

# Westtek Solutions Ltd – Terms and Conditions

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## 1. Definitions

In these terms and conditions the following words have the meaning given:

“Company” Westtek Solutions Ltd. (Westtek) whose registered office is at 3<sup>rd</sup> Floor, The Heights, 59-65 Lowlands Road, Harrow, Middlesex, HA1 3AW. Company Reg No: 07175950 VAT No: 990 2106 33

“Contract” the Customer’s order including any attached Proposal and the Company’s acceptance of it in accordance with clause 2.3.

“Customer” means the person, firm or company purchasing Equipment and/or Services from the Company.

“Equipment” computer hardware and/or software agreed in the Contract to be purchased by the Customer from the Company (including any part or parts of it).

“Network Upgrades” the installation of new or used Equipment.

“Proposal” any attached written document or electronic quote outlining the Equipment and/or Services to be delivered under the Contract.

“Services” the services to be provided by the Company to the Customer as provides in the Contract including without limitation consultancy, IT support, online backup, internet line rentals, Network Upgrades and data connection.

“Support” the delivery of technical assistance either via telephone or via remote computer, to issues arising from the equipment installed by Westtek. Support excludes reconfigurations to equipment not specified in the proposal.

## 2. Acceptance of Orders

- 2.1. All contracts of sale and/or supply of Equipment and/or services made by the Company shall be deemed to incorporate these Terms and Conditions, which shall prevail over any other document or communication from the party with whom the Company is dealing or any previous course of dealing.
- 2.2. All orders are accepted and fulfilled subject to these Terms and Conditions unless otherwise varied by agreement in writing by an officer of the Company.
- 2.3. A binding contract shall not come into existence between the Company and the Customer unless and until the earlier of the Company: (a) issuing a written order acknowledgement to the Customer; or (b) delivering the Equipment and/or commencing or executing work pursuant to the order. Accordingly the Customer’s standard terms and conditions (if any) attached to, enclosed with, or referred to in, the order shall not govern the Contract.

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- 2.4. Each order or acceptance of a quotation for Equipment and/or Services by the Customer shall be deemed to be an offer by the Customer subject to these Terms and Conditions. The Customer shall ensure that its order is complete and accurate.
- 2.5. Any quotation is valid for a period of 30 days only, and the Company may withdraw it at any time by notice to the Customer.
- 2.6. No order which has been acknowledged by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and provided that the Customer indemnifies the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### **3. Carriage, Post and Packing**

Charges will be made for delivery of new equipment and or loan equipment to and from the customer's site. Any delivery costs from suppliers/manufacturers will also be invoiced to the client.

### **4. Prices**

#### ***In respect of the supply of Equipment***

- 4.1. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 4.2. The price of the Equipment shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's price list current at the date of acceptance of the order.
- 4.3. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

#### ***In respect of the supply of Services***

- 4.4. Where any Services are provided by the Company on a time-and-materials basis the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates as amended from time to time.

- 4.5. Where any Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. Where applicable, the total price shall be paid to the Company in instalments as set out in the Proposal. Any fixed price excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company to the Customer at cost; and VAT, which the Company shall add to its invoices at the appropriate rate.
- 4.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### 5. Payment Terms

- 5.1. All Equipment is payable at the time of the Customer's order. If for any reason payment is not collected by the Company at such time, then the Company may invoice the Customer for the price of the Equipment on or at any time the Company has ordered or delivered the Equipment or at any time after the Company has notified the Customer that the Equipment is ready for collection. The Customer shall immediately pay the Company in full on delivery of the invoice.
- 5.2. All Services are payable monthly in arrears by standing order, except any part of the Services involving any labour element of which the time cost for such labour element shall be payable within 7 days of each and every invoice in that respect.
- 5.3. Time for payment of the price shall be of the essence of the Contract.
- 5.4. All payments shall be made without deduction set-off or counterclaim.
- 5.5. If the Customer fails to make payment in full on the due date, the whole of the balance of the price of any Equipment and/or Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.5.1. terminate the Contract or suspend any further deliveries of Equipment and/or Services (whether ordered under the same contract or not) to the Customer;
- 5.5.2. appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and the Company) as it thinks fit (despite any purported appropriation by the Customer);

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- 5.5.3. charge interest on the amount outstanding from the due date to the date of receipt by the Company (whether or not after judgment), at the annual rate of 8% above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 5.5.4. suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- 5.5.5. make a storage charge for any undelivered Equipment at its current rates from time to time;
- 5.5.6. stop any Equipment in transit; and
- 5.5.7. a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 5.6. All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 5.6 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 5.7. The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

### **6. Network Upgrades**

The Company will install and configure all equipment as outlined in the proposal or as subsequently agreed. The Company cannot be held liable for the unforeseen purchase of additional equipment required to complete the network upgrade as outlined in the proposal.

### **7. Legacy Systems Failure and customer responsibilities**

Quotations are based on the time and work required to install, configure and test the equipment specified in the proposal. If it is found non-specified equipment is installed on any workstation/server, Westtek will ask the customer to remove the software prior to installing any new equipment.

It is the customer's responsibility, prior to an engineer's visit, to specify equipment already owned by the customer that the engineer will be required to configure. Equipment not specified will not be configured, within the terms of this contract.

### **8. Network Support and Maintenance**

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Unlimited telephone, email support is available 8.30am to 6.00pm Monday to Friday, excluding public/bank holidays. Service requests by the customer outside the period and times specified shall be charged at the then current standard service rates for labour, travel and expenses. The customer is guaranteed a 4-hour response to requests with a target resolution of 8 hours.

Onsite visits are available when deemed unnecessary between Westtek's working hours of 8.30am and 6.00pm Monday to Friday, excluding public/bank holidays. Response time will be guaranteed at 4hrs/8hrs dependant on the equipment concerned, as defined in the proposal and are based from the time taken when a call is logged. Onsite visits will be charged at agreed rates. Westtek cannot be responsible for delays as a result of travel interference.

In the event of equipment failure, the Company will either ship replacement equipment direct to the customer's site or supply a site engineer, whichever is deemed most practical. This service is supplied next business day, but is dependent on the equipment vendor's ability to supply a next business day replacement. The customer will meet the cost of replacement equipment that is not under warranty. By prior arrangement with the customer, the failed equipment may become the property of Westtek. All delivery costs will be invoiced to the customer.

Westtek will support defined IT components as listed in the proposal. Westtek will ensure that all server and PC software is available for the user and the network. Westtek will not however respond to PC Software usage issues.

No insurance cover is provided for removed equipment. The Company shall be held liable for any negligent loss of data from equipment either in transit or whilst under repair.

Support contracts only cover Westtek supplied or pre-defined equipment, as set out in the schedule of equipment. Support does not cover equipment that has been re-configured or tampered with by the customer.

All replacement equipment not under warranty will be charged to the customer at the rate published within the Companies price list.

All reasonable precautions to ensure the health and safety of the companies employees whilst on customer premises must be undertaken.

### **9. PC Retainer**

For the purposes of PC hardware on-site support the company will make itself available on a predicted 8hr response time. All on-site support will be charged on an hourly basis of £95/hr (Westtek's working hours) and £145/hr (Saturdays and evenings). Clients on service contracts can purchase 10 hours in advance at a reduced rate of £75 per hour. A minimum of 2hr per site visit will apply. All replacement hardware and technical time will be invoiced directly to the client. Sundays and Bank Holidays is charged is double standard rate.

### **10. Remedies**

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- 10.1. Any liability of the Company for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 10.2. If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 12.1), the Customer shall be liable to pay to the Company all reasonable costs, charges or losses sustained by it as a result, subject to the Company notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 10.3. The Company shall not be liable for any damage or defect to Equipment caused by improper use of the Equipment or use outside its normal application.

### 11. Liabilities

- 11.1. The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 11.1.1. any breach of the Contract;
  - 11.1.2. any use made by the Customer of the Services, the deliverables or any part of them;
  - 11.1.3. and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3. Nothing in these conditions excludes the liability of the Company:
  - 11.3.1. for death or personal injury caused by the Company's negligence; or
  - 11.3.2. for fraud or fraudulent misrepresentation.
- 11.4. Subject to condition 11.2 and condition 11.3:
  - 11.4.1. the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
    - a) loss of profits; or
    - b) loss of business; or
    - c) depletion of goodwill or similar losses; or
    - d) loss of anticipated savings; or
    - e) loss of goods; or
    - f) loss of contract; or
    - g) loss of use; or
    - h) loss or corruption of data or information; or
    - i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

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- 11.4.2. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to lower of £5,000 or the the price paid for the Services and/or Equipment.

### 12. General

- 12.1. Neither party shall be liable for any failure to perform its obligation hereunder if such failure arises from any Act of God, War, Strike, Lockout or other Labour Dispute, Riot, Civil Commotion , Fire, Flood, Drought, Legislation or other causes (whether of the foregoing classes or not) beyond the control of the party concerned.
- 12.2. The Customer may not transfer or assign any or all of its rights under a Contract. The Company shall be entitled to transfer or assign all or any of its rights under a Contract and to perform any of its obligations through subcontractors without the prior written consent of the Customer. In the event that the Equipment needs to be returned to the original manufacturer the Company shall be entitled to rely on the original manufacturers findings as the remedial action and further rely on the original manufacturer as to time lapse to effect a repair or replacement.
- 12.3. No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.4. The Contract is made for the benefit of the parties to it and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 12.5. Save for fraud, each party acknowledges that, in entering into a Contract, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not) other than as expressly set out in a Contract.

### 13. Title and Risk

No property or title to the equipment shall pass from the Company to the Customer unless the Customer has made full and complete payment for the equipment and no support entertained if the Customer's account is overdue. The customer shall indemnify the Company against any loss or damage to the goods prior to passing of the property therein or after delivery to the Customer.

### 14. Period of Agreement

- 14.1. All Services supplied under a Contract are subject to a minimum 12 month contract period. Thereafter, 90 days notice is required to cancel any service described within these terms.

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- 14.2. Without prejudice to any other right or remedy available to the Company, the Company may terminate a Contract or suspend any further deliveries under a Contract without liability to the Customer and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:
- 14.2.1. the ability of the Customer to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or
  - 14.2.2. an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or
  - 14.2.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
  - 14.2.4. a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
  - 14.2.5. the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - 14.2.6. the Customer ceases, or threatens to cease, to trade; or
  - 14.2.7. the Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.
- 14.3. Termination of a Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination

### **15. Law and Jurisdiction**

- 15.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.



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- 15.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

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