

# **STANDARD TERMS AND CONDITIONS OF SUPPLY**

**Crownhill Associates Limited**

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## 1. **Interpretation**

### 1.1 In these Conditions:-

**"BUYER"** means the person, firm or company who purchases the Goods and/or Services from Crownhill.

**"GOODS"** means the goods (including any instalment of the goods or any parts for them) which Crownhill is to supply to the Buyer under the Contract and in accordance with these Conditions.

**"CROWNHILL"** means Crownhill Associates Limited (a company registered in England under number 2947425) whose registered office is at Richmond House, Broad Street, Ely, Cambridgeshire, CB7 4AH.

**"CONDITIONS"** means the standard terms and conditions of supply set out in this document and any special terms and conditions expressly agreed in writing between the Buyer and Crownhill to be an addition to these standard terms and conditions.

**"CONTRACT"** is defined in Clause 2.1.

**"INCOTERMS"** means the International Chamber of Commerce's official rules for the interpretation of trade terms

**"SERVICES"** means the services which Crownhill is to supply to the Buyer under the Contract and in accordance with these Conditions.

**"WRITING"** includes telex, cable, facsimile transmissions, electronic mail and comparable means of communication, and "Written" shall be construed accordingly.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. **Basis of the Sale**

2.1 Any quotation issued by Crownhill shall not be deemed to be an offer to supply the Goods and/or Services described in such quotation. An order issued by the Buyer for Goods and/or Services shall be deemed to be an offer to purchase the Goods and/or Services described in the Buyer's order. No order placed by the Buyer shall be deemed to be accepted by Crownhill unless and until Crownhill issues a written acknowledgement of order, in which case a contract shall be formed between the Buyer and Crownhill, consisting of the Buyer's order, Crownhill's written acknowledgement, and these Conditions ("Contract").

2.2 These Conditions apply to all supplies of Goods and/or Services by Crownhill, to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply to any order, confirmation of order, specification or other document). No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Crownhill.

2.3 Any representations or recommendations made by Crownhill or its personnel about the Goods and/or Services shall have no effect unless expressly agreed in Writing and signed by an authorised representative of Crownhill. However, nothing in this condition shall limit or exclude Crownhill's liability for fraud.

### **3. Orders and Specifications**

3.1 The Buyer shall be responsible to Crownhill for ensuring the accuracy of the terms of any order including any applicable specification submitted by the Buyer, and for giving Crownhill (and any agent of Crownhill) any and all necessary information relating to the Buyer's requirement for the Goods and/or Services within a sufficient time to enable Crownhill to perform the Contract in accordance with its terms.

3.2 The description of and any specification for the Goods shall be set out in Crownhill's quotation. Unless expressly stated in writing by Crownhill to form part of the Contract, all other drawings, descriptive matter, specifications and advertising issued by Crownhill, and any descriptions or illustrations contained in Crownhill's catalogues or brochures or on Crownhill's website, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them, and do not form part of the Contract.

3.3 Crownhill reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are not to be supplied to Buyer's specification, which do not materially affect their quality or performance. Where Buyer requests that Goods are to be modified to meet statutory or other regulatory requirements of any country other than the United Kingdom, the Buyer shall be solely responsible for ensuring compliance with such requirements.

3.4 No order of the Buyer which has been accepted by Crownhill may be cancelled by the Buyer except with the agreement in Writing of Crownhill and on terms that the Buyer shall indemnify Crownhill at the rate of 20% of the invoice value against any loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Crownhill as a result of cancellation.

### **4. Price of the Goods and Services**

4.1 The price of the Goods and/or Services shall be Crownhill's quoted price. (The prices listed in Crownhill's website are indicative only.) All prices quoted are valid for 30 days. All prices are exclusive of:

4.1.1 value added tax or other applicable sales tax;

4.1.2 in the case of Goods, certain costs and charges relating to loading, unloading, carriage and insurance (according to the method of delivery chosen under Clause 6.1);

4.1.3 in the case of Services, accommodation, subsistence or travel expenses which may be incurred in the performance of the Services;

all of which the Buyer shall, where applicable, pay to Crownhill in addition to the price.

4.2 Crownhill reserves the right, by giving notice to the Buyer at any time before delivery, to reasonably increase the price of the Goods and/or Services to reflect any increase in the cost to Crownhill which is due to any factor beyond the control of Crownhill (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Crownhill adequate information or instructions.

## **5. Terms of Payment**

5.1 Crownhill may request that the Buyer pay in full the price for the Goods and/or Services before Crownhill delivers the Goods or performs the Services. In such case, Crownhill shall be under no obligation to deliver the Goods or perform the Services until it has received the payment in cleared funds.

5.2 Where Crownhill has not requested that the Buyer pay for the Goods and/or Services in advance of Crownhill delivering the Goods or performing the Services, Crownhill shall be entitled to invoice the Buyer for the price of the Goods at any time after Crownhill has delivered the Goods under Clause 6.1 below. Crownhill shall be entitled to invoice the Buyer for the price of the Services, and for any reasonable expenses incurred in the provision of the Services, at any time before, during or after the performance of the Services.

5.3 Where payment is to be made in accordance with Clause 5.2 above, the Buyer shall pay the price of the Goods and/or Services within 30 days of the date of Crownhill's invoice, notwithstanding that the ownership of the Goods has not passed to the Buyer. Unless otherwise agreed by Crownhill in writing, the time of payment of the price shall be of the essence of the Contract. No payment shall be deemed to have been received until Crownhill has received cleared funds.

5.4 If the Buyer fails to make any payment on the due date (whether under Clause 5.1 or Clause 5.2) then, without prejudice to any other right or remedy available to Crownhill, Crownhill shall be entitled to:-

5.4.1 terminate the contract or suspend any further deliveries to the Buyer;

5.4.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 per cent per annum above Barclays Bank PLC

base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

- 5.5 Instead of payment being made by either of the mechanisms set out in Clauses 5.1 to 5.4 above, Crownhill reserves the right to require the Buyer to open an irrevocable letter of credit satisfactory to Crownhill established by the Buyer in favour of Crownhill immediately upon receipt of Crownhill's acceptance of the Buyer's order (in accordance with Clause 2.1 above) and confirmed by a bank acceptable to Crownhill. The letter of credit shall be for the price payable for the Goods and/or Services (together with any tax, duty and other costs payable) and shall be valid for [six] months. Crownhill shall be entitled to immediate cash payment on presentation to such bank of the documents specified in the letter of credit.

## **6. Delivery**

- 6.1 The method of delivery of the Goods shall be specified in the Contract, and shall be either EXW The Old Station Yard, Station Road Wilburton, Cambridge CB6 3PZ (Incoterms 2000), or FCA The Old Station Yard, Station Road Wilburton, Cambridge CB6 3PZ (Incoterms 2000). Unless otherwise agreed in the Contract, the Services shall be performed at Crownhill's premises.
- 6.2 Any dates quoted for delivery of the Goods or performance of the Services are approximate only. Crownhill shall use its reasonable endeavours to meet such delivery or performance dates, but provided it uses such reasonable endeavours, Crownhill shall not be liable for any delay in delivery of the Goods or performance of the Services. Time for delivery shall therefore not be of the essence unless previously agreed by Crownhill in writing. The Goods may be delivered, and/or the Services performed, by Crownhill in advance of the quoted delivery date upon Crownhill giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered and/or the Services are to be performed in instalments, each instalment shall constitute a separate contract and failure by Crownhill to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as terminated.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give Crownhill adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to Crownhill, Crownhill may: store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.5 Crownhill shall not be liable for any late delivery or performance or failure to deliver or perform where such lateness or failure is caused by any act or omission of the Buyer. Subject to Clause 8.6, any liability of Crownhill for any failure to deliver the Goods or perform the Services shall be limited to the redelivery of the Goods or re-

performance of the Services within a reasonable time, or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

## **7. Risk and Property**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the relevant Incoterm chosen by the parties under Clause 6.1.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the ownership of the Goods shall not pass to the Buyer until Crownhill has received in cash or cleared funds payment in full of:

7.2.1 the price of the Goods; and

7.2.2 the price of all other goods agreed to be sold by Crownhill to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Crownhill's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Crownhill's property. The Buyer may not, without the prior Written consent of Crownhill, resell Goods in which ownership has not passed to it.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Crownhill shall be entitled at any time to require the Buyer to deliver up the Goods to Crownhill and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Crownhill, but if the Buyer does so all moneys owing by the Buyer to Crownhill shall (without prejudice to any other right or remedy of Crownhill) forthwith become due and payable.

7.6 The Buyer's right to possession of the Goods in which ownership has not passed to the Buyer shall terminate immediately if the Contract is terminated under Clause 9 below.

## **8. Warranties and Liability**

8.1 Subject to the conditions set out below Crownhill warrants that:

8.1.1 the hardware in the Goods will correspond in all material respects with the relevant specification and will be free from defects in material and workmanship for a period of twelve months from the date of delivery ("Warranty Period"); and

8.1.2 the Services shall be performed with reasonable care and skill.

Warranties as to software provided as part of the Goods and/or Services shall be set out in a separate agreement between Crownhill and the Buyer and accordingly no warranty is given in these Conditions as to any aspect of such software.

- 8.2 The above warranties are given by Crownhill subject to the following conditions:-
- 8.2.1 Crownhill shall be under no liability in respect of any defect in the Goods or in the performance of the Services arising from any drawing, design or specification supplied by the Buyer, or from any failure by the Buyer to provide to Crownhill any and all necessary information under Clause 3.1.
- 8.2.2 Crownhill shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Crownhill's instructions (whether oral or in writing), misuse, or alteration or repair of the Goods by any person other than a person authorised by Crownhill;
- 8.2.3 Crownhill shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 Where the Goods or any part of them are not produced by Crownhill, Crownhill shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee as is given by the supplier or producer to Crownhill. Where Crownhill is able to transfer the benefit of such warranty or guarantee, this shall be in substitution for the warranties set out in Clause 8.1 above.
- 8.3 Any claim by the Buyer under the warranties set out in Clause 8.1 shall be notified to Crownhill within seven days from the date of delivery or (where the defect was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, but in any event within the Warranty Period. Crownhill shall have a reasonable opportunity, after receiving such notice, to examine the Goods and the results of the Services which the Buyer alleges to be in breach of the warranty set out in Clause 8.1. The Buyer shall, if requested by Crownhill and at its own cost, return the allegedly defective Goods or results of Services to the original point of delivery so as to enable such examination to take place.
- 8.4 Subject to Clauses 8.2, 8.3 and 8.6, Crownhill's liability under the warranties set out in Clause 8.1 above shall be limited to, at its discretion:
- 8.4.1 repairing or replacing of the Goods (or the part in question); or
- 8.4.2 refunding to the Buyer the price of the defective Goods or Services.
- 8.5 ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW (SAVE FOR THE CONDITION IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979) ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

- 8.6 CROWNHILL DOES NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR FOR FRAUDULENT MISREPRESENTATION, OR OTHERWISE IF ANY SUCH EXCLUSION OR LIMITATION IS VOID, PROHIBITED OR UNENFORCEABLE IN LAW.
- 8.7 SUBJECT TO CLAUSE 8.6, CROWNHILL SHALL NOT BE LIABLE TO THE BUYER FOR ANY LOSS OF PROFIT OR BUSINESS OPPORTUNITY, OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS, WHICH ARISE OUT OF OR ARE CONNECTED IN ANY WAY WITH THE CONTRACT.
- 8.8 SUBJECT TO CLAUSE 8.6, CROWNHILL'S TOTAL LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, AND MISREPRESENTATION), OR OTHERWISE) UNDER THE CONTRACT SHALL BE LIMITED TO THE PRICE OF THE GOODS AND/OR SERVICES..
- 8.9 Neither party shall be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of that party's obligations under the Contract, if the delay or failure was due to any cause beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond reasonable control: act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the party or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery. If the cause in question continues for a continuous period in excess of thirty days, the non-defaulting party shall be entitled to give notice in writing to the defaulting party to terminate the Contract. However, nothing in this Clause 8.6 shall affect the Buyer's obligation to make payment in accordance with Clause 5.

## **9. Termination of Contract**

- 9.1 Crownhill shall be entitled to terminate the Contract by written notice to the Buyer if the Buyer commits any breach of any of the provisions of the Contract and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 9.2 The Contract shall automatically terminate if:
- 9.2.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Buyer; or
  - 9.2.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
  - 9.2.3 the Buyer goes into liquidation (except for the purposes of a bona fide solvent amalgamation or reconstruction and in such manner that the resulting



company effectively agrees to be bound by and assume the obligations imposed on the Buyer under the Contract); or

9.2.4 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Buyer; or

9.2.5 the Buyer ceases or threatens to cease to carry on business.

## **10. Export Terms**

10.1 Where the Goods are supplied for export from the United Kingdom, the Buyer shall be responsible for complying with any legislation or regulations governing the importation and use of the Goods into the country of destination and for the payment of any duties on the Goods. The duties of Crownhill and the Buyer regarding the export of the Goods from the United Kingdom shall be in accordance with the relevant Incoterm chosen by the parties under Clause 6.1.

10.2 Where required by the Buyer, the Buyer shall be responsible for arranging for testing and inspection of the Goods before delivery. Crownhill shall, at the Buyer's cost, provide all reasonably necessary assistance to enable the Buyer to carry out such testing and inspection. Where such inspection and testing is carried out, then (subject to Clause 8.6) Crownhill shall have no liability for any claim made after delivery in respect of any defect or non-compliance in the Goods which would have been revealed by such inspection and testing.

## **11. General**

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by Crownhill of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4 The Contract shall be governed and construed in accordance with the laws of England and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.

11.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person who is not a party to it, by virtue of the Contracts (Rights of Third Parties) Act 1999.

- 11.6 The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded from the Contract and from these Conditions.
- 11.7 The Buyer shall not assign or sub-contract any of its rights or obligations under the Contract without the prior Written consent of Crownhill.

## **12. Intellectual Property**

12.1 The use of the intellectual property (including, but not limited to, copyright and trade secrets) contained in the Goods and/or the results of the Services shall be subject to a separate agreement between the Buyer and Crownhill. These Conditions grant no licence to the Buyer to use the intellectual property contained in the Goods and/or the results of the Services.