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SPECIALIST COMPUTER CENTRES PLC

TERMS AND CONDITIONS OF SALE

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1. **Definitions and Interpretation**

1.1 In these terms and conditions the following words have the meanings given:-

"Business Day"	means any day other than a Saturday, Sunday or a bank or public holiday in England, Wales, Scotland or Northern Ireland;
"Contract"	means a contract for the purchase by the Customer of Products or Services from SCC incorporating these terms and conditions and arising from the acceptance by SCC of an Order;
"Customer"	means the person, firm or company ordering Products or Services;
"Delivery"	means when possession or control of the Products is offered or transferred to the Customer or its agent or upon delivery by SCC or its agent to an address given by the Customer;
"Group"	means in relation to any that company and every other company which for the time being is a subsidiary or holding company (as defined in the Companies Act 1985) of that company or subsidiary of such holding company;
"Hardware"	means any computer hardware, networking equipment, or peripheral products supplied by SCC to the Customer but not including any consumables;
"Intellectual Property Rights"	means copyright, patent, trademark, service marks, registered designs, sui generis rights, know-how, confidential information, trade or business names or other similar rights together with applications for any of the foregoing;
"Licence Agreement"	means any licence agreement relating to use of the Software;
"Order"	means any written order for Products, or Products and Services, received by SCC from the Customer;
"Product"	means the Hardware and/or Software ordered by the Customer from SCC from time to time;
"SCC"	means Specialist Computer Centres PLC or any such other company as Specialist Computer Centres PLC may appoint as sub-contractor to provide the Services to the Customer;
"Services"	means any configuration or installation or extended warranty or similar services to be provided by SCC in conjunction with the supply of Products as detailed in a specific Contract;
"Software"	means any computer software supplied by SCC, whether embodied in ROM, RAM, firmware or on disk, tape or other media.

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- 1.2 All other words and expressions are to be given their normal English meaning taken in the context of the Contract. Any dispute as to the meaning of a word is to be settled by reference to the Oxford English Dictionary.
- 1.3 Any reference to a clause shall mean a clause of these terms and conditions unless otherwise stated.
- 1.4 The use of headings in these terms and conditions shall be for convenience only and shall not affect the interpretation of these terms and conditions.
- 1.5 Reference to any statute or statutory provision or any other regulation includes any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. Contract Formation

- 2.1 All Orders submitted by the Customer to SCC and accepted by SCC shall be subject to these following terms and conditions which shall form part of and govern any Contract.
- 2.2 Acceptance by the Customer of any estimate or quotation for Products and/or Services issued by SCC shall be deemed to be acceptance of these terms and conditions.
- 2.3 Any terms and conditions appearing in any Order or other document whatsoever issued by the Customer shall be void and of no effect and these terms and conditions shall override any previous agreements relating to the provision of Products or Services between the parties.
- 2.4 No waiver of or amendment to these terms and conditions shall be effective unless made in writing and signed by SCC.
- 2.5 The Contract contains the entire agreement of the parties in relation to the supply of Products or Services by SCC to the Customer and the Customer irrevocably waives any right it might have to claim for damages and/or to rescind a Contract because of any misrepresentation by SCC (unless such misrepresentation was made fraudulently) or any warranty not contained in the Contract.

3. Price

- 3.1 All prices for Products or Services stated in any quote, estimate or acceptance of Order are those current at the time of the Customer's enquiry. The price payable by the Customer for Products or Services will be the price in force at the time of delivery of the Products or supply of Services to the Customer and SCC reserves the right to pass on to the Customer any increase in the price of Products or Services occurring after the time of any quotation, estimate or acceptance of an Order by SCC.
- 3.2 All prices for the Products are exclusive of Value Added Tax or other applicable sales tax whether in substitution or in addition which shall be paid by the Customer at the rate from time to time in force.
- 3.3 Unless otherwise agreed in writing by SCC, all prices for the Products are exclusive of SCC's charges for delivery, handling or Services which will be added to SCC's invoice for the Products.

4. Payment

- 4.1 SCC may at its discretion offer credit terms to the Customer subject to the status of the Customer and completion by the Customer of a credit application form supplied by SCC. Such credit terms shall be governed by separate terms agreed between SCC and the Customer.

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- 4.2 Subject to any credit terms agreed, the Customer shall pay for Products or Services no later than 30 days following the date of SCC's invoice.
- 4.3 If Products are delivered in instalments SCC reserves the right to invoice each instalment as and when Delivery is made to the Customer in which case payment shall be due in accordance with clause 4.2 above notwithstanding non-delivery of other instalments or fulfilment of the entire order.
- 4.4 If any payments are overdue the Customer will be placed on credit hold and no further Products or Services will be delivered or made available to the Customer until all payments due to SCC under the Contract have been paid. Repeated failure by the Customer to comply with SCC's payment terms will result in permanent withdrawal of credit facilities.
- 4.5 If payment is not received by the relevant due date SCC may charge the Customer interest on any overdue amount (on a daily basis) from the due date of payment to the date of actual payment (both dates inclusive) at the rate of four (4) per cent above the HSBC Bank plc Base Rate for the time being in force.
- 4.6 All payments made by the Customer to SCC shall be in sterling in immediately available funds free and clear of any right of set off or counter claim or any withholding or deduction whatsoever.

5. Title

- 5.1 Title to and property in any Products will remain vested in SCC until payment in full of the purchase price (together with any interest and VAT thereon) and in cleared funds has been received by SCC in respect of:-
- (i) those Products; and
 - (ii) all other amounts payable by the Customer to SCC (whether or not due for payment).
- 5.2 Title to and property in Products will remain with SCC notwithstanding that the relevant Products have been Delivered and/or incorporated in or affixed to other products including, for the avoidance of doubt, the storage of or incorporation of any Software in ROM, RAM or any other hardware, software or firmware or other media whatsoever.
- 5.3 Until such time as title to and property in any Products passes to the Customer, the Customer will store those Products on its premises in conditions that adequately protect them and separately from the Customer's own goods or those of any other person and clearly marked as SCC's property, and the Customer shall redeliver the Products to SCC on demand.
- 5.4 If the Customer fails to redeliver any Product on demand in accordance with clause 5.3, SCC shall be entitled with or without notice, without incurring any liability to the Customer, to enter the Customer's premises for the purpose of taking possession of the Product, and to take such steps as are necessary to remove the Product including the right to dismantle any product into which the Product has been incorporated and the right to detach the Product from any other goods to which the Product has been attached.
- 5.5 The Customer shall fully indemnify SCC in respect of all SCC's costs (including legal costs) in connection with enforcing the provisions of clause 5.4.
- 5.6 Until such time as, in accordance with the above provisions, either the Customer shall have ceased to have the right to retain possession of any Product or shall have acquired title to and property in the Product the Customer is hereby authorised by SCC to sell the same and to pass good title to its customers if they purchase the Product in good faith

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without notice of SCC's rights. This right shall automatically cease on the occurrence of any of the events set out in clause 17 and/or if any sum owed to SCC is not paid when due.

- 5.7 Where a Product is sold or otherwise disposed of to a third party before title to and property in it has passed to the Customer, the sale will constitute a sale by the Customer of SCC's property, and the Customer shall hold on trust for SCC such sum as represents, or is equivalent to, the price at which the Product concerned was invoiced by SCC to the Customer. Such proceeds shall be paid by the Customer into a separate bank account opened for the purpose and approved by SCC and shall ensure that in no circumstances are the proceeds mingled with other money or paid into any overdrawn bank account that are at all times identified as SCC's money.
- 5.8 If the Customer has not received the proceeds of any such sale or disposition, it will, if required by SCC, assign to SCC forthwith all rights against the person, firm or company by whom the proceeds are owed.

6. Performance of the Contract

- 6.1 Any dates quoted or mentioned by SCC for Delivery of the Products or the provision of the Services whether verbally or otherwise are estimates only and whilst SCC will use all reasonable endeavours to meet such dates it cannot guarantee to do so. Time will not be of the essence in the Delivery of the Products or the performance of the Services. SCC shall have no liability to the Customer if it fails to meet any requested, quoted, estimated or agreed date for Delivery of Products or the provision of the Services. SCC will be entitled to a reasonable extension of time in which to effect Delivery of the Products or perform the Services.
- 6.2 SCC shall be entitled to make a partial Delivery of the Products or Delivery by instalments.
- 6.3 Notwithstanding clause 5 above, the risk in any Product shall pass to the Customer on Delivery.
- 6.4 All illustrations or specifications contained in any catalogues or publicity material produced by SCC are approximate only and are only intended to convey a general idea of the Products or Services and any typographical, clerical or other error or omission in any literature/document or information issued by SCC will be correctable without notice or any liability to the Customer.

7. Inspection

- 7.1 Where Products are delivered to the Customer, the Customer must inspect the Products immediately upon their arrival to check whether:-
- (a) the Products have been damaged in transit; and
 - (b) the Products are those, and in the quantity, specified in the Order.
- 7.2 Any discrepancy between the Products delivered and those specified in the Order and/or any damage to the Products in transit must be notified to SCC in writing within two Business Days of receipt by the Customer of the Products.
- 7.3 In the case of non-delivery of Products, the Customer must notify SCC in writing within two Business Days of receipt by the Customer of SCC's delivery note or invoice (whichever is earlier).
- 7.4 No claim for damage in transit, non-compliance with the Order or non-delivery will be considered by SCC unless the Customer complies with the provisions of this clause.

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7.5 If the Customer requests SCC to provide duplicate copies of any signed delivery notes, a charge of £[REDACTED] per copy shall be made by SCC and invoiced accordingly.

8. Acceptance

8.1 The Customer will be deemed to have accepted Products or Services as being in accordance with the Contract unless the Customer notifies SCC in writing of any defect in materials or workmanship or failure to comply with specifications or other data supplied by you or any other failure of the Products or Services which would be apparent on reasonable inspection of the Products within five Business Days from the date of delivery of the Products or completion of the Services (whichever is later).

8.2 In the event of a valid claim by the Customer under Clause 8.1, SCC shall upon return of the defective Product at its option replace the relevant Product or arrange for repair of the Product within a reasonable time at no cost to the Customer but otherwise shall have no liability for such non-compliance.

9. Customer Obligations

9.1 The Customer shall be entirely responsible for:-

- (a) providing a suitable environment for the installation of the Products; and
- (b) unless otherwise agreed by SCC, the installation of the Products.
- (c) using the Products in accordance with the manufacture's instructions and recommendations (including those contained in any Licence Agreement).
- (d) carrying out cleaning operations as recommended by the Product manufacturer or SCC.

9.2 The Customer shall provide such access to its premises, personnel and facilities as SCC shall reasonably require in order to provide the Services.

9.3 The Customer will provide SCC with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for SCC to undertake any Services. The Customer is responsible for ensuring that such information and answers are accurate and complete. SCC will, to the extent reasonably practicable, give the Customer reasonable prior notice of any information or answers it requires in accordance with this clause 9 and will notify the Customer promptly in writing if it considers the Customer to have failed to provide information or answers in accordance with this clause 9 or if it has reason to suspect that any information is inaccurate or incomplete.

9.4 In the event the Services includes installation the Customer will provide, free of charge, the following facilities to authorised personnel of SCC and its Sub-Contractors throughout the Customer's normal business hours and at such other times as the Customer authorises after reasonable prior notice from SCC (such authorisation not to be reasonably withheld or delayed):

- 9.4.1 access to and use of the Customer equipment and unloading equipment, access to the Customer's employees, the products and the site;
- 9.4.2 all electric power, lighting, heating and air conditioning reasonably needed by the SCC to perform the Services
- 9.4.3 office space suitable for this purpose and the provision of normal office services including first aid, photocopying, telephone and facsimile facilities (but excluding any secretarial support, typing and photocopying facilities needs to produce any

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documentation for which the SCC is responsible), and such facilities may be used only for the purposes of providing the Services

9.4.4 competent operators for the Products and any relevant Customer equipment.

9.4.5 The Customer shall also be responsible for ensuring that the Customer's existing hardware and software is properly installed and is sufficient and suitable for its purpose and that any adjustments which may be required are carried out expeditiously. SCC will be responsible for connecting the Products to Customer's existing hardware with the co-operation of the Customer.

10. Cancellation

10.1 Except as provided herein, the Customer shall not be entitled to return any Product or cancel any Orders which SCC has accepted without SCC's prior written agreement and any such cancellation or return shall be subject to:-

(a) the Customer indemnifying SCC in full for any costs, charge, expenses, damages or loss (including loss of profit) incurred or suffered by SCC in respect of such return or cancellation; and

(b) the Product returned being accompanied by a reference to a returns not number issued by SCC and being in stock condition, complete with all packing and appropriately boxed.

10.2 The Customer shall be responsible for the cost of carriage and insurance in respect of all Products returned to SCC, which Products shall also be at the Customer's risk until actual receipt by SCC.

11. Product Modifications

11.1 SCC may modify the specification of any Product to be supplied by SCC and/or substitute substantially conforming components provided the modifications and/or substitutions do not adversely affect the performance of the Product. SCC will wherever practicable advise the Customer of all such modifications or substitutions in advance of delivering the Product to the Customer.

12. Warranties

12.1 SCC, to the extent that it is permitted to do so, hereby assigns the benefit of any guarantee or warranty covering any defects in Products received by SCC under an agreement with the manufacturer or supplier of the relevant Product.

12.2 Unless extended warranty services or similar services are to be provided as part of the Services included in a particular Contract, the warranty service (if any) will be limited to that provided by the manufacturer or supplier (as the case may be) as standard with the delivery of the Products and any validation procedures relating to that warranty service shall be the responsibility of the Customer.

12.3 SCC may in its discretion offer support or maintenance services with respect to Products and such services shall, unless expressly covered by the Services included in a particular Contract shall be governed by separate terms and conditions to be agreed between SCC and the Customer separately in writing signed by authorised representatives of both parties.

12.4 Subject to clause 12.2 above, the standard warranty of the manufacturer or supplier referred to in clause 12.1 is in lieu of all other terms or conditions whether express or implied concerning the quality or fitness for purpose of Products and all such other terms and conditions are hereby excluded.

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- 12.5 SCC warrants that the Services will be carried out with reasonable care and skill and by suitably trained and qualified persons.

13. Date Compliance

- 13.1 SCC undertake that it will use all reasonable endeavours to obtain from the original manufacturer of the Products a warranty that the Products are Date Compliant, and to the extent that it is able, SCC will transfer to the Customer the benefits of any such warranty. For the purposes of this clause, "Date Compliant" means that neither the performance nor the functionality of the Products shall in any way be affected by any date and that the Products will be capable of correctly processing all dates.
- 13.2 SCC will in no circumstances be liable to the Customer for any losses, claims or damages whatever nature that the Customer may suffer as a result of the Products not being Date Compliant.
- 13.3 All other express or implied warranties or conditions relating to quality or fitness for purpose (whether implied by statute or otherwise) are hereby excluded in so far as they might apply in the event of the Products not Date Compliant.

14. Liability

- 14.1 The following provisions of this Clause 14 set out the total liability of SCC under or in connection with each Contract and whether in contract, tort (including negligence) for breach of statutory duty or otherwise
- 14.2 Nothing in these terms and conditions shall limit or exclude either Party's liability:
- (a) for fraud; or
 - (b) for death or personal injury resulting from negligence; or
 - (c) to the extent not permitted by law.
- 14.2 The maximum liability of SCC whether in contract, tort or otherwise for any direct physical damage to tangible property caused by by SCC shall be limited to the lesser of £[REDACTED] per incident or series of incidents or an amount equal to the sums paid by the Customer under the Contract during the preceding 12 months.
- 14.3 The maximum liability of SCC to the Customer whether in contract, tort or otherwise for a direct loss or damage (other than to tangible property) shall be limited to the lesser of £[REDACTED] or an amount equal to the sums paid by the Customer under the Contract during the preceding 12 months.
- 14.4 SCC shall not be liable to the Customer whether in contract, tort or otherwise and even if foreseeable by or on the contemplation of SCC for:-
- (a) any loss of profits, business, revenue, goodwill, data or anticipated savings, whether sustained by the Customer or any other person; or
 - (b) any special, indirect, or consequential loss whether sustained by the Customer or any other person.
- 14.5 The Customer acknowledges that the level of Charges has been calculated on the basis that SCC's liability will be limited in accordance with this clause. The Customer may by written notice request SCC to agree a higher limit of liability provided insurance cover can be obtained therefor and the Customer will pay any additional premiums incurred by SCC as a result.

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- 14.6 Except as otherwise specifically provided in these terms and conditions, SCC hereby excludes to the fullest extent permissible in law, all conditions, warranties, terms and stipulations, express (other than those set out in these terms and conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

15. Intellectual Property Rights

- 15.1 All Intellectual Property Rights in or in relation to the Products (including any manuals and operating documentation relating thereto) or in any materials (including Software) created by SCC during the course of providing the Services shall vest in SCC or its suppliers as the case may be and the Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically agreed by SCC.
- 15.2 The Customer shall notify SCC immediately if it becomes aware of any illegal or unauthorised use of any of the Products or any of the Intellectual Property Rights in the Products and will assist SCC and/or its suppliers in taking steps necessary to defend the owners' rights.
- 15.3 The Customer undertakes to execute and comply with the terms of any Licence Agreement relating to the use of any Software.
- 15.4 Where no Licence Agreement is used, the Customer is hereby granted a non-assignable, non-exclusive Licence to use any Software together with documentation accompanying such Software subject to payment by the Customer of the stipulated Licence fee.
- 15.5 Unless specifically authorised under a Licence Agreement, the Customer undertakes that it shall not (and that it shall not employ nor permit any third party) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer Software or any part thereof except to the extent allowed by English law.
- 15.6 The Customer further acknowledges that Software and all accompanying operating documentation and manuals are confidential and subject to the terms of clause 16.

16. Confidentiality

- 16.1 Each party shall treat as confidential all information obtained from the other which is specifically designated as confidential or propriety and shall not divulge such information to any person (except to such party's own employees and the only to those employees who need to know the same) without the other party's prior written consent.
- 16.2 This clause shall not extend to any information which was rightfully in the possession of a party prior to the commencement of the negotiations leading to a Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of the clause) or which is trivial or obvious.
- 16.3 Each party shall ensure that its employees are aware of and comply with the provisions of this clause.

17. Termination

- 17.1 Without prejudice to any other rights or remedies SCC might have against the Customer SCC may terminate a Contract or suspend the performance of its obligations under a Contract forthwith by notice in writing to the Customer if:-
- (a) the Customer defaults in making payment for any of the Products or Services supplied by SCC within seven days of its due date;

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- (b) any steps are taken or negotiations commenced by the Customer or any of its creditors with a view to a kind of voluntary arrangement, compromise, or other arrangement between the Customer and its creditors; or
 - (c) the Customer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 be unable to pay his debts or any steps are taken to wind up the Customer, or an administrator, administrative receiver or receiver is appointed over the Customer's business or any part of its assets.
- 17.2 Upon termination of a Contract under clause 17.1, SCC have the right, without prejudice to any other right or remedy available, to enter the Customer's premises and repossess the Product or any of them and shall have the right to dismantle any machinery, product, item or equipment into which the Product or any of them have been incorporated and the Customer shall be responsible for all SCC's costs and expenses in connection with so doing.
- 17.3 Upon termination of a Contract under clause 17.1, the Licence granted to the Customer under clause 15.4 shall terminate forthwith and SCC shall at its options have the right without notice to enter on the Customer's premises to remove any Software and all copies of the Software, or to request the Customer to return all copies of the Software, or to insist that the Customer destroys all copies of Software and certifies in writing that they have been destroyed.
- 17.4 Those clauses capable of surviving termination shall do so.

18. Variations

- 18.1 SCC reserves the right to modify these terms and conditions upon notice in writing to the Customer. Any such modification will apply on the effective date specified in the said notice to all Orders which are accepted by SCC on or after the date of notice. The Customer shall have thirty days from the date of notice within which to cancel any Order sent to SCC prior to the date of notice and not accepted by SCC at that date.

19. Assignment

- 19.1 The Customer shall not assign or otherwise transfer any of its rights or obligations under a Contract whether in whole or in part without the prior written consent of SCC.

21. Personnel

- 21.1 The Customer acknowledges that SCC has incurred significant costs in recruitment and training its employees to enable them to provide the Services. Accordingly the Customer agrees that it will not, and it will ensure that no other company within its Group will not, solicit or approach in any way, any of SCC's employees who are involved in the provision of the Services with a view to offering the employment or to solicit services from them on their own account (whether for the Customer or another party) during the period of the Contract and for a period of six (6) months after the termination or expiration of the Contract.
- 21.2 The Customer acknowledges that damages will not be an adequate remedy for SCC if the Customer breaches clause 21.1 and that SCC will be entitled to seek injunctive relief and any other equitable remedies with respect to such breach.
- 21.3 If any employee of SCC leaves the employment of the SCC as a result of a breach by the customer of clause 17.1 and commences employment with, or provided services to, the Customer or other member of the Customer's Group it shall pay SCC 50% of the higher of:-

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- (a) the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of SCC; and
- (b) the annual salary of the employee at the time they commence employment by the Customer or other member of the Customer's Group

and the Customer acknowledges that any such payment is by way of liquidated damages and is reasonable and genuine pre-estimate of SCC's losses.

22. Invalidity

- 22.1 If any provisions, or portions thereof, of a Contract are held to be invalid and unenforceable under any applicable statute or rule of law, they are to that extent to be deemed omitted and the validity and/or enforceability of the remaining provisions of the Contract shall not be impaired or affected by that omission.

23. Force Majeure

- 23.1 Neither party shall be liable for any delay or failure in performing any of its obligations under a Contract (except payment by the Customer of any sums due under a Contract) if such delay or failure is caused by circumstances beyond that party's reasonable control.

24. Notices

- 24.1 All notices are required to be given hereunder shall be in writing and shall be sent to the registered address of the party in question.

25. Export Control

- 25.1 The Customer acknowledges that certain Products may be subject to export controls imposed by United Kingdom or other Governments and undertakes to apply for and obtain any necessary licenses or other consents that may be necessary to export or take any product (or any part thereof) out of the United Kingdom.

26. General

- 26.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 26.2 Neither party shall be entitled to recover from the other under provisions of this Agreement more than once to the extent and in respect of the same liability of the other party or its loss.
- 26.3 Each of the parties hereto shall use all reasonable efforts to mitigate loss, damages, costs or expenses that it may suffer or incur in respect of which it desires to make recovery in whole or in part from the other party by way of indemnity or otherwise.

27. Law

- 27.1 All Contracts shall be governed by, and constructed in accordance with, English law and the parties submit to the exclusive jurisdiction of the English courts.