

Nextus Inc.
TERMS AND CONDITIONS OF SALE

1. (i) In these terms and conditions "Goods" includes the supply of services and the right to use software in accordance with the provisions hereof and "Delivery" includes performance of services, as the context may admit. "Order" means an order accepted by the Company and includes contracts to provide services and also authorised amendments to an Order. "Price" includes mutatis mutandis payment for goods and/or services to time expended, materials used or supplied or on any other basis than fixed price. The "Company" means Nextus Incorporated.

(ii) Estimates or quotations comprise an invitation to treat only and are valid for 30 days. No order will become effective until it is accepted or confirmed on behalf of the Company. Such accepted or confirmed Order will then comprise the Company's entire agreement with the buyer and merge all prior discussion, quotation, offers and understandings.

(iii) These terms and conditions exclude any other terms and conditions inconsistent therewith which a buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the buyer.
2. Save as expressly agreed in writing signed by the Company's duly authorised representative or as provided by clause 4 hereof:
 - (i) If any information supplied by or on behalf of the buyer is insufficient, incorrect, inaccurate, or misleading or if the buyer notifies the Company of any change of requirements in relation to any Order after acceptance thereof by the Company shall be entitled to amend the Price, the terms of payment and the delivery date or delivery schedule as in the circumstances the Company shall consider fair and reasonable. The Company shall as soon as practicable notify the buyer in writing of such amendments. In particular all wasted journeys undertaken by the Company as a consequence of such information or notification shall be charged to the buyer at net cost of labour and transport.
 - (ii) Any variation or amendment requested by the buyer will only be valid and binding on the Company when subject to a change order relating to the Order duly placed and accepted by the Company in writing signed by a duly authorised representative, and subject to appropriate adjustment in Price, delivery dates and other matters.
3. (i) The Company will endeavour to make delivery at the time and in the manner specified in the Order, but any delivery date given is an estimate only and in no circumstances shall time be or be capable of being made of the essence of the contract. Delivery may be made by instalments if the Company so requires.

(ii) If in the Company's opinion any part of the Goods is usable by the buyer independently of other parts the Company shall be entitled to deliver and to be paid for such part alone in the event of the whole of the goods not being immediately available.

(iii) Unless otherwise stated in the Order delivery of Goods shall be at the Company's premises or as specified in the Order.

(iv) Where the Company has undertaken to install the Goods, the buyer shall at its expense provide all such installation space, environment, power points and other facilities as the Company shall have specified in the Order, or shall at any time reasonably require and any failure to do so shall be deemed a failure to accept delivery.
4. It is hereby declared and agreed that it is the practice of manufacturers and/or suppliers of Goods consisting of or incorporating computer software products or copies thereof to retain title to any copyright or other intellectual property rights therein. The Company only transfers to the buyer such title or right to use such goods as the Company may process and no warranty is given in respect of the exercise by any third party of such rights against the buyer save as the herein provided for. Subject to any express licence in writing entered into the buyer with the Company or with the owner of such right the limit of the right or interest in any such software which the buyer shall receive shall be the right or licence to use or enjoy such software as may be permitted or conferred by the Company or other by the owner of such rights and which is either manifest from the software concerned or from any document attached to or accompanying such software or which has been otherwise modified by the Company to the customer in writing.
5. The Price, delivery dates or other terms relating to any Goods are based upon the Company's assessment of materials, labour, and buy-in prices from manufacturers, and are subject to revision in respect of any increased cost to the Company in respect thereof PROVIDED THAT the Company shall give notice of any such intended revision and the buyer may within two days of receiving notice cancel the Order if the Price or delivery time would increase by more than 25% in which case neither party shall be liable to the other except that the Company shall be entitled to payment for the work it has done on a time and materials basis at its usual rates.
6. (i) All Goods will be carefully inspected before delivery to ensure freedom from defects and general compliance with the Order.

(ii) The Company shall have the right whether before or after the date of the Order to alter the specification of the Goods or any part thereof without notice to the buyer provided that such alteration shall not adversely affect the performance of the Goods and for the avoidance of doubt it is agreed that the sale and purchase shall not be a sale and purchase by sample.

(iii) The buyer must examine the Goods immediately upon delivery and within 7 days thereafter notify the Company in writing of any defects, and return any allegedly defective part or parts of the Goods to the Company or as the Company shall direct at the buyer's expense within 18 days of delivery and pay to the Company the costs of any tests carried out of such part or parts (such cost to be certified by the Company) together with costs of return thereof to the Buyer in the event that no liability attaches to the Company in respect of defects. In default the buyer will be deemed to have examined and accepted the Goods.

(iv) In relations to components bought in from outside manufacturers the Company will use all reasonable endeavours to allow the buyer the benefit of such rights against the manufacturers as the Company may have.

(v) The Company shall not be liable for any loss or damage caused by or resulting from any variation (for whatever reason) in the specifications or technical data of any such outside manufacturer or for any loss or damage arising out of curtailment or cessation of supply following such variation.

(vi) Save as set out in the Order in the absence of specific written agreement signed by the Company's duly authorised representative: -

(a) The buyer accepts that he is not relying upon the Company's judgment as to the fitness of the Goods for any specific purpose of the buyer.

(b) The buyer accepts that he is not placing an Order in reliance upon any promise representation or inducement on the part of the Company.

(c) The Company shall not be liable for any consequential loss or loss of profit howsoever arising to the buyer the buyer's staff or any third party.

(d) The Company shall not be liable for any loss, expense or damage howsoever arising to any property of or furnished by the buyer and the buyer must insure it as hereunder provided.

(e) The Company shall not be liable and the buyer shall indemnify and hold the Company harmless against any claim by or any loss or damage to any person or property occasioned directly or indirectly by or arising from the use or operation (otherwise than by the Company) or possession of any part of the Goods and from negligence (including the use of any part of the Goods otherwise than in accordance with the Company's operating instructions and manuals) or default (including any non-compliance with any obligation imposed by these terms and conditions or any delay wrong information or lack of required information) or misuse by or on the part of the buyer or any persons other than the Company and this indemnity shall extend to any costs and expenses incurred by the Company and shall continue in force notwithstanding the termination of any agreement between the buyer and the Company.

(f) Until the expiry of any warranty period granted by the Company or until the payment in full by the buyer of all monies whichever shall be the later: -

(i) the company's representative shall have a full and free right of access to the Goods.

(ii) the buyer shall only permit duly authorised representatives of the Company to effect replacement of parts maintenance and repairs to the Goods.

(iii) the buyer shall properly maintain the installation space and environment for the Goods so as to comply with the Company's specifications.

(iv) the buyer shall use with the Goods only such operating supplies as shall comply with the Company's specifications.

(v) the buyer shall permit operation of the Goods only by such operators as shall be competent and conversant with the Goods and the buyer shall not permit any addition or attachment to or movement of any item or part of the Goods or purport to assign or transfer its interest under any agreement between the buyer and the Company.

(g) The buyer shall not sell lease lend dispose of or otherwise part with the possession of all or any part of the Goods other than in the form in which the same is supplied to the buyer and shall not separate the component parts of the Goods or any part thereof or incorporate the same into any other machine or system without the prior consent of the Company in writing.

(vii) Each exclusion or limitation of liability in this condition (6) or any sub-clause or paragraph thereof: -

(a) Shall be construed as separate, distinct and severable.

(b) Shall not apply to death or personal injury arising from the Company's negligence as defined in the Unfair Contract Terms Act 1977.

7. (i) The Company warrants to the buyer that the Goods will be free from defects caused by faulty materials or poor workmanship for a period of twelve months from the date of delivery.

(ii) Under the warranty the Company will at its option either repair or give a replacement of equivalent quality or issue credit to the buyer for any Goods found to be defective from faulty materials or poor workmanship provided that: -

(a) The Company is notified in writing within seven days of the buyer discovering any such defects and in any event not later than one month from the date of delivery.

(b) The defective Goods are returned to the Company transportation charges being prepaid by the buyer.

(c) Examination by the Company of such Goods shall disclose to its satisfaction that such defects exist and have not been caused by misuse, neglect, accident, improper storage, installation or handling, or by repair or alteration not effected by the company.

(d) The buyer shall pay to the Company the cost (as certified by the Company) of any examination of such Goods as a result of which the Company does not admit liability.

8. (i) The buyer covenants with the Company that it shall forthwith notify the Company of any allegation of infringement of any patent registered design trade mark copyright or other intellectual property right enjoyed by the Company or by the manufacturer or supplier of the Goods or any part thereof.

(ii) The buyer warrants that any design or instruction furnished or given by it does not infringe any patent registered design trade mark or copyright or any such right or interest.

9. (i) VAT and all indirect taxes, duties and levies are unless otherwise shown payable in addition to the price.

(ii) Any sums paid by deposit, retainer or prepayment are not in any circumstances returnable.

(iii) Unless otherwise stated in the Company's invoice payment in full shall be due to the Company seven days after the date of the Company's invoice.

(iv) The time sheets maintained by the Company shall be conclusive of the time or any incidental works thereto.

(v) If the buyer (being a Company) enters into liquidation or receivership or (being an individual) commits an act of bankruptcy, or in either case makes any arrangement with his creditors, or commits a material or serious breach of this agreement (and in the case of such a breach being remediable fails to remedy it within seven days of receiving notice to do so), he will be deemed to have repudiated the contract.

(vi) Interest is payable at 2% per month or part thereof on any late payment.

(vii) The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any Order.

10. (i) All information supplied by the Company in any form (other than information in the public domain) is supplied in confidence and must not be used by the buyer for any other purpose than the Order and must not be disclosed to any other party without the Company's express written consent and then only on conditions equivalent to this condition and with an express notification that the information was provided for the buyer only, and is not intended to be relied upon by any other party.

(ii) The Company may use its connection with the buyer in its advertising of its Goods and services.

11. The Company may assign or sub-contract such part or parts of any Order as it sees fit.

12. (i) The title in Goods including the right to use software shall not pass from the Company to the buyer until the later of delivery and receipt by the Company of payment in full of all sums due or owing from the Company to the buyer on any account. Until title shall have passed the Goods shall be marked as the property of the Company, stored separately not incorporated into any larger assembly or system or disposed of or used in any way by the buyer. If the buyer defaults in the punctual payment of any sum owing to the Company, then the Company shall be entitled to the immediate return of all goods sold by the Company to the buyer in which the title has not passed to the buyer and the buyer hereby irrevocably authorises the Company to recover the Goods and enter any premises of the buyer for that purpose.

(ii) The risk in the Goods shall pass to the buyer on delivery at the Company's works immediately prior to loading into appropriate transport, but if the buyer fails to accept delivery by loading onto such transport when required so to do by these terms and conditions, the risk shall pass at the time the buyer was obliged to accept delivery by such loading.

13. (i) Without prejudice to the Company's rights under clause 2(1) all materials, tools, jugs, fixtures, drawings, artwork, specifications, samples and property provided by the buyer of whatever nature ("Buyer's Property") shall be correct and accurate and satisfactory in all respects and the buyer shall indemnify and save harmless the Company from any damage flowing from breach of the buyer's obligations under this condition, and from any liability and expense howsoever arising from any injury or damage to any third party caused by any Buyer's Property.

(ii) The buyer shall fully indemnify the Company, its employees, agents and representative against any loss, damage, injury or liability howsoever, and any expense incurred in connection therewith, arising to any of the same or to any third party as a result directly or indirectly of the Company carrying out any work at the buyer's premises or with equipment loaned by the buyer.

14. Until the Company has received payment in full for any Goods from the buyer the Company shall have a general and specific lien on all the Buyer's Property in the possession or control of the Company for all monies due to the Company from the buyer.

15. The Company shall not be liable for any loss, damage or expense howsoever arising from any delay or failure or performance arising from circumstances beyond its control including but not limited to earthquake, flood, storm, act of God or of public enemies, national emergency, invasion, insurrection, riots, strikes, picketing, boycott, interruption of services by any public utility or interference from any government agency or official.

The buyer agrees that restrictions may from time to time be imposed by governmental or other authorities have competent jurisdiction in relation to the sale or other disposal or movement of the Goods or other equipment or the provision of technical data in relation to such equipment and that the written authorisation of such authorities may be required before any such equipment or technical data is exported re-exported or released and the buyer covenants with the Company that it shall not export or re-export any equipment system technical data or other goods supplies by the Company outside the United Kingdom without the prior consent in writing of the Company such consent not to be unreasonably withheld but so that the withholding of such consent on the grounds of restrictions imposed as aforesaid shall not in any circumstances be deemed unreasonable.

16. All notices required to be given hereunder shall be given by written notice personally delivered or by telex or by first class recorded delivery mailed to the address of the party as stated in the sales order or to such address as either party may from time to time notify to the other in writing and such notice shall be deemed to have been given immediately on personal delivery of the notice or on despatch of the telex or within forty eight hours of the despatch of a recorded delivery letter and the words "in writing" or "written" whichever is contained in this agreement shall be deemed to include any notification sent by telex or letter.

17. This agreement shall in all respects be governed by and construed in accordance with the laws of Texas.

I have read the conditions of sale and agree that orders placed on Nextus Inc., products supplied or services provided by Nextus Inc. to be subject to the Terms and Conditions above.

Signature

Date: _____

Print Name / Position

for (company):
