

FRUITION SYSTEMS LTD TERMS & CONDITIONS

HERINAFTER REFERRED TO AS FRUITION

1. FRUITION agrees to sell or supply or cause to be supplied and the Purchaser agrees to purchase the equipment and/or the right to use the software and/or the services (such equipment or services being hereinafter called "the system" upon the terms and conditions hereinafter contained and (in the case of a purchase of the right to use software) subject to the terms of the licence that will accompany the software a copy of which licence is available upon request.
2. The price for the system shall be either the price specified on FRUITION'S Sales Order which price is the current price charged by FRUITION on the date thereof for the system or such price as shall be the current list price of FRUITION for the system on the date of delivery thereof to or to the order of the Purchaser whichever shall be higher together (where applicable) with Value Added Tax thereon.
- 3.(a) FRUITION shall deliver or supply the system to the address specified on the FRUITION Sales Order and in addition to the purchase price FRUITION shall be entitled to charge its normal delivery charge or charges details of which are available upon request.
- (b) FRUITION shall endeavour to deliver or supply the system on the date specified in the FRUITION Sales Order but time shall not be of the essence in respect of such delivery or supply and FRUITION shall not under any circumstances be liable for any delay or for any consequence of any delay in the delivery or supply of the system and if any such delay shall occur unless the cause thereof shall render impossible or illegal the performance of the Contract (whereupon the Contract shall be at an end) FRUITION'S period for performing its obligations shall be extended by such period (not limited to the length of the delay) as FRUITION may require to complete the performance of its obligations thereunder.
- (c) If in the opinion of FRUITION part of the system the subject of the FRUITION Sales Order is capable of being used by the Purchaser independently of other parts of the system then FRUITION shall be entitled to deliver or supply and be paid for part of the system without waiting for the whole to be available.
- 4.(a) FRUITION shall not be responsible for the installation or commissioning of the system unless so specified in the FRUITION Sales Order.
- (b) If FRUITION shall agree to install or commission the system then the Purchaser shall at its own expense prior to the anticipated delivery date prepare a site for the system, such site conforming in all respects with the requirements of FRUITION in respect of such sites and the Purchaser indemnifies FRUITION against all and any liability resulting directly or indirectly from the failure of the Purchaser to comply with such requirements.
- 5.(a) Save as expressly hereinafter provided the right to use any software and or property in any equipment forming part of the system shall not pass to the Purchaser until FRUITION shall be paid in full in respect of the whole of the system in accordance with these terms and conditions and the Purchaser shall not be entitled to incorporate any such equipment into any larger assembly or connect such equipment with any other thing until FRUITION has been paid in full as aforesaid provided that if such connection or incorporation is made then property in the whole of such equipment shall remain with FRUITION.
- (b) If the Purchaser shall in the ordinary course of business sell by bonafide sale any such equipment before payment in full has been made to FRUITION then the purchase monies shall forthwith become payable to FRUITION and FRUITION shall be entitled to trace the proceeds of such sale into the hands of the Purchaser and the Purchaser shall hold such proceeds of sale upon trust for FRUITION.
- (c) For so long as the property in any such equipment or the right to use software remains in FRUITION, FRUITION shall have the right by its servants and agents to enter upon any premises where the equipment or software is stored whether by breaking locks or otherwise and take possession thereof and subsequently dispose of all or any part of the system so recovered.
- (d) Nothing in this agreement shall entitle the Purchaser to return the system or any part thereof to FRUITION and FRUITION shall be entitled to maintain an action for the price of the system notwithstanding the property in the system or any equipment forming part thereof may not have passed to the Purchaser.
- (e) Risk in the system and each part thereof shall pass to the Purchaser upon departure thereof from FRUITION'S premises and the Purchaser shall effect all such insurance's as may be prudent.
- (f) The unenforceability of any part of this clause shall not affect the enforceability of the remainder thereof.
- 6.(a) Save as hereinafter proved payment for the system and all delivery and installation charges shall become due and payable to FRUITION on the thirtieth day after delivery or supply of the system as provided in the Sales Order and if all such monies are not paid as aforesaid then the Purchaser shall also pay to FRUITION interest at the rate of five per cent above Midland Bank Plc base rate from time to time both before and at the election of FRUITION after any judgement and moreover if payment in full (including interest) is not made within thirty days as aforesaid then FRUITION shall be entitled without notice to enter upon any premises where the system or any part thereof may be and recover possession thereof and subsequently dispose of any part of the system recovered and shall be entitled to be reimbursed and the costs of obtaining possession as aforesaid and its loss of profit and further if at anytime the Purchaser is liable to pay interest to FRUITION under the provisions hereof then FRUITION shall be entitled to suspend performance of or cancel any other contract between FRUITION and the Purchaser.
- (b) All monies payable hereunder shall immediately become due and payable if the Purchaser shall make any default under the Contract or under any other contract with FRUITION or if any act shall be committed or proceedings commenced relating to or in connection with the solvency of the Purchaser.
- 7.(a) FRUITION warrants where appropriate that the system is free of defects caused by faulty materials or poor workmanship but the Purchaser hereby agrees with FRUITION that it has inspected the system and buys the same as a result of such inspection and agrees that the descriptions, illustrations, specifications, drawings and all other materials contained in or referred to in any catalogue, price list, brochures leaflet or other descriptive matter produced or distributed by FRUITION merely represents the general nature of the system described therein but such descriptions, illustrations, specifications, drawings and other material do not form part of the Contract and the Purchaser agrees that it has not entered into the Contract upon the basis of any such representation but has satisfied itself as to the suitability of the system for the purpose for which the Purchaser intends it to be used.
- (b) The Purchaser hereby agrees with FRUITION that FRUITION shall have the right from time to time whether before or after the date hereof to alter the specification of the system or any part thereof without giving notice thereof to the Purchaser provided that such change shall not adversely affect the performance of the system and for the avoidance of doubt it is hereby agreed and declared that the sale and purchase shall not be a sale and purchase by sample.
- (c) FRUITION shall not be under any liability in respect of any faulty material or poor workmanship unless:
 - (i) FRUITION is notified of such defects in writing within seven days of delivery or supply of the system as provided in the Sales Order and
 - (ii) The defective part of the system is returned at the expense of the Purchaser to FRUITION or to such person as FRUITION may reasonably direct within twenty eight days from the date of delivery of or supply of the system or the relevant part thereof as aforesaid and

- (iii) FRUITION is satisfied upon examination that the defect has not been caused by misuse, neglect, repair, alteration or accident.
 - (d) The liability of FRUITION under the contract shall be limited to the replacement or repair of the system or part thereof or (at the option of FRUITION) the refund of any monies paid by the Purchaser in respect of the system or a fair proportion thereof if only part of the system shall be defective.
 - (e) The Purchaser shall pay to FRUITION the amount of the cost (as certified by FRUITION) of any tests of the system returned by the Purchaser to FRUITION for examination together with the cost of returning such equipment to the Purchaser if upon examination it shall be determined that FRUITION is not liable in respect of any defect in the system.
 - (f) The benefit of this Warranty shall apply only to the Purchaser.
8. FRUITION shall not be liable to the Purchaser if it shall be prevented from performing any of its obligations under the Contract by reason of any cause beyond its reasonable control including (without limitation to the generality of the foregoing) acts of God, war, insurrection, riot, civil commotion, government regulations, embargo, explosions, strikes, labour disputes, flood, fire or tempest.
9. (a) If any action of proceeding is brought against the Purchaser for alleged infringement of any United Kingdom letters, patent registered design, trade mark or copyright by the system or any part thereof supplied hereunder or any allegation of such infringement is made and if the Purchaser gives FRUITION (at FRUITION'S expense) all information, assistance and authority required for those purposes and does not by any act (including any admission or acknowledgement) or omission prejudice the conduct of such defence then:
- (i) FRUITION will at its own election either effect any settlement or compromise which it deems reasonable or at its own expense defend any such action or proceeding and
 - (ii) FRUITION will pay the cost of any settlement or compromise effected by FRUITION of all damages and costs awarded against the Purchaser in any such action or proceeding and
 - (iii) If the system or any part thereof is in such action or proceeding held to constitute infringement and is the subject of an injunction restraining its use or any order providing for its delivery or destruction FRUITION shall at its own election and expense either:
 - (i) procure for the Purchaser the right to retain and continue to use the system or part thereof or
 - (ii) modify the system or parts thereof so that it becomes not infringing or
 - (iii) remove part of the system or any part thereof which is not essential to the operation of the whole system granting the Purchaser a credit therefore not exceeding the written down value of the asset for income or corporation tax purposes.
- (b) FRUITION shall not be under any of the obligations specified in sub-clause (a) hereof in either of the following events:
- (i) Any infringement or allegation thereof based upon the use of the system or parts thereof in combination with equipment or other devices not made nor supplied by FRUITION or if the infringement or allegation thereof is based upon the use of the system or parts thereof with any matter or in any manner for which the system was not designed or
 - (ii) The Purchaser entering into any compromise or settlement in respect of any such action or proceeding without FRUITION'S prior written consent.
- (c) The Purchaser covenants with FRUITION that it shall give immediate notice to FRUITION of any alleged infringement as aforesaid and of any information that it may receive in respect of any infringement of any patent, registered design, trade mark, copyright or other intellectual property right enjoyed by FRUITION or by the manufacturer or supplier of the system or any part thereof.
- 10.(a) FRUITION shall not be liable for any loss, injury or damage or for any consequence of any such loss or otherwise arising out of any cause whatsoever beyond FRUITION'S reasonable control or (except as provided in any maintenance agreement) in respect of or consequent upon any malfunctioning of or defect in or failure of the system or any part thereof or for any loss of the use of any of the system and (in the absence of negligence on the part of FRUITION in installation) any delay in commissioning of the system by FRUITION and FRUITION will not under any circumstances whatsoever be liable for any consequential loss or damage howsoever caused.
- (b) FRUITION shall not be liable for and the Purchaser shall indemnify and hold FRUITION harmless against any claim by or loss of or damage to any person or property directly or indirectly occasioned by or arising from the use or operation (other than by FRUITION) or possession of any part of the system and from negligence (including the use of any part of the equipment otherwise than in accordance with FRUITION'S operating instructions and manuals) or default (including any non-compliance with any obligation of the Contract, any delay, any wrong information and any lack of required information) or misuse by or on the part of the Purchaser or any person or persons other than FRUITION and this indemnity shall extend to any costs and expenses incurred by FRUITION and shall continue in force notwithstanding the termination of the Contract.
- 11.(a) Until the expiry of the warranty period specified herein or until the Purchaser shall have paid in full all monies due hereunder whichever shall be the later:
- (i) FRUITION'S representative shall have full and free right of access to the system
 - (ii) The Purchaser shall not permit persons other than authorised representatives of FRUITION to effect any replacement of parts, maintenance, adjustment or repairs to the system.
 - (iii) The Purchaser shall properly maintain the installation facilities for the system in accordance with FRUITION'S recommendations.
 - (iv) The Purchaser shall use with the system only such operating supplies as meet FRUITION'S specifications.
 - (v) The Purchaser shall not permit any addition or attachment to or movement of any item of part of the system or assign or transfer any of its interest under the Contract.
12. It is agreed between the parties that in the event of the Purchaser repudiating this agreement either before or after delivery of or supply of the system and having no legally enforceable right to do so there shall at the election of FRUITION be payable by the Purchaser to FRUITION in the form of agreed liquidated damages for breach of contract whichever shall be the greater of twenty-five per cent of the total price of the system and such sum as represents the value of the time spent by FRUITION'S employees before FRUITION receives notice of repudiation under an in connection with the Contract and with any associated contract and any payment due under this clause shall be payable within thirty days of such repudiation and if not paid within such period as aforesaid the Purchaser shall in addition pay interest at the rate of two per cent per month after as well as before any Judgement.
13. This agreement shall in all respects be governed by and construed in accordance with the provisions of English Law and the Contract shall be deemed to have been made in Southsea.

14. (a) The Sales Order and these terms and conditions contain the entire agreement between FRUITION and the Purchaser and no variation hereof shall be effective save under the hand of a Director of FRUITION and these terms and conditions shall have effect notwithstanding any contrary or inconsistent provision in any order form or other document not prepared by FRUITION.