delivery at our premises using data supplied by you, which we have not rejected by notice in writing to you within 10 working days of its receipt by us.
- 8.2 Following installation of the Hardware and the Software at the Installation Site we will carry out our standard installation tests to the System.
- 8.3 We will prepare an acceptance test specification suitable to demonstrate that the System complies with the Specification ('the Acceptance Specification') for approval by you (not to be unreasonably withheld or delayed). Where you request that we use an Acceptance Specification prepared by you, we reserve the right to reject it or to amend it in our absolute discretion.
- 8.4 We will carry out the acceptance tests ('Acceptance Tests') in accordance with the Acceptance Specification using test data and expected results prepared by you and approved by us. You will provide two suitably experienced personnel to assist us in such Acceptance Tests.
- 8.5 Following any demonstration of testing or submission of our reports to you, your appointed representative will notify us in writing within 5 working days, signifying your acceptance or rejection of the System (or the part of it so tested), giving full details of any reasons for rejection. Failure to respond within the specified period will constitute deemed acceptance.
- 8.6 If we are required to repeat any Acceptance Tests because of reasons outside our reasonable control, we may increase the Contract Price by such sum as is reasonable in the circumstances.
- 8.7 If the System or any part of it fails to pass its applicable Acceptance Test after two repeat Acceptance Tests, we shall provide such additional services and replacement items to enable the System or such part of it to pass the Acceptance Tests within a reasonable period and if it fails to do so to terminate this Agreement at any time after such period by written notice to you. Upon such termination, we shall refund any of the Contract Price already paid by you.
- 8.8 Acceptance of the System is deemed to occur on the earliest date of:
- 8.8.1 the successful completion of Acceptance Tests, acknowledged by your signature of an acceptance certificate within 10 working days; or
- 8.8.2 if you have not signed the said certificate within 10 days and have failed to demonstrate within such period that the System has materially failed to pass the Acceptance Tests in accordance with the Acceptance Specification, the 11<sup>th</sup> day; or
- 8.8.3 the System or a substantial part of it being first put into operational use or
- 8.8.4 if we cannot install the System through any act or omission by you, then the 11<sup>th</sup> day after we first attempt (or seek to attempt) to install the System at the Installation Site.

## **9. Warranty**

- 9.1 We warrant that the System will materially perform and function in accordance with the Specification for a period of one year from acceptance in accordance with clause 8.8.
- 9.2 We will rectify (by repair or replacement at our option) within a period of one year from the date of acceptance of the System any defect, being any non-conformance with the above warranty under the System's proper use (by personnel trained by us), care and maintenance. Only compliance with our safety manual and user manual given to you at delivery will constitute proper use of the System.
- 9.3 You will notify us at once in writing of any such defects and will give us adequate time and access to the System to rectify such defect.
- 9.4 We are not responsible for any problem caused by any modification made to the System or any part of it by you or by any third party, unless with our prior written consent. If a defect is found upon investigation not to be our responsibility, we may charge you for our reasonable costs and expenses incurred by us in carrying out any investigations.

## **10. Limitation of liability**

- 10.1 You acknowledge that our obligations and liabilities in respect of the System are exhaustively set out in this Agreement, to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise (to the fullest extent permitted by law) relating to this Agreement (including, but not limited to, the condition, quality, performance, merchantability or fitness for purpose of the System).
- 10.2 You are responsible for the use of the System and we will not be liable for any indirect or consequential loss, damage, cost or expense of any kind however caused, and whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings, even if we had been advised of their possibility.
- 10.3 Save in the event of death or injury caused by our negligence or that of our agents or subcontractors (where our liability shall not be limited), our total liability to you (whether in contract, tort, including negligence, or otherwise) in connection with this Agreement or based on any claim for indemnity or contribution shall not exceed the sum of £10,000,000.

## **11. Termination**

- 11.1 Orders for Systems (or any part thereof) may not be cancelled less than eight weeks before the estimated shipment date. For any orders cancelled between 16 and 8 weeks prior to the estimated shipment date, you will be liable to pay us a cancellation fee of 50% of the Contract Price (plus any VAT due thereon). For orders cancelled more than 16 weeks prior to the estimated shipment date the cancellation fee shall be 25% of the Contract Price, plus any VAT due thereon.
- 11.2 Either we or you may terminate this Agreement with immediate effect by written notice if:
- 11.2.1 the other ceases or threatens to cease to carry on its business;
- 11.2.2 if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other party;
- 11.2.3 if the other party makes any arrangement for the benefit of its creditors; or
- 11.2.4 if the other party goes in to liquidation, save for the purposes of a genuine amalgamation or reconstruction;
- 11.2.5 if the other commits a material breach of this Agreement and (in the case of a breach capable of remedy) fails to remedy it within 30 days of receipt of a written notice from the party not in default specifying the breach and requiring its remedy.
- 11.3 Termination of this Agreement will not affect any of our respective rights accruing up to the date of termination.

## **12. General**

- 12.1 Neither of us will be liable for any delay or failure to perform any of our respective obligations under this Agreement caused by events outside our reasonable control. Provided that the party relying on such force majeure events notifies the other party promptly of the circumstances, its performance of the relevant obligations under this Agreement will be suspended for such time as is reasonable in the circumstances.
- 12.2 All notices to be given under this Agreement must be in writing and sent to the addresses set out in this Agreement or otherwise notified to the other party from time to time. Notices may be delivered personally, by first class letter or facsimile transmission and will be deemed to have been received at the time of delivery (for hand delivery), 48 hours after mailing (for first class post), or immediately on transmission with correct answerback (for facsimile transmission).
- 12.3 This Agreement contains the entire agreement between us relating to the subject matter of this Agreement and supersedes all prior arrangements. The printed terms of any purchase order or other documentation used by you will not apply to this Agreement unless expressly accepted by us in writing.
- 12.4 Except as otherwise permitted by this Agreement, no change in its terms will be effective unless in writing and signed by authorised signatories of both parties.
- 12.5 This Agreement is specific to you and you may not assign it without prior written consent and on such terms as may be specified by us.
- 12.6 This Agreement is subject to English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 12.7 Any failure by either of us to exercise any of our powers, rights or remedies under this Agreement will not operate as a waiver of them.