

General conditions Gantner Ltd.

These terms and conditions ("Conditions") shall be incorporated in and shall govern any contract between the supplier, namely Gantner Limited ("Gantner") and you (the "Customer") These conditions shall constitute the entire agreement between Gantner and the Customer regarding the contract and shall prevail over any terms and conditions contained in or purported to be contained in any order or other document or communication from the customer.

Article 1. Quotations

A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the same at any time prior to the Company's acceptance of the Customer's order. A quotation by the Company will normally remain available for a period of 30 days.

Article 2. Equipment and Software Maintenance

The Customer will enter into a separate agreement for the supply of maintenance services in respect of Equipment. The Customer will enter into a Software Support Agreement with the Company in respect of Software supplied effective from the date of acceptance of such Software in accordance with Clause 18.

Article 3. Orders

All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions. An order must be accompanied by sufficient information to enable the Company to proceed with the order forthwith and thereafter any modification must be agreed in writing. All communications relating to orders should specify the number and date of order. Unless otherwise stated all prices quoted assume delivery and payment within 12 months of order placement.

Article 4. Limits of Contract

A quotation includes only such Goods and Services as are specified therein.

Article 5. Assignment

(a) The Customer shall not be entitled to assign the benefit of this Contract without the prior written consent of the Company; (b) The Company reserves the right to sub-contract the performance of its obligations under this Agreement or any part thereof.

Article 6. Additional Expense

Should the Company incur additional expense not provided for in the quotation owing to suspension or delay of the work on the Customers' instructions or owing to any of the circumstances or events referred to in Clause 22 hereof such additional expense and any cost involved in keeping any of the Company's employees on the Site (as hereinafter defined) after completion of installation, shall be added to the price and paid for by the Customer accordingly.

Article 7. Terms of Payment

(a) Unless otherwise stated the Price shall be price set out overleaf. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice. (b) Unless otherwise stated 100% payment of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence and payment shall be made in full without deduction or set off. (c) Payment for training and technical services are due in advance of the training or technical services being performed and a cancellation policy applies for:- i) cancellations / postponements between 20 and 10 working days before the course start date whereupon 50% of the fee will be due. ii) cancellations / postponements up to 10 working days before the course start date will be subject to a 100% charge. For the purposes of these Terms and Conditions, a working day is defined as Monday to Friday excluding public holidays. These charges are applicable even if courses and dates are re-booked, unless at the express request of the company. (d) In the event of the Customer failing to comply with the Company's terms of payment the Company reserves the right to discontinue forthwith the provision to the Customer of any further Goods or Services by way of installation or storage or otherwise howsoever and in addition interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 2% per month or part thereof and shall accrue at such a rate after as well as before any judgment.

Article 8. Delivery

(a) Delivery shall be at the Customer's premises unless otherwise stipulated by the Company. The Company may charge for delivery, but in all cases it will be the responsibility of the Customer to provide adequate labour for unloading all Goods. (b) Delivery and any other dates mentioned in any quotation acknowledgement of order or elsewhere are approximate only and not of any contractual effect and the Company shall not be under any liability to the Customer in respect of any failure to deliver on any particular date or dates. (c) If the Customer refuses or fails to accept or take delivery of Goods tendered in accordance with the Contract, then: i) for the purposes of Clauses 7 and 9, the Goods will be deemed to have been delivered at the date of such refusal or failure; and ii) the Company shall be entitled either to store any Goods of which the Customer refuses or fails to take delivery and the Customer shall pay the cost of such storage or to dispose of any such Goods and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure.

Article 9. Risk

Risk in the Goods shall pass to the Customer on delivery.

Article 10. Title and Ownership

(a) Title to the Equipment shall not pass to the Customer until payment in full of the price therefore and no other sums whatever shall be due from the Customer to the Company. Until such payment the Customer shall have possession of the Equipment as bailee for the Company and shall store the Equipment (at no cost to the Company,) in such a way as to enable it to be identified as the property of the Company, provided that if the Customer is purchasing the Equipment for resale the Customer may sell and deliver the Equipment to a third party in the ordinary course of the Customer's business on condition that until such payment as aforesaid the Customer shall hold all proceeds of such sales in trust for the Company. Such monies shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money. At the Company's request the Customer will undertake to assign to the Company all rights and claims which the Customer may have against its customers arising from such sale until payment in full as aforesaid. (b) The Company reserves the right to repossess any Equipment in respect of which payment in full has not been received and therefore to re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without

vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason, and is without prejudice to any accrued rights of the Company thereunder or otherwise. (c) The copyright and all other proprietary rights whatever in all materials developed under this Contract including the software and any modifications and enhancements thereto will remain vested in and the absolute property of the Company. The Customer will do all such acts and things as the Company may reasonably require for the purpose of preserving or perfecting such vesting.

Article 11. Third Party Rights

(a) The Company shall have no liability to the Customer in the event of the Equipment infringing or being alleged to infringe the rights of any third party. In the event that the Equipment does infringe the rights of third parties the Company shall be obliged to transfer to the Customer only such titles as the Company may have. (b) To the best of its knowledge information and belief at the date hereof the use by the Customer of the Software will not infringe any rights of any third parties and in the event that the Software does infringe the rights of third parties the Company shall use its reasonable endeavours to make the Software non-infringing. (c) The Customer shall notify the Company forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third parties. The Company shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Customer shall provide all such reasonable assistance in connection therewith as the Company may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine. (d) The application of the Contracts (Rights of Third Parties) Act 1999 is excluded from this Agreement in its entirety except as between the Company and the Customer.

Article 12. Performance Warranties

(a) The Company warrants that: i) the Services shall be carried out at all times by properly skilled and competent employees of the Company or by properly skilled and competent sub-contractors of the Company. ii) the Goods when installed will conform to the manufacturer's published specifications. iii) the Software will perform in accordance with the Company's functional specification current at the date hereof.

Article 13. Liability

(a) The Company shall not be liable to the Customer:- i) for shortages in quantity delivered unless the Customer notifies the Company of any claim for short delivery within seven days of receipt of the Goods. ii) for damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Customer shall notify the Company of any such claim within seven days of receipt of Goods or the scheduled date of delivery whichever shall be the earlier. iii) for defects in the Goods caused by fair wear and tear, abnormal conditions of storage or use or any act, neglect or default of the Customer or of any third party. iv) for other defects in the Goods unless notified to the Company within seven days of receipt of the Goods by the Customer. (b) i) Where the Company is in breach of warranty in Clause 12 or where liability is accepted by the Company under paragraph (a) the Company's only obligation shall be at its option to make good any shortage or non-delivery and/or to replace or repair any Goods found to be damaged or defective or non-conforming and/or to refund the cost of such Goods or Services to the Customer. ii) the Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed £250,000 or the cost of the defective, damaged or undelivered Goods which give rise to such liability as determined by net price invoiced to the Customer or the total monies paid by the Customer to the Company in the preceding 12 months' period prior to the date or a claim being made whichever is smaller in respect of any occurrence or series of occurrences. (c) Subject to the foregoing all terms conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods or Services including merchantability and fitness for purpose are hereby excluded and the Company shall be under no liability to the Customer for any loss (including loss of data and loss of profits) damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company its employees or agents SAVE THAT the Company shall accept liability for death or personal injury caused by the negligence of the Company and its employees acting in the course of their employment and agents acting within their authority. (d) The Company's prices are determined on the basis of the limits of liability set out in this Condition. The Customer may by written notice to the Company request the Company to agree a higher limit of liability provided insurance cover can be obtained therefore.

Article 14. Confidentiality

(a) The Company and the Customer shall, during and after termination of this Contract, keep confidential any information obtained under this Contract and shall not divulge the same to any third party without the consent of the other party. (b) The provisions of this Clause shall not apply to:- i) Any information in the public domain otherwise than by breach of this Contract ii) information in the possession of the receiving party thereof before divulgence as aforesaid iii) information obtained from a third party who is free to divulge the same. (c) The Company and the Customer shall only divulge confidential information to those employees who are directly involved in the Contract or use the Goods and will ensure that such employees are aware of and comply with these obligations as to confidentiality.

Article 15. Licence

(a) The Company hereby agrees to grant the Customer a personal, non-exclusive and non-transferable licence to use the Software on the Equipment at the Customer's place of business referred to in the quotation (the "Site") either during the term of this Contract. (b) If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Customer, the Customer shall obtain the same at its own expense and if necessary produce evidence of the same to the Company on demand. Failure to do so shall not entitle the Customer to withhold or

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delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be for the Customer's account.

[Article 16. Obligations of the Customer](#)

The Customer shall observe and perform all relevant provisions whether statutory or otherwise of the law of the country where the Goods or Services are to be supplied. The Customer shall indemnify the Company against all actions, costs demands and claims made against the Company by reason of non-compliance by the Customer, with any of the said obligations and against all costs and expenses arising from any such claim.

[Article 17. Termination](#)

If either party shall commit any material breach of any term or condition of this Contract or if either party enters into a deed of arrangement or commits any act of bankruptcy or makes any composition for the benefit of creditors or any receiving order is made against him or being a Company goes into liquidation either voluntarily, or compulsorily, or if a receiver is appointed of any of such party's assets or undertaking or if circumstances arise which entitle a court or creditor to appoint a receiver or manager, the other party shall have the right by notice in writing to terminate the Contract forthwith. Any termination or cancellation shall be without prejudice to any rights of the other party arising prior to the date thereof.

[Article 18. Installation of Equipment & Acceptance of Software](#)

The Customer shall be treated as having accepted the Software either:- i) when the Software has been satisfactorily demonstrated in accordance with the Company's specifications; or ii) if such Software is used to process live data, (whichever is the earlier).

For the avoidance of doubt any support or maintenance fees shall become due on the date of installation whether in a live production or test environment

[Article 19. Inspection and Tests](#)

Any inspection of the Goods by the Customer or his representative shall be made at the Company's works or where otherwise nominated by the Company. If special tests or tests in the presence of the Customer or his representative(s) are required these must be made at the Company's offices and all additional charges shall be borne by the Customer. In the event of any delay on the part of the Customer

or his representative(s) in attending such tests after having received seven days' notice that the Company is ready, the tests may proceed and shall then be deemed to have been made in the presence of the Customer or his representative(s).

[Article 20. Brochures](#)

While the Company takes every precaution in the preparation of brochures, these are an indication only of the type of Goods offered and no particulars contained therein shall be binding on the Company.

[Article 21. Force Majeure](#)

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply, delivery or installation of the Goods by the Company or the supply of the Services by the Company being prevented hindered delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including but not limited to Act of God war riot strike lock-out trade dispute or labour disturbance accident breakdown of plant or machinery fire flood storm difficulty or increased expense in obtaining workmen materials or transport or other circumstances affecting the supply of goods or services or of raw materials therefore.

[Article 22. Waiver](#)

Any failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

[Article 23. Notices](#)

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class registered post or telex to the party concerned at its last known address. Notices sent by first registered class post shall be deemed to have been given seven days after despatch and notices sent by telex shall be deemed to have been given on the date of despatch.

[Article 24. Governing Law](#)

These Conditions and any contract following thereon shall be governed by and construed in accordance with English Law and the Parties hereby agree to submit to the non-exclusive jurisdiction of the English Court.