

Terms and Conditions of Sale

These Conditions are the terms of business agreed between Vital Trace UK Ltd ("VTUL") and the person firm or company who has requested VTUL to supply Products and Services ("the Customer") and shall be incorporated by reference, deemed a part of, and govern all Orders and all matters for the supply of Products and Services between the parties. VTUL and the Customer, intending to be legally bound, agree as follows:

1. DEFINITIONS

1.1. In these Conditions, unless the context otherwise requires:

"Acceptance Criteria" means the criteria (if any) for acceptance of the Products and Services set out in an order.

"Acceptance Tests" means the tests (if any) set out in an Order to establish whether the Products and Services meet the criteria for acceptance agreed between VTUL and the Customer.

"Confidential Information" has the meaning assigned to it in Condition 16.

"Customer System" means the Customer's information technology infrastructure.

"Delivery" means physical delivery of the Products to the Site and/or completion of the Services.

"Order" means the document setting out the Products, Services, Price and any further detail concerning their supply to the Customer.

"Price" means the payment due by the Customer to VTUL for all the Products and Services including software license fees (if any) to be paid in accordance with an Order.

"Products" means the equipment, accessories or other products specified in an Order.

"Project Manager" means the authorised representative of either party stated in an Order.

"Services" means installation and/or configuration of the Products following Delivery as specified in an Order or any other services set out in an Order.

"Site" means the location identified in an Order where the Products and Services are to be delivered.

"Software" means the software (if any) identified in an Order to be supplied to the Customer.

"Subcontractor" means any subcontractor to whom the execution of any part of the Delivery is assigned by VTUL.

2. PRODUCTS AND SERVICES

2.1. VTUL agrees to

2.1.1. Supply the Products and Services set out in Orders accepted by VTUL from time to time;

2.1.2. Deliver the Products and Services at the Site in accordance with the dates for Delivery (if any) specified in the Order;

2.1.3. Obtain for the Customer the non-exclusive right to use Software (if any) in accordance with an Order or the applicable Software licensor's license agreement.

2.2. The parties agree that the Products and Services to be supplied by VTUL are limited to those specified in an Order only, and do not include hardware and/or software repair, maintenance and support services. Purchase of Software upgrades, revisions, bug fixes, patches and other similar products and services are not included in the Price unless otherwise specified in the Order and shall be the responsibility and at the expense of the Customer.

3. TERMINATION OF AN ORDER

3.1 Either party may terminate contracts formed by an Order at any time with immediate effect by giving written notice to the other if the other shall present a petition or have a petition presented for its winding up or shall have a liquidator, receiver or administrative receiver or administrator appointed of the whole or any part of its assets or business or an order or resolution is made for its dissolution or liquidation (or the dissolution or liquidation of any of its affiliates), other than for the purpose of solvent amalgamation or reconstruction.

3.2 Termination of an Order or any part thereof by either party shall not prejudice any remedy that either party may have, at law or in equity. In the event of such termination, (a) all amounts owed to VTUL for time, expenses and costs incurred by VTUL shall immediately become due and payable and, (b) the Customer shall also pay VTUL for any reasonable costs resulting from such termination.

3.3 If VTUL is in material breach of any term of the Order the Customer shall:

3.3.1 Notify VTUL in writing (including sufficient detail to permit VTUL to identify the breach);

3.3.2 Co-operate with VTUL and permit VTUL no less than 30 days in which to make reasonable commercial efforts to correct the breach; and

3.3.3 If, after the expiry of this time period and despite VTUL's commercially reasonable efforts, VTUL has been unable to correct

the breach the Customer may terminate an Order with immediate effect by notice in writing.

3.4 If the Customer is in material breach of any term of the Order VTUL shall be entitled to suspend the supply of Products and Services to the Customer until such time as the Customer has corrected the breach. If the Customer fails to correct any breach within 30 days, VTUL may, at its sole discretion, immediately terminate an Order by notice in writing.

3.5 In the event of any material breach by the Customer of any term of the Order that is incapable of remedy VTUL shall be entitled to terminate the Order with immediate effect by giving notice in writing to the Customer.

4. PREPARATION

4.1 The Customer shall prepare a Site to enable VTUL to deliver Products, or where overseas, arrange a suitable carrier to arrange collection from VTUL.

To ensure the Customer System is compatible with the Products and Services and shall, upon notice from VTUL, correct any deficiencies in such preparation. All costs of preparing and correcting deficiencies at client Site (such as construction, electrical and cabling) and the Customer System will be the responsibility of the Customer. If requested by the Customer, VTUL shall prepare or inspect the Site and such work will be charged to the Customer as an Additional Charge.

4.2 If during or before Delivery VTUL encounters at the Site any conditions which would result in an increase in the cost of performing its obligations under an Order, then VTUL shall give the Customer's Project Manager notice of the conditions and of VTUL's anticipated additional charge under this sub-clause as soon as practicable after becoming aware of the unforeseen conditions.

4.3 It shall be a condition precedent to any Price increase under this clause that VTUL gives written notice. Provided such notice is given by VTUL, then any additional cost incurred by VTUL in performing its obligations under the Agreement in consequence of the conditions specified in such notice, plus a reasonable profit thereon, shall be paid to VTUL as an addition to the Price.

5. SITE ACCESS

5.1 The Customer shall give VTUL (including its employees and sub-contractors, and their vehicles and equipment) access to the Site at all times to assist Delivery and allow VTUL to perform its obligations set out in an Order.

5.2 VTUL shall permit the Customer (including its Project Manager, servants and agents) to enter the Site at all reasonable hours.

VTUL shall also permit other contractors or suppliers engaged by the Customer to enter the Site and execute work or deliver goods at all reasonable hours, but unless the Agreement expressly provides otherwise, VTUL shall not be required to allow them to have such access or facilities as would unreasonably impede its performance. VTUL shall otherwise take full account of and abide by the Customer's site and security rules for contractors, which have been notified to VTUL in writing.

6. DELIVERY

6.1 Each party recognises that, although the dates set forth in an Order are approximate only, the delivery of the Products and Services contemplates and requires the continuing co-operation of both parties. Accordingly, each party shall use its commercially reasonable efforts to accomplish the tasks required for the delivery of the Products and Services on a timely basis. All dates for Delivery of Products and Services (in whole or in part) shall be extended by a reasonable period if delay is caused by:

6.1.1 Any act or omission by the Customer, their servants or agents; or

6.1.2 Any cause beyond VTUL's reasonable control.

6.2 VTUL shall arrange at the Customer's expense for transportation and Delivery of each Product to the Site substantially in accordance with the Order, it being recognised that shipping and delivery dates are approximate only.

6.3 The Customer shall be responsible for the accuracy of information provided by it or on its behalf. If any such information proves to be inaccurate and in consequence VTUL incurs any increase in the cost of Delivery or otherwise in performing its obligations, then VTUL shall be entitled to be paid those costs immediately on invoicing the Customer.

7. PAYMENT

7.1 The Customer shall pay the total invoice value to VTUL in cleared funds within seven days of VTUL's acceptance of the Order unless otherwise agreed in writing.

7.2 VTUL shall invoice the Customer the Price of the Products on Order. The Price of the Services and any related charges will be invoiced on Delivery and the Customer shall pay VTUL the invoiced sum (including all Taxes) within thirty (30) days of the invoice date.

7.3. The Customer may not under any circumstance set off or seek to set off the payment in Condition of 7.1 above or any other sum against any payment to VTUL, other than in the form of the credit deduction afforded by VTUL to the Customer.

7.4 The Price does not include the cost of travelling, accommodation or other reasonable expenses incurred by VTUL employees and or sub-contractors in the performance of the Services. Unless otherwise specified in the Order these will be charged to the Customer in addition to the Price.

7.5 Written notice of any disputed price and/or charge must be received by VTUL within twenty (20) days of the date of the invoice in question or the Customer shall forfeit its right to dispute such price and/or charge. Such notice shall include the number of the disputed invoice, the items and amounts disputed and a full description of the reason for the Customer withholding payment. Notice of any disputed price and/or charge does not release the Customer from the obligation of paying any remaining balance of the invoice. Upon resolution of the disputed price and/or charge, VTUL may issue a credit note or if VTUL determines that full payment remains due, the Customer shall pay the total amount outstanding to VTUL. VTUL reserves the rights to accrue late payment interest for the disputed Price.

7.6 Without prejudice to any other rights it may have, VTUL reserves the right to charge interest at 1.5% per month on all overdue payments, such interest payments to run from the due date of payment until payment in full is received (both before and after any judgment) and/or to suspend the provision of Products and Services or Delivery of Products and Services until payment in full, including any accrued interest, is received.

7.7 The Customer shall indemnify VTUL for and against all costs and expenses incurred by VTUL in recovering any sum due to VTUL from the Customer in the event that the Customer fails to pay in accordance with Condition 7.2 above.

8. PASSING OF RISK & TITLE

8.1 Liability for loss or damage to Products shall pass to the Customer upon Collection.

8.2 Title to Products and all rights in Software (if any) shall be retained by VTUL until, and shall pass to the Customer only upon, payment of the Price in full to VTUL.

8.3 The Customer agrees that in the event of default in any payment and failure to cure same within a reasonable time, VTUL shall have, in addition to its rights under the law, the right to repossess such goods without further operation of law and without notice to the Customer.

9. ACCEPTANCE TESTS

9.1 If Acceptance Tests are to be performed, the Customer must notify VTUL, in writing, within 3 days of Delivery of any non-conformity to the Products or Services. If the Customer does not notify VTUL of any non-conformity, the Customer shall be deemed to have accepted the Products and Services 3 days after Delivery. If the Customer notifies VTUL of non-conformity, VTUL will repair or replace the Products or re-perform the Services in accordance with the Order.

9.2.1 If specified in the Order, following the Delivery of the Services, VTUL shall, in the presence of the Customer, carry out the Acceptance Tests to confirm that the Products and Services are compliant with the Acceptance Criteria.

9.2.2 VTUL shall then complete an Acceptance Certificate and provide it to the Customer.

The Customer shall return the signed Acceptance Certificate to VTUL within 3 days to acknowledge acceptance of those Products and Services successfully tested in accordance with the Acceptance Criteria.

9.2.3 In the event that a Customer either fails to return the signed Acceptance Certificate to

VTUL in accordance with Condition 9.2.2, or fails to notify VTUL of any non-conformity in accordance with Condition 9.2.4, the acceptance date shall be deemed to be 3 days after completion of the Acceptance Tests.

9.2.4 If in the course of the Acceptance Tests the Customer discovers that a Product or Service does not comply with the Acceptance Criteria, the Customer shall notify VTUL in writing within 3 days and such notice shall include sufficient detail to allow VTUL to identify and address any non-conformity. After investigation and correction by VTUL (if necessary) the Acceptance Tests shall be re-performed immediately at VTUL's request.

10. SOFTWARE

10.1 If the Products include Software, the Customer shall enter into all Software licences required by licensors of the Software.

10.2 In the event of any conflict between the terms of the applicable Software licensor's licence agreement and these

Conditions, the Software licensor's conditions shall prevail only in relation to the Software.

10.3 The Client agrees not to decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form nor permit any third party to do so.

11. PROJECT MANAGER

11.1 Each party agrees to designate a project manager (each, a "Project Manager") upon whose written orders and decisions the other party may rely.

12. WARRANTY

12.1 VTUL warrants that any Products provided pursuant to the Order, at the time of Delivery, will be free from any and all liens and encumbrances of any party. The Customer acknowledges that VTUL acts as a reseller only of the Products provided to the Customer under these Conditions, that VTUL neither designs publishes nor manufactures any of the Products, and that VTUL therefore disclaims any and all warranties.

12.2 VTUL warrants that Services shall be performed in a professional and workman like manner.

12.3 EXCEPT AS EXPRESSLY SET FORTH IN ANY APPLICABLE ORDER, THE PRECEDING IS VTUL'S ONLY WARRANTY CONCERNING THE PRODUCTS AND SERVICES PROVIDED TO CUSTOMER UNDER THESE CONDITIONS, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, COURSE OF PERFORMANCE, TRADE USAGE OR INDUSTRY CUSTOM.

12.4 VTUL is not responsible for the loss of Customer data. The Customer is responsible for maintaining current backups of all data. VTUL will not be responsible for and any warranty does not cover infection of any Customer system with a virus. All work necessary for VTUL to restore data or to remove a virus will be charged to the Customer in addition to the Price.

13. VTUL'S LIABILITY

13.1 VTUL can help the Customer to select Products and Services, but the assessment and selection of the Products and Services remains the Customer's sole responsibility.

VTUL undertakes only that in giving such assistance (if any) it has acted in good faith and has not been wilfully misleading.

13.2 It is the responsibility of the customer to ensure that there is sufficient insurance coverage for any direct damage to the Customer's property arising from the supply of Products or Services.

13.3 VTUL shall not be liable to the Customer for loss of profits, data, goodwill or any other type of indirect loss, including loss or damage suffered by the Customer as a result of an action brought by a third party, even if such loss was reasonably foreseeable or VTUL had been advised of the possibility of the Customer incurring the same.

13.4 VTUL's liability to the Customer for any direct loss or damage of whatsoever nature and howsoever caused shall be limited to and in all circumstances other than the direct damage to the Customer's property shall not exceed the Price.

13.5 VTUL shall not be liable for imperfect work caused by any inaccuracies in any drawings, bills of quantities or specifications supplied by the Customer.

13.6 The Customer indemnifies and shall hold VTUL harmless against all and any loss, damage, claim or liability otherwise arising due to the death, personal injury or damage to the property of employees, agents or VTUL's sub-contractors whilst on the Customer's premises for the purposes of provision of the Services and which arise due to the negligence, acts or omissions of the Customer, its agents or employees.

13.7 VTUL has calculated the Price on the basis that it is not responsible for any other risks.

14. FORCE MAJEURE

14.1 VTUL may, without liability, delay performance or cancel any Order on account of force majeure or other circumstances beyond its control including, but not limited to, acts of God, war, riot, fire, earthquake, explosion, flood, strike, lockout, injunction or telecommunications, electrical or source of supply failure, or the unavailability of services, personnel, products or materials.

15. SOLICITATION

15.1 During the term of the Order and for a period of one (1) year thereafter, the Customer shall not:

15.1.1 Offer employment to any employee or former employee of VTUL who in the previous 12 months was concerned with the supply of Products or Services to the Customer; or

15.1.2 Attempt to directly or indirectly induce any employee of VTUL to terminate his or her employment with VTUL.

15.2 In the event of a breach of this Condition 15, the Customer shall, within ten (10) days of such breach, pay VTUL, in addition to any other fees required under these Conditions, liquidated damages in an amount equal to fifty percent (50%) of the total remuneration accruing to VTUL by reason of that employee's provision of services and availability to provide services on VTUL's behalf over the last twelve (12) months of his or her employment by VTUL.

15.3 In the alternative, in the event of a breach of this Condition 15, money or damages may not be an adequate remedy, and, therefore, in addition to any other legal or equitable remedies, VTUL shall be entitled to obtain an injunction against such breach.

15.4 The obligations set forth in this condition are independent covenants and shall continue after the Order is completed or terminated for any reason.

16. CONFIDENTIALITY

16.1 Confidential Information shall mean all information identified in writing as being confidential, which is obtained from the Customer by VTUL or from VTUL by the Customer or is generated by VTUL in connection with the Order, other than information:

16.1.1 Which becomes generally available in the public domain other than by the unauthorised actions of either of the parties to the Order; or

16.1.2 Which has or may come into the possession of one party otherwise than in breach of a duty of confidence to the other party; or

16.1.3 Which is already in the possession of a party with the right to disclose.

16.2 VTUL shall not, without the previous written consent of the Customer, use, publish or disclose to any person, nor cause nor permit any of its servants, agents or subcontractors to use, publish or disclose any Confidential Information otherwise than for the performance of its duties under the Order.

16.3 The Customer shall not, without the previous written consent of VTUL, use, nor cause nor permit any of its servants or agents to use any Confidential Information received by the Customer otherwise than for the operation of the Products and associated facilities.

17. ASSIGNMENT

17.1 The Customer shall not, without VTUL's prior written consent, assign any benefit or obligation under the Order to any other person in whole or in part.

17.2 VTUL may, subject to notifying the Customer in writing, subcontract the performance of any of its obligations under an Order, as VTUL considers expedient. The subcontracting by VTUL of any of the benefits or obligations under the Order in whole or in part shall not relieve VTUL of its responsibility for the performance of its obligations to the Customer.

18. PROJECT CHANGES

18.1 All changes involving the addition or deletion of Products or Services and other change affecting the Price shall be made as follows:

18.1.1 The Project Manager of the party requesting the change shall provide written notice of the proposed change to the other party's Project Manager;

18.1.2 If a change is acceptable to VTUL, VTUL shall prepare a Change Order Form ("Change Order"). The Change Order shall specify any alteration in the program of work and/or the Price;

18.1.3 VTUL shall then submit the Change Order to the Customers Project Manager for written approval. Upon VTUL's receipt of the approved Change Order the change shall be deemed made and the relevant Order amended accordingly.

19. GENERAL PROVISIONS

19.1 These Conditions, including Orders entered into from time to time, set forth the entire understanding between the parties and supersede all prior agreements, arrangements and communications, whether oral or written, with respect to the supply of Products and Services. Any purchase order issued by the Customer shall be for its administrative purposes only and none of its terms and conditions shall be of any force or effect against VTUL. Each Order, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement these Conditions for the purposes of that Order only. No other agreements, representations or warranties, whether oral or written, shall be deemed to bind the parties with respect to the subject matter of these Conditions. Neither these Conditions nor any Order may be modified or amended except by the mutual written agreement of the parties.

19.2 The waiver by VTUL of a breach or default in any of the provisions of the Order by the

Customer shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

19.3 The Parties agree that all rights afforded to any third parties by operation of the

Contracts (Rights of Third Parties) Act 1999 is expressly excluded under these Conditions.

19.4 Any notice to be served shall be in writing and served upon the recipient at its address set out in the Order, either by hand or by first class post or facsimile transmission and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand, on receipt of a successful facsimile transmission sheet if confirmed in writing within the next two working days.

19.5 Save as otherwise expressly provided all amounts stated by VTUL are expressed exclusive of any Taxes including, import and export taxes, value added tax ("VAT") and any VAT arising in respect of any supply made under these Conditions shall be paid to VTUL by the Customer in addition to any other consideration for the Products and /or Services.

19.6 Headings to clauses in these Conditions are for the purpose of information and identification only.

19.7 In the event of a conflict between an Order and these Conditions these Conditions shall prevail.

19.8 These Conditions shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English court.