

Terms & Conditions – ItemTracker Software

1. Definitions

- 1.1 'Annual License Fee' The sum payable by the Customer to the Supplier in respect of the Licensed Software, support and Materials;
- 1.2 'Contract Price' the contract price in the Title Page being the aggregate of the Initial License Fee, Delivery and Installation Charge and the Training Charge;
- 1.3 'Installation' in respect of the Licensed Software and the Licensed Operating System, the point in time at which it is placed onto the Installed Hardware;
- 1.4 'Licensed Software' the ItemTracker software or any software substituted by The Supplier from time to time which in the opinion of The Supplier carries out materially the same functions, consisting of a series of instructions or statements in machine readable form and any data base consisting of the logical collection of data in machine readable format;
- 1.5 'Manufacturer' the manufacturer of the Hardware and the licensor of the Licensed Operating System;
- 1.6 'Materials' all literary and artistic material, whether in the form of manuals or otherwise, provided by The Supplier to accompany and assist an operator in operating the Licensed Software;
- 1.7 'Specifications' the overview description of the Licensed Software only, as prepared by The Supplier including Training Materials, Materials and Product Release Notes;
- 1.8 'System' together the Licensed Operating system, the Licensed Software, the Materials, as installed and delivered together with the Training;
- 1.9 'Use' the non-exclusive right, following the Date of order, to utilise the facilities of the System solely for the purpose of processing data relating to the Customer's own business or data relating to a third party, with whom the Customer has a bona fide association, or data relating to a third party for whom the Customer provides professional business services;
- 1.10 References to the Supplier in this agreement shall, where acceptable, include its employees, agents and contractors

2. Customer Responsibility

- 2.1 To receive all the goods and services supplied or to be supplied under the terms and conditions of the Agreement.
- 2.2 To accept full responsibility for the selection, use and results obtained from the system.
- 2.3 To accept responsibility for the selection, use and results obtained from any equipment, programs or services used in conjunction with the System.
- 2.4 Where the customer has requested the help of the software supplier to install the licensed software, it is the customers' responsibility to ensure that the hardware onto which the licensed software will be installed is ready for the installation.
- 2.5 It is the Customers' responsibility to ensure that the hardware onto which the licensed software is installed complies with the Licensed Software system requirements.
- 2.6 To give the Supplier access to the Installation Location whenever reasonably requested by the Supplier

3. Payment

- 3.1 Full payment consisting of all agreed charges (including charges for the initial license fee, installation, training or other work) is payable within 28 days of receipt of the invoice.

4. License

- 4.1 The supplier grants to the Customer, with effect from the date of order, and subject to the Customer complying with its obligations under this Agreement, a non-exclusive non-transferable license for a period of one year to use the Licensed Software.
- 4.2 On expiry of the first year, this Agreement will continue on an annual basis subject to all the terms and conditions of this Agreement and subject to the right of either party to terminate this agreement on an anniversary.
- 4.3 The Customer will not alter, amend, misuse, damage, reverse compile, reverse assemble, print, copy (except for back-up security copies), translate, diffuse or broadcast the Licensed Software.
- 4.4 The Customer may assign its rights under this Agreement to any corporation or other entity, provided that such assignment is a part of the sale of all or the majority of Customer's assets, or pursuant to a merger, consolidation, or other reorganisation. The Customer may also assign its rights under this Agreement to a subsidiary or parent or to the subsidiary of a parent. The Customer shall provide the Supplier with notice of such assignment at the time of transfer. Any assignee shall have the same rights and obligations as the Customer, and is bound by the terms and conditions of this Agreement.

5 Confidentiality

- 5.1 The Customer acknowledges that it will have no proprietary right of any nature whatsoever in the Licensed Software, the Materials and the Licensed Operating System, apart from the license granted in the Licensed Software in accordance with this Agreement and that any rights in the nature of the patents, copyrights, design, trade secrets and confidential information existing in or arising in relation to the Licensed software and the Materials or the intangible concepts, knowledge ideas, information, methodologies, and know-how contained in and given effect to by the Licensed software and the materials remain the property of The Supplier and together with all confidential information relative thereto
- 5.2 The Customer will guard and protect the Licensed Software and the Materials from unauthorised disclosure and apart from the necessary disclosure to its servants and employees to enable their use by the customer, the Licensed Software and the Materials will be kept and remain confidential and the property of the Supplier; such obligation will survive termination of this Agreement or by license granted by this Agreement.
- 5.3 The Customer will indemnify the Supplier against all loss (including consequential loss) and damage, and will account to the Supplier for all its profits received by it rising from the Customers willful or negligent unauthorised disclosure of the Licensed Software and the Materials
- 5.4 The Customer will not sell, transfer or declare any trust in respect of the Licensed software and/or the Materials without the prior written consent of the Supplier and the Customer will not in any circumstances assign or grant any sub-license in respect of the Licensed Software and/or the Materials
- 5.5 The Supplier undertakes to keep and maintain all information with regard to the Customer's business, clients, operations and process from unauthorised disclosure and, apart from the necessary disclosure to its servants and employees to enable training and software support as outlined in previous clauses of this agreement, will be kept and remain confidential and the property of the Customer. Such obligations to survive termination of this Agreement any license granted by this Agreement
- 5.6 This Contract is governed by the laws of England. The parties will seek to resolve disputes in good faith through mediation prior to filing suit.
- 5.7 Neither party shall use the name of the other party or the names of the employees of the other party in any advertising or sales promotional material or in any publication without prior written permission of such party.

6 Escrow Facility

- 6.1 The supplier shall if requested by the Customer and at the cost of the customer, procure the inclusion of the Customer in an escrow facility agreement with effect from the date of order under which the Customer shall be entitled to access the source code in the Licensed Software in the event of a proven failure by The Supplier ceasing to trade or support the software

7 Access to the Licensed Software

- 7.1 On request by the Customer, subject to all the terms of this Agreement, the supplier shall as soon as reasonably possible provide the Licensed Software and/or any related materials which are available to customers.

8 Annual Licence Fee

- 8.1 Each year of this Agreement shall run for 12 months from the date of software installation or such period as may be agreed. The Annual Licence Fee payable in respect of the period from the Date of order until the end of the 12-month period shall be paid by the Customer following presentation of the Supplier's invoice.
- 8.2 It is the responsibility of the Customer to be aware of the date of expiration of the Annual Licence Fee. When considering the options for the following year in respect of which the Customer shall have the option to:
- 8.2.1 Confirm the rollover of the Agreement and pay the proposed annual Licence Fee in full within the terms of the date of invoice, but before the new Agreement takes effect.
- 8.2.2 Terminate the Agreement by giving notice to the Supplier and not paying the invoice.
- 8.3 Any increases shall become effective on the date specified in the notice.

9 Software Support

- 9.1 In consideration of the payment by the customer when due of the Annual License Fee in each year of this Agreement, the Supplier shall provide to the customer during the term of this Agreement the following support services:
- 9.1.1 Telephone assistance between the hours of 09.00 and 17.00 GMT on all weekdays, excluding United Kingdom Bank Holidays.
- 9.1.2 In response to telephone or written requests for diagnosis or correction of defects or errors in connection with the Licensed Software, where such diagnosis or resolution could not have been made by reasonable attempts to reach diagnosis or resolution by reference to the Materials, if reasonable attempts are not being made all assistance provided will be chargeable to the customer at The Supplier's prevalent commercial charge rate;
- 9.1.3 Corrections to the Licensed Software within a reasonable time to ensure that it conforms satisfactorily to the specifications. The Supplier shall fulfill this obligation by way of a telephone contact or by personal visit to the Customer's premises at the sole discretion of the Supplier
- 9.1.4 Updates or amendments to the Licensed Software where such updates or amendments are necessary to ensure that the Licensed Software or the use thereof is not in contravention of any English law;
- 9.1.5 Notwithstanding anything in these clauses, the services shall not include the performance of any services resulting directly or indirectly from a breach by the Customer of any of its obligations in this Agreement and expressly:
- 9.1.5.1 where the Customer operates a release of the Licensed Software and/or Materials which is not current or one previous release of the Licensed Software and / or Materials;
- 9.1.5.2 where the System is not operating in the conditions specified by the Supplier as contained within user manuals product release notes and other documents provided to the client from time to time
- 9.1.5.3 where the Customer does not have and/or the Customer does not maintain personnel sufficiently trained on the System;
- 9.1.5.4 where the Customer interfered with or altered the Licensed Software;
- 9.1.5.5 failure of the Customer to operate the System in accordance with The Supplier's recommended operating procedures, as contained within user manuals, product release notes and other documents provided to the client from time to time
- 9.1.6 Support services shall not include:
- 9.1.6.1 data file expansions or the recovery of data corrupted by failure of the Hardware (or other computer hardware or software)
- 9.1.6.2 Systems reformatting and reorganization

9.1.6.3 Systems audit

- 9.2 The Supplier will at their option be available to provide assistance in such cases; this however would be outside of this support agreement
- 9.3 The Customer agrees to pay the cost of travel and subsistence incurred by the Supplier personnel in the performance of the software support services described in the clause, at the Customer's premises, except where these costs are result of a failure in the software, or where the software does not perform in accordance with the Specifications.

10 Warranties

- 10.1 The Supplier warrants that from Date of order and for the duration of the currency of this agreement, the Licensed Software, when operated correctly, will in all material respect meet the Specifications.
- 10.2 The Customer acknowledges that the Licensed Software cannot be tested in every possible combination and operating environment and that the Supplier is not able to represent that its operation will be uninterrupted or error free.
- 10.3 The warranties in this clause shall not apply where the balance of the Contract Price has not been paid, where the Customer is in material breach of its obligations under this Agreement or where any malfunction, error, stoppage or other problem in the Licensed Software is caused or contributed to by the failure of the Customer to operate the Licensed Software in accordance with the Materials or where the Customer fails to prevent exposure to unusual physical, environmental or electrical stress, or where the Hardware or the Licensed Operating System is defective.
- 10.4 Further the warranties do not include:
- 10.4.1 Failure continually to provide a suitable installation environment as required by the Supplier as set out within the user manuals, product release notes and other documents provided to the client from time to time, including adequate space, electrical power, air conditioning, humidity control
- 10.4.2 Use of the Licensed Software for a purpose other than that for which it was designed.
- 10.4.3 Service of the Licensed Software by non-Supplier personnel
- 10.4.4 Accident, disaster, including but not limited to fire, flood, vandalism, burglary, water, wind, lightening or act of violence, nuclear explosion, radiation, transportation, neglect or misuse, unauthorised attachments, alterations

11 Hardware

- 11.1 The Customer acknowledges that so far as is permitted in law the Supplier shall have no liability in respect of any Hardware supplied and/or its Licensed Operating System

12. Copyright Indemnity

- 12.1 The Supplier will indemnify and hold harmless the Customer against any damages (including cost) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Licensed Software by the customer infringes the patent, copyright, registered design or trade mark rights of a third party ('Intellectual Property Infringement')

PROVIDED THAT:

- 12.1.1 The customer promptly notifies the Supplier in writing of any such claim;
- 12.1.2 The Customer affords the Supplier all reasonable assistance required by the Supplier in the defence or negotiation of any such claim.

The Title Page

The Supplier: ItemTracker Software Limited
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South Nutfield
Surrey
RH1 5NS
Tel: 0845 055 1976
Fax: 0870 622 0983
E-mail: info@itemtracker.com
Web: www.itemtracker.com

The Customer:

The Installation Location

Date of order

Contract Price

Licensed Software