

# TERMS OF TRADING

## 1. DEFINITIONS

"Customer" means the party identified as the Customer in this Agreement to whom PC PRO may agree to supply Products in accordance with these terms and conditions.

"PC PRO" means PC PRO Computers Ltd/PC PRO Distribution of Unit 22 Southside Industrial Estate Toghur Cork Ireland or any subsidiary or associated company.

"Products" means goods or services including but not limited to computer hardware and software items to be provided by PC PRO to the Customer in accordance with these terms and conditions.

"Third Party Software" means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by PC PRO) and which comprises part of the products.

## 2. ORDER ACCEPTANCE

All orders placed with PC PRO by the customer for Products shall constitute an offer to PC PRO, under these terms and conditions, subject to availability of the products and to acceptance of the order by PC PRO's authorised representative.

All orders are accepted and products supplied subject to these express terms and conditions only. No amendment to these terms and conditions will be valid unless confirmed in writing on or after the date hereof by PC PRO's authorised representative.

It is agreed that these terms and conditions prevail over the Customer's terms and conditions of purchase unless these latter terms and conditions are amended by PC PRO in writing and signed by PC PRO.

## 3. INDEPENDENT CONTRACTOR

The relationship between the Supplier and Customer is that of Independent Contractor. Neither party is the agent of each other, and neither party has any authority to make any contract or make any obligation expressly or impliedly in the name of the other party, without that party's prior written consent for express purposes connected with the performance with this Agreement.

## 4. DESPATCH

Any time quoted for despatch is to be treated as an estimate only but despatch may be postponed because of conditions beyond PC PRO's reasonable control, and in no event shall PC PRO be liable for any damages or penalty for delay in despatch or delivery.

Risk shall pass to the Customer at the time the Products are despatched by PC PRO. PC PRO accepts no liability for loss or damage caused by the carrier.

If Products have not been received, the Customer must notify PC PRO within 7 days of the date of the invoice. If proof of delivery is required, this must be requested within 14 days of the date of the invoice.

## 5. CANCELLATION AND RESCHEDULING

Any requests by the Customer for cancellation of any order or the rescheduling of any deliveries will only be considered by PC PRO if made at least 12 hours before despatch of the Products, and shall be subject to acceptance by PC PRO at PC PRO's sole discretion and subject to a reasonable administration charge therefor by PC PRO. The customer hereby agrees to indemnify PC PRO against all loss, costs (including the cost of labour and materials used and overheads occurred), damage, charges and expenses arising out of the order and its cancellation or rescheduling.

## 6. PRICING

Catalogues, price lists and other advertising literature or material as used by PC PRO are intended only as an indication as to the price and range of goods offered and no prices, descriptions or other particulars contained therein shall be binding on PC PRO. All prices are given by PC PRO at the time of the order on an ex-works basis and the Customer is liable to pay for transport, packing and insurance. All quotes or listed prices are based on the cost of PC PRO of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any way of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment without notice at PC PRO's discretion. All prices are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be supplied in accordance with Irish legislation in force at the tax point date.

## 7. PAYMENT TERMS

Invoices will be raised and dated by PC PRO on the date of despatch of the Products. Unless otherwise specifically requested and agreed, invoices will be payable by the customer 30 days from the date of invoice. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 4% per annum above the base rate for the time being of the Allied Irish Banks plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgement. When all prices, taxes and charges due in respect of the Products and any Products supplied previously to the customer have been paid in full, title to hardware Products only shall pass to the Customer. Notwithstanding despatch and the passing of risk in the Products to the Customer or any other provision of these conditions, the property of the Hardware Products shall not pass to the customer until PC PRO has received cash or cleared funds payment of the price of the Products and all of the Products agreed to be sold by PC PRO to the Customer for which payment is then due. Until such time as the property in the Products passes to the customer, the customer shall hold the Products as PC PRO's fiduciary agent and bailee and shall keep the Products properly stored, protected and insured and identified as PC PRO's property. Until that time the Customer shall be entitled to resell or use the products in the ordinary course of business, but shall account to PC PRO for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or properties of the customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

Until such time as the property in the Products passes to the Customer (and provide the Products are still in existence and not been resold,) PC PRO shall be entitled at any time to require the Products be delivered to PC PRO and if, the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products. The Customer's power of sale or right to use such Products shall immediately cease if an Administrative receiver is appointed over all or any part of its assets or if it adjudicated bankrupt or enters liquidation whether compulsory or voluntary, or if the customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act. On termination of the Company's power of sale or right to use the Products the Customer will immediately hold the products to the order of PC PRO. The Customer shall not be entitled to pledge or in anyway charge by way of security for any indebtedness any of the Products which remain the property of PC PRO, but if the customer does so, all monies owing by the Customer to PC PRO shall (without prejudice to any other right or remedy of the seller) forthwith become due and payable. PC PRO reserves the right to cease supplies of Products to the Customer at any time. On such cessation of supplies, PC PRO reserves the right to withdraw and credit facility such that the whole of the Customer's account becomes due for payment forthwith.

## 8. SPECIFICATION OF PRODUCTS

PC PRO will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacture's specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. PC PRO will use its reasonable endeavours to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacture. Unless other agreed, the Products are supplied in accordance with the Manufacturer's standard specifications as these may be improved, substituted or modified PC PRO reserves the right to increase its quoted or listed price or to change accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of such orders.

## 9. PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS

The Customer hereby acknowledges that any proprietary rights in any Third Party Software supplied hereunder including, but not limited to any title or ownership rights, patents rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner. The customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered By PC PRO (including if so required the execution and return of a Third Party Software licence). The customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The customer further agrees to indemnify PC PRO in respect of any costs, charges, or expenses incurred by PC PRO at the suit of a Third Party Software owner as a result of any breach by the customer of such conditions.

NO TITLE OR OWNERSHIP OF SOFTWARE OR ANY THIRD PARTY SOFTWARE LICENCED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

## 10. RETURNS

PC PRO reserves the right to levy an administration charge in respect of the rotation of products and returns.

Returns must be made subject to the following

- Prior authority having been obtained from PC PRO which will be given at PC PRO's sole discretion.
- Within 30 days of the date of invoice.
- Subject to stock rotation policy.
- The products must be properly packed and include all original software, accessories and components supplied.
- The products must be in a sealed condition.
- The products must be accompanied by a delivery docket.
- The product is still covered by warranty.

PC PRO reserves the right to reject any Products which do not comply with the conditions set out above.

If PC PRO nevertheless agrees to accept any Products returned which are not in a saleable condition, PC PRO reserves the right to charge the cost to the customer of bringing the Products into a saleable condition.

## 11. WARRANTY

Warranty is one year only from date of invoice unless otherwise stated.

PC PRO warrants that it has good title to or licence to supply all Products to the Customer.

If any part of the hardware products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacture of the Products PROVIDED THAT no unauthorised modifications to the product or to the system of which the product forms part have taken place. PC PRO is not responsible for the cost of labour or the expenses incurred in repairing or replacing defective or non-conforming parts. All software Products supplied hereunder are supplied "as is" and the sole obligation of PC PRO in connection with the supply of software products is to use all reasonable endeavours to obtain and supply a corrected version from the manufacture concerned in the event that such software product should fail to conform to product description PROVIDED ALWAYS THAT the Customer notifies PC PRO of any such non-conformity within 90 days of the date of delivery of the applicable software Product. Specifically PC PRO gives no express warranty in relation to the Product's year 2000 compliance and cannot accept any liability in relation to any losses, costs or expenses which arise through any difficulty caused over date changes.

If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause, PC PRO will only accept the return of such Products provided that it receives written notification thereof giving detailed reasons for rejection. PC PRO will not consider any claim for compensation, indemnity or refund under liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company. Under no circumstances shall the invoiced Products be deducted or set off by the customer until PC PRO has passed a corresponding credit note.

EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 11, PC PRO DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.

## 12. INDEMNITIES AND LIMITS OF LIABILITY

PC PRO disclaims and excludes all liability to the Customer in connections with these terms and conditions including the Customer's use of the Products and in no event shall PC PRO be liable to the Customer for special, indirect or consequential damage including but not limited to loss of profits arising from loss of data or in connection with the sue of the Products. All terms of any nature, express or implied, statutory or otherwise, as to correspondence with any particular description or sample, fitness for purpose or merchantability, are hereby excluded.

The Customer shall indemnify and defend PC PRO and its employees in respect of any claims by third parties which are occasioned by or arise from any PC PRO performance or non-performance pursuant to the instructions of the Customer or its authorised representative.

## 13. TERMINATION FOR CAUSE

This agreement may be terminated forthwith by notice in writing:

By PC PRO if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment.

If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.

If either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or a reconstruction, or makes an arrangement with creditors or petitions for an administration order or has a Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this Agreement forthwith.

Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party.

## 14. EXPORT AND/OR RE-EXPORT LIMITATION

Having regard to the current statutory or other European regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to PC PRO of an ultimate destination for any Products, the customer will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

## 15. CONTRACT

The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.

No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.

The Customer agrees not to assign any of its rights herein without the prior written consent of PC PRO.

In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.

Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force major, act of God, fire, explosion, accident, industrial dispute or any cause beyond its reasonable control.