



SBL TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

“**Business Day**” means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

“**Computer Software**” means software provided by or on behalf of the Supplier for use in both object code and source code form and any updates, upgrades, versions or releases of the same existing now or in the future and all related specifications, documentation and other materials supplied with the software;

“**Conditions**” means the terms and conditions set out in this document;

“**Contract**” means the agreement between SBL and the Supplier for the sale and purchase of the Products and/or Services incorporating these Conditions and the Purchase Order;

“**Deliverables**” means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

“**Force Majeure**” means an event or sequence of events beyond any party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water or telecommunications service, strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier’s or its suppliers’ workforce;

“**Location**” means the address(es) for delivery of the Products and/or performance of the Services as set out in the Purchase Order;

“**Products**” means goods including but not limited to Computer Software, hardware items provided by the Supplier to SBL as detailed in a Purchase Order;

“**Purchase Order**” means SBL’s standard form for orders, which shall set out the quantity of Product and/or Services ordered by SBL;

“**SBL**” means Software Box Limited (company number 02109168) whose registered office is at East Moor House Green Park Business Centre, Goose Lane, Sutton-on-the-Forest, York, YO61 1ET and any subsidiary or associated company;

“**Services**” means all services supplied by the Supplier to SBL as detailed in the Purchase Order; and

“**Supplier**” means the person who sells the Products and/or Services to SBL.

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1.2 In these unless the context otherwise requires:

- 1.2.1 any clause headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.2 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.3 words in the singular include the plural and vice versa;
- 1.2.4 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email); and
- 1.2.5 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2. Order Procedure

2.1 SBL will place an order on the Supplier using one of the following methods;

- 2.1.1 email PDF Purchase Order;
- 2.1.2 fax Purchase Order; or
- 2.1.3 online Purchase Order.

2.2 Each Purchase Order by SBL to the Supplier shall be an offer to purchase Products and/or Services subject to these Conditions.

2.3 No variation of these Conditions or to a Purchase Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of SBL.

2.4 A Purchase Order may be withdrawn or amended by SBL at any time before acceptance by the Supplier.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.6 Acceptance of a Purchase Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which SBL reasonably considers is consistent with acceptance of the Purchase Order.
- 2.7 Errors or omissions that are not communicated to SBL that result in a Purchase Order not matching a Supplier's invoice will result in the Supplier invoice being disputed until the discrepancy is resolved, which may incur a delay in payment.

3. Supply of Products

3.1 The Supplier warrants that any Products will:

- 3.1.1 correspond with their description and any applicable specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by SBL, expressly or by implication, and in this respect SBL relies on the Supplier's skill and judgement;
- 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Products.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Products.

3.3 SBL shall have the right to inspect and test the Products at any time before delivery. If following such inspection or testing SBL considers that the Products do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, SBL shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.4 The Supplier shall ensure that:

- 3.4.1 the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition;

- 3.4.2 each delivery of the Products is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Products (including the code number of the Products (where applicable)), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
- 3.4.3 if the Supplier requires SBL to return any packaging material for the Products to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.5 The Supplier shall deliver the Products:

- 3.5.1 on the date specified in the Purchase Order or, if no such date is specified, then within a reasonable time period of the date of the Purchase Order;
- 3.5.2 to SBL's premises or such other location as is set out in the Purchase Order or as instructed by SBL before delivery ("**Delivery Location**");
- 3.5.3 during SBL's normal hours of business, or as instructed by SBL.

3.6 Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location.

3.7 The Products shall not be delivered in instalments unless otherwise agreed in writing by SBL. Where it is agreed that the Products are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle SBL to the remedies set out in clause 5.1.

3.8 Title and risk in the Products shall pass to SBL on completion of delivery. If the Products are sent directly to SBL's customer, risk and title shall only pass once a proof of delivery is provided and/or SBL's customer confirms receipt of the Products in an acceptable condition.

4. Supply of Services

- 4.1 The Supplier shall provide the Services to SBL in accordance with the terms of the Contract.
- 4.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by SBL.



4.3 In providing the Services, the Supplier shall:

- 4.3.1 co-operate with SBL in all matters relating to the Services, and comply with all instructions of SBL;
- 4.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 4.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- 4.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by SBL;
- 4.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 4.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to SBL, will be free from defects in workmanship, installation and design;
- 4.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 4.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of SBL's premises or any other premises where the Services will be performed;
- 4.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by SBL to the Supplier ("**SBL Materials**") in safe custody at its own risk, maintain the SBL Materials in good condition until returned to SBL, and not dispose or use the SBL Materials other than in accordance with SBL's written instructions or authorisation; and
- 4.3.10 not do or omit to do anything which may cause SBL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that SBL may rely or act on the Services.

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5. SBL Remedies

- 5.1 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Products or perform any of the Services by the date specified in the Purchase Order, SBL shall (without prejudice to its other rights and remedies) be entitled at SBL's sole discretion:
- 5.1.1 to terminate the Contract with immediate effect on written notice;
 - 5.1.2 refuse to accept any subsequent performance of the Services and/or delivery of the Products;
 - 5.1.3 to purchase the same or similar Products and/or Services from a supplier other than the Supplier and recover from the Supplier any costs associated with this;
 - 5.1.4 where SBL has paid in advance for Services that have not been provided by the Supplier and/or Products which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 5.1.5 to recover from the Supplier all costs and losses incurred by SBL which are in any way attributable to the Supplier's failure to meet such dates.
- 5.2 If the Supplier has delivered Products that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, SBL shall have one or more of the following rights, whether or not it has accepted the Products:
- 5.2.1 to reject the Products (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 5.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 5.2.3 to require the Supplier to repair or replace the rejected Products, or to provide a full refund of the price of the rejected Products (if paid);
 - 5.2.4 to refuse to accept any subsequent delivery of the Products which the Supplier attempts to make;
 - 5.2.5 to recover from the Supplier any expenditure incurred by SBL in obtaining substitute goods from a third party; and

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5.2.6 to claim damages for any additional costs, loss or expenses incurred by SBL arising from the Supplier's failure to supply Products in accordance with clause 3.1.

5.3 If any Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, SBL shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

5.3.1 to rescind the Contract; or

5.3.2 to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by SBL to the Supplier under the Contract; or

5.3.3 to require the Supplier, without charge to SBL, to carry out such additional work as is necessary to correct the Supplier's failure; and

5.3.4 in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of the Contract.

5.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

5.5 SBL's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

Price & Payment

5.6 The price for the Products:

5.6.1 shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the date of the Purchase Order; and

5.6.2 shall be inclusive of the costs of packaging, insurance and carriage of the Products, unless otherwise agreed in writing by SBL. No extra charges shall be effective unless agreed in writing and signed by SBL.

5.7 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by SBL, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

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5.8 The Supplier shall invoice SBL for:

5.8.1 the Products, no sooner than completion of delivery of the Products; and

5.8.2 the Services, no sooner than completion of performance of the Services.

5.9 Each invoice shall include such supporting information required by SBL to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

5.10 All charges are exclusive of VAT, which SBL shall pay in addition on receipt of a valid VAT invoice. SBL shall pay all correctly rendered, non-disputed invoices within 30 days of the end of the month in which the invoice is received.

5.11 Time of payment is not of the essence. Where sums due under the Contract are not paid in full by the due date, the Supplier may charge interest on the overdue sum (before and after judgment) at the rate of two per cent per annum above the base rate from time to time of the Bank of England.

5.12 If an invoice is disputed for any reason, SBL shall inform the Supplier within a reasonable timescale. The invoice shall not be passed for payment until any issue is resolved to SBL's satisfaction.

5.13 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow SBL to inspect such records at all reasonable times on request.

6. Confidentiality

6.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 6.2 In order for the Supplier to fulfil an order from SBL, information about SBL's customers may sometimes be provided. The Supplier agrees not to pass this information to any third party unless required to fulfil the requirements detailed on the Purchase Order and only with SBL's prior written consent.
- 6.3 The Supplier will not contact SBL's customer directly under any circumstances without the express permission of SBL.
- 6.4 This clause 6 shall survive termination of the Contract.

7. Intellectual Property Rights

- 7.1 In respect of the Products and any goods that are transferred to SBL as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to SBL, it will have full and unrestricted rights to sell and transfer all such items to SBL.
- 7.2 The Supplier assigns to SBL, with full title guarantee and free from all third party rights, all intellectual property rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 7.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Supplier shall, promptly at SBL's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as SBL may from time to time require for the purpose of securing for SBL the full benefit of the Contract, including all right, title and interest in and to the intellectual property rights assigned to SBL's in accordance with clause 7.2.
- 7.5 All SBL Materials are the exclusive property of SBL.

8. Indemnity and Insurance

- 8.1 The Supplier shall indemnify, and keep indemnified, SBL from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by SBL as a result of or in connection with:
- 8.1.1 the Supplier's breach of any of the Supplier's obligations under the Contract;

- 8.1.2 any claim made against SBL for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Products, or receipt, use or supply of the Services; and
- 8.1.3 any claim made against SBL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Products, or the provision of the Services to the extent attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 8.2 During the term of the Contract and for a period of 5 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on SBL's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 8.3 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, SBL may terminate the Contract:

- 9.1.1 in respect of the supply of Services, by giving the Supplier not less than 2 weeks' written notice; and
- 9.1.2 in respect of the supply of Products, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. SBL shall pay the Supplier fair and reasonable compensation for any work in progress on the Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

9.2 SBL may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

- 9.2.1 commits a material breach of the Contract (which if capable of remedy) is not remedied within 14 days of receiving written notice of such breach;
- 9.2.2 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

- 9.2.3 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 9.2.4 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 9.2.5 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 9.2.6 (being an individual) is the subject of a bankruptcy petition or order;
- 9.2.7 has a resolution passed for its winding up;
- 9.2.8 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 9.2.9 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 9.2.10 has a freezing order made against it;
- 9.2.11 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; or
- 9.2.12 is subject to any event, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.3 to clause 9.2.11 (inclusive).

10. Consequences of Termination

10.1 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

10.2 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10.3 On termination of the Contract for any reason, the Supplier shall immediately deliver to SBL all Deliverables whether or not then complete, and return all SBL Materials. If the Supplier fails to do so, then SBL may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

11. Notices

11.1 Any notice given by a party under these Conditions shall be in writing, be signed by, or on behalf of, the party giving it and be sent to the relevant party at the address set out in the Contract. Notices may be given, and are deemed received:

11.1.1 by hand: on receipt of a signature at the time of delivery;

11.1.2 by Royal Mail Recorded Signed for post: at 10.00 am on the Business Day after posting;

11.1.3 by commercial courier: on the date and time that the courier's delivery receipt is signed;
and

11.1.4 by email: one Business Day after transmission.

12. General

12.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

12.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

12.1.2 uses best endeavours to minimise the effects of that event.

12.2 If, due to Force Majeure, a party:

12.2.1 is or shall be unable to perform a material obligation; or

12.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days or more,

the other party may terminate the Contract on immediate written notice.

- 12.3 The Supplier shall not, without the prior written consent of SBL, at any time during the supply or Products and/or Services under these Conditions and for three months after, solicit or entice away from SBL or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of SBL and with whom the Supplier has had dealings with a result of the supply of the Products and/or Services.
- 12.4 Any consent given by SBL in accordance with clause 12.3 shall be subject to the Supplier paying to SBL a sum equivalent to 20% of the then current annual remuneration of SBL's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Supplier to that employee, consultant or subcontractor.
- 12.5 SBL's rights under these Conditions are cumulative and in addition to and not exclusive of any rights which SBL has otherwise in law, whether under statute, at common law or otherwise, and nothing in these Conditions is intended to or will be construed as excluding any such rights which SBL has otherwise in law.
- 12.6 SBL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.7 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of SBL.
- 12.8 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 12.9 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, SBL.
- 12.10 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.11 A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 12.12 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.13 Nothing in the Contract shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Contract or create any agency between the parties.
- 12.14 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formations (including non-contractual disputes or claims) will be governed by and construed in accordance with Laws of England.
- 12.15 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).