

## Terms & Conditions

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### RECITALS

These Terms and Conditions govern the supply to the Customer of Escape Technology.

### 1. INTRODUCTION

1.1. In these Terms and Conditions the following terms shall unless the context otherwise requires have the meaning set out below.

Contract means any agreement between Escape Technology and the Customer for the supply of Products, which expressly or by implication incorporates these Terms and Conditions.

Customer means the party named in the Invoice.

Delivery Address means the address as the point of delivery as noticed by Escape Technology to the Customer.

Delivery date means the delivery date as notified by Escape Technology to the Customer.

Hardware means the hardware components of Escape Technology products including all ancillary equipment, accessories, spares, supplies and related documentation.

Invoice means the invoice prepared by Escape Technology and issued to the Customer.

Licence Agreement means the terms and conditions governing the supply of software, whether Escape Technology's own software or third party software which Escape Technology is authorised to supply to the Customer.

Price means the total price for the Products as specified in the Invoice.

Products means Escape Technology's products including but not limited to any configuration of Hardware and/or Software. All services offered by Escape Technology; including maintenance and support, training and education, and consultancy services are not Products to which these Terms and Conditions apply, but are supplied on the terms and conditions contained in Escape Technology's applicable agreements.

Escape Technology means Escape Technology Ltd a company incorporated in England whose registered office is at:  
5 Theobald Court, Theobald Street, Elstree, Herts, WD6 4RN.

Software means any operating system, utility or applications software delivered by Escape Technology in machine readable object, printed, interpreted or any other form whatsoever and either incorporated with Hardware or separately supplied, including related documentation.

1.2. This Contract constitutes the entire agreement between the parties with regard to the supply to the Customer of Products. Each party confirms that it has not relied upon any representation not recorded in this document inducing it to enter into the Contract. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of the Contract.

1.3. If these Terms and Conditions are incorporated by reference into any other form of agreement between Escape Technology and the Customer and that other agreement is currently in effect at the time the Contract is made, so that the Contract constitutes a contract for the purposes of that agreement, the terms and conditions of the agreement will prevail in the event, but only to the extent, of any conflict of meaning with these Terms and Conditions.

## **2. PRICE AND PAYMENT**

2.1. Our standard terms are Prepayment. Accounts with outstanding balances will be placed on credit hold. This means that no further goods will be shipped and all support and repair/warranty services withdrawn until the account is brought into order except where other terms have been agreed in writing. Value Added Tax will be charged at the rate appropriate at the date of the Invoice.

2.2. Payment of the Price or any part payment thereof and any other charges due under the Contract must be made in accordance with 2.1 above (unless otherwise specified in the Invoice). The contents of the Invoice, including inter alia the Price, shall, in the absence of a manifest error, be deemed to have been accepted by the Customer unless the Customer has notified Escape Technology in writing within 24 hours of these goods being received that such contents are being disputed. Unless otherwise agreed, payment shall be made in pounds sterling, without set-off, deduction or withholding. All payments which are not received when payable shall be considered overdue and Escape Technology reserves the right to charge interest on a daily basis at four per cent per annum above Barclays Bank Plc base rate. In addition, Escape Technology reserves the right to charge a late payment fee with the final reminder.

2.3. Without prejudice to any of Escape Technology's other rights if the Customer fails to effect any payment due to Escape Technology under the Contract in accordance with Clause 2.2, Escape Technology shall have the right to terminate or suspend the Contract in whole or in part. If Escape Technology elects to exercise its right of suspension under this sub-clause it shall do so by 5 days notice in writing to the Customer and shall be entitled to recover from the Customer all costs which it reasonably incurs as a consequence of such suspension.

## **3. TITLE**

3.1. Title to the Products is vested in Escape Technology. The risk in the goods shall pass from the seller to the buyer upon delivery of such goods to the buyer. However, notwithstanding delivery and the passing of the risk in the goods, title and property in the goods, including full legal and

beneficial ownership, shall not pass to the buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the buyer under this contract and all other contract between the seller and the buyer for which payment in full price of the goods there under has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer under which the goods were delivered. Only when the Price, all taxes and other charges due under the Contract have been paid in full will title to any Hardware supplied under the Contract pass to the Customer.

3.2. No title or ownership of any Software supplied under the Contract and licensed to the Customer under any Licence Agreement is transferred to the Customer.

3.3. Until such time as title in the Products passes to the Customer, the Customer shall hold the Products as Escape Technology's fiduciary agent and bailee, and shall keep the products separate from those of the Customer and third parties and properly stored protected and insured and identified as Escape Technology's property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business but shall account to Escape Technology 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 property of the Customer and third parties and in the case of tangible proceeds properly stored, protected and insured.

3.4. Until such time as title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) Escape Technology shall be entitled at any time to require the customer to deliver up the Products to Escape Technology 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.

3.5. The Customer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the Products which remain the property of Escape Technology but if the Customer does so all monies owing by the Customer to Escape Technology shall (without prejudice to any other right or remedy of Escape Technology) forthwith become due and payable.

## **4. DELIVERY**

4.1. Delivery will be effected at the Delivery Address.

4.2. The Delivery date is approximate only and not of any contractual effect. While Escape Technology will use all reasonable endeavours to meet the Delivery date, it will not be liable for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the Customer as a result of any failure to deliver on such particular date.

4.3. Each delivery of Products under the Contract will be deemed to constitute a separate enforceable contract to which these Terms and Conditions will apply.

4.4. If the Customer refuses or fails to take delivery of Products tendered in accordance with the Contract, delivery will nevertheless be deemed to have taken place for the purpose of Escape

Technology's rights to payment and Escape Technology will be entitled to store the Products at the Customers risk and expense, including all transportation charges.

4.5. The Customer shall inspect the Products on delivery and shall within 24 hours of delivery notify Escape Technology of any alleged shortage in quantity, damage or failure to comply with description or sample. If the Customer fails to notify Escape Technology within such time the Products shall be conclusively presumed to be in accordance with the Contract.

4.6. If the Products are not in accordance with the Contract the sole remedy of the customer shall be limited to Escape Technology making good any shortage by replacing such Products or if Escape Technology shall elect, by refunding a proportionate part of the Price.

## **5. SUBSTITUTION AND CHANGES**

5.1. Escape Technology reserves the right to make improvements, substitutions or modifications to any part of the Products at any time prior to delivery, provided that such improvements, substitutions or modifications will not materially affect the performance of such Products.

5.2. Escape Technology further reserves the right to change the Delivery date and increase the price of the products at any time prior to delivery, to reflect any increase in the cost to Escape Technology which is due to any factor beyond Escape Technology's control.

5.3. No order which has been accepted by Escape Technology may be cancelled by the Customer except with the prior written consent of Escape Technology and the Customer shall indemnify Escape Technology in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by Escape Technology as a result of such cancellation.

## **6. HARDWARE**

6.1. Where installation or training is not included in the Price and not ordered by the Customer, the Customer will be solely responsible for this, and Escape Technology disclaim all liability in this connection.

6.2. Where the Hardware includes data communications equipment and data transmission speeds are given in relation to any item of Hardware these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant modem at the speeds indicated and to the capacity of any of that company's equipment to which the Hardware is linked.

6.3. Where the Hardware is installed for use in conjunction with other products not supplied by Escape Technology, the Customer will be solely responsible for ensuring that the Products are compatible with such other products, and Escape Technology disclaims all liability in this connection.

6.4. Escape Technology warrants that it has good title to or legal right to supply all Hardware supplied to the Customer with any manufacturer's warranty supplied and in the event the Hardware is warranted against defects in workmanship and materials for a period of 1 year from the date of delivery. The sole obligation of Escape Technology under such warranty will be limited to the use

of all reasonable efforts to repair or replace, at its option, any component which proves defective during the warranty period provided that:

- (1) Escape Technology has been notified within such warranty period of such defect;
- (2) Escape Technology has issued an appropriate authorisation; and
- (3) such defective component has been returned to Escape Technology, undamaged, complete and identified in accordance with Escape Technology's instructions, within 14 days of receipt of such authorisation. For the avoidance of doubt Escape Technology will only issue an appropriate authorisation in the event that every opportunity has been given to investigate and resolve such defect having reasonably used all its technical resources. All replaced Hardware or parts will become Escape Technology's property.

6.5. Where, as part of a valid claim under Clause 6.4, any Product is to be returned to Escape Technology, the expense, responsibility and risk of delivering the Product to Escape Technology shall be borne by the Customer. Escape Technology shall assume the expense and responsibility of redelivering the Product to the Customer. In any case where Escape Technology reasonably determines that the Hardware is not defective within the terms of the warranty, the Customer will pay Escape Technology all costs of handling, transportation and repairs at Escape Technology's then prevailing rates.

6.6. The stated warranties apply only to the Customer and not the initial end user of the Hardware and are contingent upon proper treatment and use of the Products with no unauthorised modifications and maintenance, at a safe and suitable premises.

6.7. The supply of Hardware to the Customer does not convey any ownership or licence to exploit any of the proprietary rights of Escape Technology in the Hardware. Any such proprietary rights granted in the Customer by Escape Technology will be granted only subject to a separate restrictive non-transferable non-exclusive licence agreement. All operating instructions, manuals and other documentation referencing the Hardware and supplied by Escape Technology are subject to copyright and shall not be copied or disclosed to any third party without the prior express written consent of Escape Technology.

6.8. Goods cannot be returned for Credit Refund unless agreed in writing by Escape Technology, any goods accepted for credit refunds by Escape Technology will be subject to a re-stocking fee.

## **7. SOFTWARE**

7.1. Copyright subsists in all Software whether it is Escape Technology's proprietary software or software supplied by Escape Technology under licence. All Software is supplied to the Customer only under the terms and conditions of the appropriate Licence Agreement (whether this has been signed and/or returned to Escape Technology). No part of the Software may be copied, reproduced or utilised in any form by any means without the prior written approval of Escape Technology.

7.2. It is the sole responsibility of the Customer to comply with all of the terms and conditions of any Licence Agreement and the Customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of such Licence Agreement.

7.3. Software is warranted in accordance with the terms of any Licence Agreement governing its supply.

## **8. LIMITS OF LIABILITY**

8.1. Escape Technology will indemnify the Customer for direct physical injury or death caused solely either by defects in the Products or by the negligence of its employees acting within the course of their employment and the scope of their authority.

8.2. Escape Technology will indemnify the Customer for direct damage to property caused solely either by defects in the Products or by the negligence of its employees acting within the course of their employment and the scope of their authority. The total liability of Escape Technology under this sub-clause will be limited to £500,000 for any one event or series of connected events.

8.3. Except as expressly stated in this clause and elsewhere in these Terms and Conditions any liability of Escape Technology for breach of the Contract will not exceed, in the aggregate of damages, costs, fees and expenses capable of being awarded to the Customer, the Price.

8.4. Except as expressly stated in these Terms and Conditions Escape Technology disclaims all liability to the Customer in connection with Escape Technology's performance of this Contract or the Customers use of the Products and in no event will Escape Technology be liable to the Customer for special, indirect or consequential damages including but not limited to loss of profits or arising from loss of data or unfitness for user purposes.

## **9. EXPORT AND RE-EXPORT LIMITATION**

9.1. Notwithstanding any other provision here under some or all of the Products may be delivered subject to Escape Technology or its suppliers obtaining the required export licence or other authorisation from the United Kingdom Government or the States Department of Commerce or other agency or department of the United States Government. Regardless of any disclosure made by the Customer to Escape Technology of any ultimate destination of any products, the Customer hereby agrees not to re-export, transmit transfer or engage in or permit oral exchanges or visual inspections of, whether directly or indirectly, any of the Products to any other party without first obtaining the required export licence or other authorisation from the United States Department of Commerce or other agency or department of the United States Government or from the United Kingdom Government.

## **10. CONFIDENTIALITY**

10.1. Each party shall treat as confidential all information obtained from the other pursuant to the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the

Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause). Each party shall ensure that its employees are aware of and comply with the provisions of this Clause. If Escape Technology shall appoint any subcontractor then it may disclose confidential information to such sub-contractor subject to such sub-contractor giving Escape Technology an undertaking in similar terms to the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

## **11. FORCE MAJEURE**

11.1. Escape Technology shall not be liable for failure to perform its obligations in the event such performance is prevented or hindered by reasons of force majeure. Force majeure shall be deemed to mean all causes beyond the reasonable control of Escape Technology (including without prejudice to the generality of the foregoing any delays arising from the act, omission or default of any of Escape Technology's suppliers or sub-contractors), fires or industrial disputes.

## **12. TELECOMMUNICATIONS REQUIREMENTS**

12.1. When computer equipment is connected to a public network, i.e. a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the Customer to ensure compliance with all such regulations.

## **13. LIFE ENDANGERING APPLICATIONS**

13.1. The Products are designed for standard commercial use and are not intended to be installed or used in hazardous or life-threatening environments or for the potentially life-endangering applications, including but not limited to environments or applications involving safety critical systems in the nuclear industry or the control of aircraft in the air. The Customer undertakes not to use or supply the Products for any of these purposes and agrees to indemnify and hold Escape Technology harmless from and against all liabilities and related costs arising out of the use of any of the Products for any of these purposes.

## **14. ASSIGNMENT**

14.1. The Customer shall not assign its rights or obligations under the Contract except with the prior written consent of Escape Technology.

## **15. WAIVER**

15.1. Failure by either party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by that party of any such provisions nor in any way affect the validity of the Contract.

## **16. SEVERABILITY**

16.1. In the event that any or any part of the Contract shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severable from the remaining terms conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

## **17. LAW AND JURISDICTION**

17.1. The Contract shall be subject to and interpreted in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts in all matters arising out of the Contract.

## **18. NOTICES**

18.1. Any notice to be served by either party pursuant to the Contract is to be sent by registered mail or fax to the other parties address as specified in the invoice.

## **19. DATA PROTECTION ACT**

19.1 Escape Technology Ltd uses the services of credit insurance agencies and cheque guarantee companies, therefore, customer details may be divulged as required by such companies. This information will be stored in their databases and may be exchanged with other credit reference agencies.

## **20. SAFETY REGULATIONS**

20.1 It is the responsibility of the customer to check that any goods purchased comply with CE, safety, and any other guidelines, or laws of the land, where the products are to be used.