

## **Terms & Conditions**

1.1 In these Conditions the following words have the following meanings:

"Company" means Spirit Data Capture Limited (Registered No: 5106838) whose registered office is at c/o Mitchell Charlesworth, Glebe Business Park, Lunts Heath Road, Widnes, Cheshire WA8 5SQ;

"Contract" means any contract between the Company and the Customer for the sale of Goods and/or provision of Services incorporating these Conditions;

"Customer" means the person(s), firm or company who purchases the Goods from the Company; and

"Goods" means mobile computer, bar-coding, media containing software and printer solutions and all further devices sold by the Company from time-to-time;

"Order" means any order from the Customer to the Company for the supply of Goods, Software and/or provision of Services which shall incorporate the terms and conditions of the Contract; and

"Platform" means the Company's platform software as set out in the Order

"Services" means any Services agreed in the Contract to be provided to the Customer by the Company;

"Software" means computer programs, applications or code:

- (a) written or developed by the Company for the Customer under a Contract;
- (b) embedded in Goods;
- (c) necessary to access any platform hosted by the Company; and
- (d) supplied to the Customer that relate to a platform to be hosted by the Customer,

but excludes Third Party Software;

"Restocking" means all goods ordered in error by the Customer or goods the Customer wishes to return are subject to a re-stocking fee. This is £35 plus VAT or 15% of the net sale value of the goods plus VAT whichever is the Greater;

"Third Party Software" means computer programs, applications or code owned or licensed by a third party.

"Third Party Terms" means the terms and conditions specified in the Order for the relevant Third Party Software. A copy of the Third Party Terms is available from the Company upon request

1.2 In these Conditions references to a gender include every gender, reference to persons include an individual, company, corporation, firm or partnership and reference to the singular include the plural and vice versa as the context admits or requires.

1.3 Headings are for ease of reference only and shall not affect the construction of these Conditions.

## **2 Basis of Contract**

2.1 Subject to any variation under Condition 2.2 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Order, confirmation of order, specification or other document whatsoever and whenever).

2.2 Any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and executed by the Company.

2.3 Each Order for Goods and/or provision of Services shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.

2.4 No Order shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) their appropriation to the Customer's order or despatch of the Goods and/or provision of Services to the Customer. Any Order shall be accepted entirely at the discretion of the Company

2.5 It is the Customer's obligation to ensure that the terms of an Order and any applicable specification are complete and accurate and that the Goods are suitable for its needs.

2.6 Any quotation or estimate made by the Company is given subject to these Conditions. Without prejudice to the Company's right not to accept an Order, quotations will be valid for 30 days from date of issue.

2.7 The Customer can only cancel an Order (or any part of an Order) which the Company has already accepted, with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in terms established by the Company. The Company is not bound to agree to any such cancellation and may complete such Order even if the Customer purports to cancel it.

## **3 Description of the Goods and Services**

3.1 The description of the Goods and/or Services together with any special terms relating to the Goods and/or Services shall be set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they will not form part of the Contract unless otherwise agreed in writing by the Company.

## **4 Delivery and Acceptance of Goods**

4.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Customer's place of business during normal business hours.

4.2 The Company shall deliver or arrange delivery of the

Goods to the Customer and shall charge the Customer the carriage costs as set out in the Company's quotation in addition to the price of the Goods.

- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 4.4 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence) and the Company may:
- (a) store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance);
  - (b) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract price; and
  - (c) Charge the Customer for any costs incurred by the Company (including but not limited to costs of storage, redelivery and insurance).
- 4.5 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually.
- 4.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments
- 4.7 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.8 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:
- (a) within 14 days of the date of delivery of the Goods, the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
  - (b) the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be

so apparent within 14 days of the date of delivery, Failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 4.9 Goods, once delivered, may not be returned unless their return is agreed in advance in writing by the Company, and subject to the following conditions:
- (a) Goods are returned in a new and unused condition;
  - (b) Any packaging remains unbroken and in reasonable condition unless the Company has installed the Goods in which case this shall not be required;
  - (c) Returns are made within 7 working days of delivery of those Goods, all transport and other re-delivery costs of whatever nature are paid by the Customer; and
  - (d) Returned Goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.
- 4.10 The Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.
- 4.11 The Company shall only be liable for any nondelivery of Goods (even if caused by the Company's negligence) if the Customer gives written notice to the Company within 7 days of the date when the Goods would, in the ordinary course of events, have been delivered.
- 4.12 If the Customer gives notice to the Company in accordance with Condition 4.7, the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5 Passing of Risk and Legal Title**
- 5.1 The Goods shall be at the risk of the Customer from the time of delivery or attempted delivery to the Customer.
- 5.2 Legal title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:
- (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Company; and
  - (b) All other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.

5.3 Until legal title to and property in the Goods passes to the Customer:

- (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
- (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them without any charge to the Company and shall ensure that they are stored separately from any other goods and are clearly identifiable as belonging to the Company;
- (c) the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 12 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;
- (d) for the purposes of this Condition 5 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice;
- (e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has
- (f) The Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 13 and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of the sale into a separate bank account. At the Company's request, the Customer shall assign to the Company all claims that the Customer may have against purchasers of the Goods from the Customer.

5.4 The Company's rights and remedies set out in this Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.

## 6 Provision of Services

6.1 Where the Company is to perform Services at the Customer's premises, the Customer shall procure safe access to the premises and the provision of adequate power, lighting, heating and other such facilities or supplies for the Company's employees or agents in accordance with the demands of any

applicable legislation and as the Company shall reasonably require.

6.2 The Services will be deemed to be completed and the relevant element of the Contract price to be due and payable forthwith

- (a) when the Company issues a written notice to the Customer confirming such completion; or
- (b) if the Company is available to perform the Services but is prevented from doing so by reason of:
  - (i) the lack of relevant assistance from the Customer (such as lack of availability of test components or parts from the Customer); and/or
  - (ii) The condition of the Customer premises on the site at which the Services are to be provided and/or the facilities at or the services available therein at the time agreed for the provision of the Services.

6.3 Where Services include provision of a hosted Platform, the Company grants the Customer the right to access the hosted Platform subject to any restrictions set out in the Order.

## 7 Contract Price

7.1 Unless otherwise agreed by the Company in writing the price for the Goods and/or Services shall be the price set out in the Company's quotation.

7.2 Unless otherwise agreed in writing the price for the Goods and/or Services shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to packaging, labeling, loading, unloading, carriage, freight and insurance all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay for the Goods and/or Services.

## 8 Payment Terms

8.1 Unless set out otherwise in an Order, the Company may invoice the customer:

- (a) Upon delivery for Goods;
- (b) Upon supply of Third Party Software;
- (c) Upon Contract signature for one-off charges including those relating to provision of Software or customisation Services; and
- (d) Annually in advance for Services including those relating to hosting of the Platform and support of Software.

8.2 Payment of the price for the Goods and/or Services is due 30 days from the date of the invoice unless stated differently in the "payment terms" section of the quotation. Time of payment of the invoice shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 Notwithstanding any other provision, all payments payable to the Company under the Contract shall become due immediately upon termination of this Contract for whatever reason.

8.5 The Customer shall make all payments due under the Contract without any deduction whether by way of setoff, withholding, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.6 No indulgence granted by the Company to the Customer concerning the Customer's obligations under this Clause 8 shall be or be deemed to be a credit facility but if any such facility is granted to the Customer by the Company, the Company may withdraw it at its sole discretion at any time.

8.7 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

- (a) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods and suspending provision of the Services;
- (b) appropriate any payment made by the Customer to such of the Goods or such of the Services as the Company may think fit;
- (c) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;
- (d) suspend performance of the Services remaining to be carried out; and
- (e) charge the Customer:
  - (i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of eight per cent (8%) per annum above the official dealing rate from time to time until payment is made in full;
  - (ii) reasonable debt recovery costs; and
  - (iii) the cost of obtaining judgment or payment include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

## 9 Warranty of Quality of Goods and Services

9.1 If the Customer establishes to the Company's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Company in relation to the conformity of the Goods with the Contract within 12 months following delivery of the Goods or the Services have not been

performed with reasonable skill and care, then the Company shall at its option, at its sole discretion and within a reasonable time:

- (a) repair or make good such defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods or materials to the Customer for that purpose); or
- (b) Replace such Goods with Goods which are in all respects in accordance with the Contract or re-perform such Services. Subject, in every case, to the remaining provisions of this Condition 9 provided that the liability of the Company under this Condition 9 shall in no event exceed the purchase price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.

9.2 The Company shall be under no liability under the warranty at Condition 9.1 above:

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
- (b) if the total price for the Goods or Services has not been paid by the due date for payment;
- (c) for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to the Company by the Customer provided in accordance with specifications, instructions or recommendation issued by the Customer or for any Services provided in accordance with specifications, instructions or recommendation provided by the Customer;
- (d) in respect of any non-conformity or noncompatibility with the Customer's computer software, hardware and systems or for any viruses that may be present in the Goods or the Customer's computer software, hardware and systems; or
- (e) in respect of any minor faults which do not affect the performance of the Goods;
- (f) In respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing.

9.3 The warranties set out in this document are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

## 9.4 Restocking

In the event that the Customer cancels any order for goods subsequent to despatch by the Company to the Customer (regardless of whether or not said goods have been delivered to the Customer) the Company will credit the Customer with the value of the order less the restocking fee upon the return of the said goods (in

saleable condition) provided the return of the goods is made within 14 days of receipt by the customer and at the sole expense and risk of the Customer

## **10 Exclusion and Limitation of Liability**

- 10.1 Condition 4 and this Condition 10, set out the entire liability of the Company (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of these Conditions or the Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 10.3 The Company shall not be liable for any economic loss of profit (direct or indirect), or for any indirect, special or consequential loss or damage howsoever caused or any liability arising to any third party.
- 10.4 Subject to Condition 10.5 below, the total aggregate liability of the Company this Contract whether for negligence or breach of contract or otherwise shall in no event exceed 120% of the price paid or payable by the Customer.
- 10.5 Subject always to Conditions 10.2 and 10.3 where the Company sub-contracts any part of its obligations under a Contract, the Company's liability to the Customer in relation to any loss, damage, claim, cost, expense or other loss howsoever arising caused by any act or omission of a sub-contractor shall not exceed the price paid by the Customer that relates to the sub-contracted Goods, Software or Services.

## **11 Subcontracting, Assignment and Third Party Rights**

- 11.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company. The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.
- 11.2 No third party shall have the benefit of or the right to enforce any provisions of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **12 Force Majeure**

- 12.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods and/or the provision of the Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting

carriers or inability or delay in obtaining supplies of adequate or suitable materials ("Force Majeure").

- 12.2 If the Force Majeure in question continues for more than three months, the Company may give written notice to the customer to terminate this Agreement.

## **13 Product Recall**

- 13.1 If the Company notifies the Customer in writing of any defect in the Goods previously delivered to the Company or services previously performed at any time or any error or omission in the instructions for the use and/or assembly or installation of the Goods (whether or not any such defect, error or omission represents a breach of the warranty in Condition 9 or any other provision of the Contract) which exposes or may expose consumers to any risk of death, injury or damage to property, the Customer shall co-operate fully and promptly with any steps taken by the Company under Condition 13 below.
- 13.2 The Company may at its discretion recall any Goods already sold by the Company to its customers (whether for a refund or credit or for replacement of the Goods which shall in each case be undertaken by the Company) and/or issue any written or other notification to its customers about the manner of use or operation of any Goods already sold by the Customer to its customers and/or offer to re-perform Services previously provided.

## **14 Breach of Contract or Insolvency**

- 14.1 The Company may, as it thinks fit, immediately suspend further performance of the Contract or cancel any outstanding or delivery of the Goods and/or provision of the Services or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
- (a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy fails to remedy a breach of its obligations under the Contract (except as to payment) which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days;
  - (b) the Customer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement as defined by the Insolvency Act 1986; or
  - (c) any sum payable under the Contract is not paid within 7 days of its due date for payment in accordance with this Contract;
- 14.2 Notwithstanding any such termination or suspension in accordance with Conditions 14 above the Customer shall pay the Company at the Contract rate for all Goods delivered up to and including the date of suspension or termination and the termination of the Contract.

## 15 Notices

15.1 All notices between the parties about this Contract must be in writing and delivered by hand or sent by prepaid first class post or sent by facsimile transmission:

- (a) (in case of notices to the Company) to its registered office or such other address as shall be notified to the Customer by the Company in accordance with this Condition 15; or
- (b) (in the case of the notices to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer in writing.

15.2 Notices shall be deemed to have been received:

- (a) if sent by pre-paid first class post, 2 days after posting (exclusive of the day of posting);
- (b) if delivered by hand, on the day of delivery or if that is not a usual business day, the first usual business day after delivery;
- (c) If sent by facsimile transmission, at 10:00am local time on the first usual business day in the country of receipt following despatch, subject to being able to show that the notice was sent to the correct telephone number.

15.3 Notices addressed to the Company shall be marked for the attention of the Sales Director from time to time.

## 16 General

16.1 Nothing in the Contract shall transfer any intellectual property rights in the Goods, Software and/or the provision of the Services to the Customer or any third party. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the intellectual property rights of the Company or any third party except as set out below.

16.2 Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) created by the Company in the course of the performance of the Contract or otherwise in the manufacture of the Goods development or provision of Software or the provision of the Services shall remain the Company's property.

16.3 The Company hereby grants to the Customer a non-exclusive, revocable, royalty-free, non-transferable licence to use the Software (and any related documentation or manuals) for the Company's internal business purposes and subject to any restrictions set out in the Order. This licence is subject to payment by the Customer of the Price for the Software and the licence shall

automatically expire at the end of the period to which payment relates.

16.4 Third Party Software supplied to the Customer by the Company shall be subject to the Third Party Terms which are available upon request from the Company. The Company shall be entitled to vary such Third Party Terms if required to do so by the third party licensor and shall serve written notice on the Customer detailing any change.

16.5 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

16.6 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

16.7 If at any time any one or more of the Conditions of the Contract (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission. 16.6 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods.

16.8 Both the Company and the Customer shall each keep confidential and shall not, without the prior written consent of the other, disclose to any third party or otherwise make public the terms or existence of the Contract or any other confidential or sensitive information of the other party, especially relating to price.

## 17 Law and Jurisdiction

17.1 This Contract and any dispute or claim arising out of or in connection with it whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be governed by and be construed in all respects in accordance with English law and all disputes or claims arising out of or relating to this Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.