

# acardia ltd TERMS AND CONDITIONS OF SUPPLY

- 1. DEFINITIONS**
  - 1.1 "Customer" means the party identified as the Customer in this Agreement to whom acardia may agree to supply Products in accordance with these terms and conditions.
  - 1.2 Acardia Ltd of Venture House, Arlington Square, Bracknell, RG12 1WA.
  - 1.3 "Products" means goods including but not limited to computer hardware items to be provided by acardia to the Customer in accordance with these terms and conditions and to computer software items to be provided to the customer by acardia under licence from third parties hereinafter described as "the hardware products" and "the software products" respectively.
- 2. QUOTATION**
  - 2.1 Where acardia has provided Customer with a Quotation, the same shall constitute an invitation to treat and shall remain valid for a period of 14 days from date of issue.
- 3. ORDER ACCEPTANCE**
  - 3.1 All written orders placed with acardia by the Customer for Products shall constitute an offer to acardia under these terms and conditions subject to availability of the Products and to written acceptance of the order by acardia's authorised representative.
  - 3.2 All written orders are accepted and Products supplied subject to these express terms and conditions only. No amendment of these terms and conditions will be valid unless confirmed in writing on or after the date hereof by an authorised representative of acardia.
  - 3.3 It is agreed that these terms and conditions shall govern the contract to the exclusion of the Customer's terms and conditions of purchase.
- 4. RELATIONSHIP BETWEEN CUSTOMER AND acardia**
  - 4.1 Neither party is the agent of the other and neither party has any authority to make any contract or make any obligation expressly or implied in the name of the other party without the party's prior written consent for express purposes connected with the performance of this Agreement.
- 5. DESPATCH**
  - 5.1 Any time quoted by acardia for despatch of products to the Customer is to be treated as an estimate only and despatch may be postponed because of conditions beyond acardia's reasonable control and in no event shall acardia be liable for any damages or penalty for delay in despatch or delivery. Time for delivery shall not be of the essence.
  - 5.2 Risk shall pass to the Customer at the time the Products are despatched by acardia. acardia accepts no liability for loss or damage caused by the carrier.
  - 5.3 Upon delivery to the entrance to the Site, Customers will be responsible for and will bear the entire risk of loss or damage to Hardware or Software media regardless of when acceptance occurs. If Customer wishes to make any claims for shortages or damaged Products full particulars must be notified to acardia within 48 hours of delivery. If proof of delivery is required this must be requested within 14 days of the date of the invoice.
- 6. CANCELLATION AND RESCHEDULING**
  - 6.1 In the event that Customer (i) cancels all or any part of any order, or (ii) requests a rescheduling of scheduled Products and the request is accepted by acardia, or (iii) requests a configuration change causing rescheduling of scheduled Products and the request is accepted by acardia, Customer agrees to pay to acardia the following cancellations/rescheduling costs:  
Cancellation/Rescheduling  
Notice Received: Charge (% of Product UK List Price)  
61-90 days prior to scheduled delivery date 5% or £500, whichever is greater  
31-60 days prior to scheduled delivery date 15% or £1,000, whichever is greater  
0-30 days prior to scheduled delivery date 25% or £2,500, whichever is greater
  - 6.2 Recognising that acardia's damages or costs arising from any cancellation or rescheduling of any order will be difficult to estimate, the parties agree that the charges set out in 6.1 above are reasonable and are intended as liquidated damages and not as a penalty.
- 7. PRICES**
  - 7.1 Catalogues, price lists and other advertising literature or material as used by acardia are intended only as an indication as to price and range of goods offered and no prices, descriptions or other particulars contained therein shall be binding on acardia. Any promotional prices for specific marketing or manufacture's programmes shall only be available to those qualifying customers at the time of ordering. Any none qualifying customers shall be liable for a surcharge equivalent to the uplift to the correct price.
  - 7.2 All prices are given by acardia at the time of the order on an ex-works basis and the Customer is liable to pay for transport, packing and insurance.
  - 7.3 All quoted or listed prices are based on the cost to acardia of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any way of such costs in respect of Products which have not yet been delivered the price payable may be subject to amendment on written notice from acardia forthwith at acardia's discretion.
  - 7.4 All prices are exclusive Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with UK legislation in force at the tax point date.
- 8. PAYMENT TERMS**
  - 8.1 Invoices will be raised and dated by acardia on the date of despatch of the Products. Unless otherwise specifically negotiated and agreed, invoices will be payable by the Customer 30 days from the date of the invoice. Time for payment of the price shall be of the essence of the contract without prejudice to clause 14.1 hereof. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of the HSBC Bank Ltd. Such interest shall accrue on a daily basis and be payable on demand before, as well as, after judgement.
- 9. RISK AND PROPERTY**
  - 9.1 Notwithstanding despatch and the passing of risk in the Products to the Customer pursuant to Clause 5 or any other provision of these conditions the property in the hardware Products and software Products shall not pass to the Customer until acardia has received in cash or cleared funds payment of the full price (including all taxes and charges due) of the Products and all of the other products agreed to be sold by acardia to the Customer for which payment is then due.
  - 9.2 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as acardia's fiduciary agent and bailee and shall keep the Products (separate from those of acardia and any third party) properly stored, protected and insured and identified as acardia's property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business but shall account to acardia for the proceeds of sale or otherwise of the Products, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds, property stored, protected and insured.
  - 9.3 Until such time as the property in the Products passes to the Customer, acardia shall be entitled at any time to require the Customer to delivery up the Products to acardia and if the Customer fails to do so forthwith, to enter upon such premises of the Customer or any third party where the Products are stored and repossess the Products.
  - 9.4 The Customer's power of sale or right to use such Products shall immediately cease if an Administrative Receiver is appointed over all or any part of its assets or if it is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986.
  - 9.5 On termination of the Customer's power of sale or right to use the Products the Customer will immediately hold the Products to the order of acardia.
  - 9.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of acardia but if the Customer does so, all monies owing by the Customer to acardia shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable acardia reserves the right to cease supplies of Products to the Customer at any time. On such cessation of supplies acardia reserves the right to withdraw any credit facility such that the whole of the Customer's account becomes due for payment forthwith.
- 10. SPECIFICATION OF PRODUCTS**
  - 10.1 acardia will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. acardia will use its reasonable endeavours to advise the Customer of any such impending variation as soon as it receives any notice thereof from the manufacturer.
  - 10.2 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. acardia reserves the right to increase its quoted or listed price, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of the Products.
- 11. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS**
  - 11.1 In this clause the expression "Third Party Software" shall mean software supplied to acardia on licence by the author of that software ("The Third Party Software Owner") and supplied by acardia to the Customer on the terms set out in this Agreement.
  - 11.2 The Customer hereby acknowledges that any proprietary rights in any Third Party Software supplied hereunder including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights shall at all times and for all purposes vest and remain vested in the Third Party Software owner.
  - 11.3 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by acardia (including if so required the execution and return of a Third Party Licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a Software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify acardia in respect of any costs, charges or expenses incurred by acardia at the suit of a Third Party Software owner as a result of any breach of the Customer or such conditions.
- 12. WARRANTY**
  - 12.1 acardia warrants that it has good title to or licence to supply all Products to the Customer.
  - 12.2 If any part of the hardware Products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover and terms provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Products or to the system of which the Product forms part have taken place. acardia is not responsible for the cost of labour or other expenses incurred in repairing or replacing defective or non-conforming parts.
  - 12.3 All software Products supplied hereunder are supplied "as is" and the sole obligation of acardia in connection with the supply of software Products is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that any such software Product should fail to conform to its product description PROVIDED ALWAYS THAT the Customer notifies acardia of any such non-conformity within 90 days of the date of delivery of the applicable software Product.
  - 12.4 If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 12.2 or 12.3, acardia will only accept the return of such products provided that it receives written notification thereof giving detailed reasons for rejection. acardia will not consider any claim for compensation, indemnity or refund until liability, if any, has been established or agreed with the manufacturer and where applicable its insurance company. Under no circumstances shall the invoiced Products be deducted or set off by the Customer until acardia has passed a corresponding credit note.
  - 12.5 EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 12, ACARDIA DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- 13. INDEMNITIES AND LIMITS OF LIABILITY**
  - 13.1 acardia will indemnify the Customer for direct physical injury or death caused solely by defects in any of the Products or caused solely by the negligence of its assigned employees acting within the course of their employment and the scope of their authority.
  - 13.2 acardia will indemnify the Customer for direct damage to property caused solely by defects in any of the Products or caused solely by the wilful conduct of its assigned employees acting within the course of their employment and the scope of their authority. The total liability of acardia under this sub-clause shall be limited to price paid by customer for the supplied goods.
  - 13.3 Except as stated in clause 13.1 and 13.2 above, acardia disclaims and excludes all liability to the Customer in connection with these items and conditions including the Customer's use of the Products and in no event shall acardia be liable to the Customer for special, indirect or consequential damage including but not limited to loss of profits or arising from loss of data or in connection with the use of the Products. All terms of any nature express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.
  - 13.4 The Customer shall indemnify and defend acardia and its employees in respect of any claims by third parties which are occasioned by or arise from any acardia performance or non performance pursuant to the instructions of the Customer or its authorised representative.
- 14. TERMINATION FOR CAUSE**
  - 14.1 This Agreement may be terminated forthwith by notice in writing.
  - 14.2 By acardia if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment in clause 7.1.
  - 14.3 If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.
  - 14.4 If either party ceases trading or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary other than for the purposes of an amalgamation or reconstruction or makes an arrangement with its creditors or petitions for an administration order or has a Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this Agreement forthwith.
  - 14.5 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party.
- 15. EXPORT AND/OR RE-EXPORT LIMITATION**
  - 15.1 Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to acardia of an ultimate destination for any Products, the Customer will not export or re-export directly any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.
- 16. CONTRACT**
  - 16.1 The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
  - 16.2 No forbearance, delay or indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
  - 16.3 The Customer agrees not to assign any of its rights herein without the prior written consent of acardia.
  - 16.4 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
  - 16.5 Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute or any other cause beyond its reasonable control.
  - 16.6 Any documents or notices given hereunder to either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of post will be deemed to have been given 2 working days after the date of posting.. Documents or notices shall be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in the normal course of trading in writing by either party to the other for the purpose of receiving documents or notices after the date of this Agreement.
  - 16.7 These terms and conditions shall be governed and construed in accordance with English Law.