

Standard Terms and Conditions – Supplies**Definitions**

If the following words are utilised in these Standard Terms and Conditions they shall have these meanings ascribed to them respectively as follows:

“Agreement” means these Standard Terms and Conditions - Supplies.

“Company” means Bottomline Technologies Limited whose registered offices are at 115 Chatham Street, Reading RG1 7JX.

“Customer” means the legal entity (i.e. registered company, or legally constituted public body or financial institution) specified in the Order Agreement.

“Customer Agreement (CA)” means collectively the initial Order Agreement, any subsequent Order Agreement(s) (signed pursuant to this Agreement) and this Agreement.

“Order Agreement” means the document which specifies the Supplies or other service being acquired by the Customer subject to this Agreement.

“Supplies” means any or all of the following (or any other consumables supplied under these terms by the Company from time to time in the ordinary course of its business) including but not limited to: printer toner cartridges, paying in books, rail warrant books, vouchers, credit slips, sheeted cheques, cheque books and invoice paper.

1. General

This Agreement shall govern the Customer's purchase of Supplies from the Company. In the event of a conflict between this Agreement and any other terms, then this Agreement shall take precedence and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other document(s) prepared by Customer irrespective of their date. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. The CA states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of the CA shall be signed electronically where the facility to do so is made available by the Company. The parties further agree that such electronic signatures appearing on any of the aforementioned documents shall for the purposes of validity, enforceability and admissibility, be treated the same as hand written signatures. No amendment or modification of any individual Order Agreement, this Agreement or the CA shall be made except in writing and signed (including by electronic means) by an authorised signatory of each party.

2. Prices

- 2.1. All prices are exclusive of value added tax and any other applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect and any withholding tax will be for the Customer's account unless and until such time that Company is able to reclaim such tax.
- 2.2 If the Company arranges or undertakes the carriage, freight, insurance and other transport costs beyond its premises, such costs shall be for the Customer's account and shall in any event not affect the passing of title in the Supplies.
- 2.3 Prices quoted are in Pounds Sterling unless otherwise agreed and stated on an Order Agreement.

3. Invoicing and Payment

Company shall upon shipment raise an invoice for all Supplies fees specified in an Order Agreement. When deliveries are spread over a period of time each consignment will be invoiced as despatched and treated as a separate account and payable accordingly. Payment of all invoices shall be due within thirty (30) days of date of invoice. If payment is delayed for more than thirty (30) days and the Customer has not raised a reasonable dispute in writing regarding the amounts invoiced, Customer agrees to pay interest at a rate of 2% per annum over the Bank of England base rate from the date payment was first due until payment is received in full. Alternatively the Company at its sole option may request the Customer to immediately return any Supplies in good and complete condition.

4. Carriage

- 4.1 All Supplies shall be shipped to the premises as indicated on the Order Agreement. Risk in the Supplies shall pass when they leave the Company's premises by secure shipping means.
- 4.2 The dates for delivery of the Supplies are approximate only and time is specifically not of the essence of the CA. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the Supplies. If for any reason the Customer is unable to accept delivery of the Supplies when they are due and ready for delivery, the Company may store the Supplies at the Customer's risk and the Customer shall be liable to the Company to pay the reasonable costs of such storage and related insurance.

5. Security Interest

- 5.1 Company retains a security interest in all Supplies until paid for in full.

6. Intellectual Property

Customer acknowledges that the intellectual property in the hardware and/or software used in producing Supplies, where applicable, remains the sole property of the Company or its related entities or third party suppliers. Company acknowledges that the intellectual property in all Customer logos, branding and other collateral generated by the Customer and provided to the company in connection with provision of Supplies under the CA where applicable, remains the sole property of the Customer or its related entities or third party suppliers. Neither party shall gain any right, title or interest in the other party's respective intellectual property by virtue of the CA.

7. Warranty

- 7.1 The Company warrants that in accordance with this Agreement:
 - 7.1.1 it has title to the Supplies and has the right to sell the Supplies purchased by the Customer;
 - 7.1.2 the Supplies will on delivery be free from material defects in materials and workmanship;
 - 7.1.3 the Supplies will on delivery materially conform to their standard specification, or where agreed in writing between the Company and the Customer to any additional specifications; and
 - 7.1.4 the Supplies shall be provided using reasonable care and skill consistent with applicable industry standards.

7.2 The Customer's sole and exclusive remedy in the event of breach of the above warranties in clauses 7.1.2, 7.1.3 and 7.1.4 is the correction of any failure reasonably determined by the Company as a failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion, re-delivery of the Supplies or portion thereof, or replacing, repairing or adjusting the Supplies without charge to the Customer or refunding any relevant portion of paid fees. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within thirty (30) days of completed delivery of the defective Supplies.

8. Limits of Liability

8.1 Notwithstanding any other provisions in this Agreement the Company's liability to the Customer for death or injury resulting from the Company's negligence or the negligence of its employees, agents or sub-contractors shall not be limited under the CA.

8.2 Subject to clause 8.5, the Company's maximum aggregate liability for any damage to the tangible property of Customer resulting from the negligence of the Company or its employees, agents or sub-contractors shall not exceed £1,000,000.

8.3 Subject to clause 8.5 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 10.2, shall be limited to the greater of £20,000 or the combined total amount paid by Customer for Supplies under the Order Agreement to which such claim (or series of related claims) relates.

8.4 Subject to clause 8.5 the Company will be liable to the Customer for any direct loss which the Customer may incur as a result of fraud or dishonesty on the part of Company employees, provided that the Customer uses its best endeavours to minimise such loss and to recover any funds from such employees. Company shall not be liable to the Customer under this clause 8.4 unless and until the Customer has exhausted any legal remedy it may have against such employees and/or any third party in this respect; and Company shall reduce the amount of any liability to the Customer by the amount of any loss or funds recovered from Company employees by Customer.

8.5 In no event shall the Company have any liability:

8.5.1 for loss of profits, goodwill, business interruption, delay or failure in provision of services, or any type of special, indirect, consequential or incidental loss or damages (including loss or damage suffered by the Customer as a result of any action brought by a third party) even if the Company has been advised of the possibility of such damages; and

8.5.2 (including breach of warranty) which arises as a result of the misuse of the Supplies; and

8.6 Except as expressly provided in this Agreement all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Company or its third party suppliers or otherwise (including, without limitation, any warranties of merchantability or fitness for particular purpose) are hereby superseded, excluded and disclaimed to the fullest extent permitted by law.

9. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of any Software supplied hereunder nor, without the prior written consent of the Company, to permit the whole or any part of the Software supplied hereunder to be combined with or become incorporated in any other software.

10. Confidentiality

Each party shall treat as confidential information all information (including the terms of the CA) obtained from the other pursuant to the CA and shall not disclose such information to any person (except to such party's own legal advisers, auditors, employees and then only to those employees who have a reasonable need to know the same; and in the case of the Company to their third party licensors where applicable (all such disclosure subject to each party being made aware of the confidential nature of the information and agreeing to abide by terms no less onerous than those specified in this clause 10)) without the other party's prior written consent, provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the CA, (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach), which is trivial or obvious, or is required to be disclosed by law or regulatory body.

11. Data Protection

The Parties further agree that in so far as any personal data is handled and/or processed under the CA, they shall respectively adhere to all applicable data protection legislation and in particular the Data Protection Act 1998.

12. Termination

12.1 Either party may terminate the CA in writing if:

(i) the other party commits any material breach of any term of the CA (which shall include failure to meet payment obligations hereunder) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do; or

(ii) the other party has an interim or bankruptcy order made against it or enters into or becomes subject to a scheme, composition or voluntary arrangement with its creditors or becomes subject to a winding-up, dissolution, administration or receivership proceedings;

12.2 The Company may further without prejudice to its other rights, stop Supplies in transit, suspend delivery or further deliveries of Supplies.

12.4 Following termination for any reason (other than by the customer for un-remedied breach in accordance with clause 17.1 (i), any monies owing from the Customer to the Company shall immediately become due and payable.

13. Assignment

The Customer shall not be entitled to assign, or otherwise transfer the rights and obligations granted hereunder, or under the CA, whether in whole or in part unless otherwise agreed in writing by a duly authorised representative of the Company. The Company shall be entitled to sub-contract any Professional Services work relating to any Order Agreement without the consent of the Customer provided that such work is performed in accordance with the terms of this Agreement.

14. Force Majeure

Neither Party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: an act of God; an act of war; civil unrest; terrorism; riot; epidemic/pandemic; fire; explosion or accidental damage; extreme weather conditions (including but not limited to: flood, storm, or other disaster); an act of government; industrial action or lockouts; and failure of the worldwide web. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months.

The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the CA by reason of a Force Majeure event shall use all reasonable commercial endeavours to mitigate against the effects and consequences of the Force Majeure event. The affected party shall resume performance of its obligations under the CA immediately upon the end of the Force Majeure event. Where no performance or cure is possible after the three (3) month period has elapsed, and in the reasonable view of the parties will not be forthcoming or possible within a further one (1) month from that date, the party not affected by the Force Majeure event may decide to terminate the CA on service of written notice upon the party so prevented, hindered or delayed, in which case no party shall have any liability or obligation to the other under the CA other than the payment of monies due.

15. Notices

Any notice or other communication to be given under the CA must be in writing and may be delivered or sent by pre-paid first class letter post to the Company at its registered address or facsimile transmission to an officer of the Company. Any notice or document shall be deemed served: if delivered electronically by e-mail at the time of delivery and if posted 48 hours after posting.

16. Invalidity

The invalidity, illegibility or unenforceability of any provision shall not affect any other part of this Agreement.

17. Third Party Rights

A person who is not a party to the CA shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the CA. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

18. Non-solicitation

While this Agreement remains in effect and for one (1) year following the termination of the Agreement, neither party shall directly or indirectly recruit, solicit or hire any employee of the other party, or induce or attempt to induce any employee of a party hereto to terminate his/her employment with the other party; provided that either party shall be permitted to hire any employee of the other party who responds to a general employment advertisement or solicitation.

19. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

The Customer agrees that it has read this Agreement and agrees to be bound by the terms and conditions contained herein.