Terms and Conditions of Sale – Calon Associates Limited

Definitions

"the Company" , "we" and "us" shall mean Calon Associates Limited and / or one or more of its subsidiary companies, its successors or assignees.

"the Customer" and "you" shall mean the person, firm or company placing the order with the Company.

"Goods" means the goods, and "Services" means the services which the Company is to supply in accordance with these terms.

"Contract" means the Contract for the purchase and sale of Goods and/or Services.

"Background Intellectual Property" means the body of knowledge, software source codes, software libraries, software development tools, designs, drawings and patents existing prior to the commencement of this Contract or otherwise developed outside the scope of this Contract.

"Requirements Specification" means the document setting out the Services to be provided;

"Term" means the period during which Services are to be provided by the Company to the Customer.

Supply of Goods

All Goods are offered for sale subject to availability. Prices charged for Goods shall be as specified in the Company's current price lists, or as quoted in writing.

Unless otherwise quoted in writing, payment is due strictly within 30 days of invoice date for approved account Customers. Non-account Customers must enclose payment with order, unless otherwise agreed in writing.

All Goods remain the property of the Company until full payment for the Goods has been received. After delivery of the Goods to the Customer, the Goods shall be at the Customer's risk. The Customer agrees to take all necessary measures to safeguard and insure the Goods for their full reinstatement value, to promptly disclose to the Company upon request the location(s) where the Goods are stored, and to promptly grant the Company unrestricted access to any premises where such Goods may be stored, for the purpose of repossession, in the event that the Customer fails to make promptly any payment due.

All source code, designs and other intellectual property associated with the Goods to be supplied remain the property of their respective owners and are used under license. Failure to pay promptly any software license fees due may render a software license liable to termination.

Goods are warranted against failure due to manufacturing defects for a period of 24 months from the date of supply, or for such warranty period as may be offered by the ultimate manufacturer of the Goods. Goods which are found by the Company to have failed during the warranty period due to a manufacturing defect will be replaced, repaired or the purchase price credited, at the Company's sole option. Apart from such warranty, all Goods are sold 'as is', without any warranty as to their suitability for use in any specific application. The Customer must satisfy themselves prior to purchase that the Goods are suitable for use in the intended application as the Company will not accept Goods returned for reasons of unsuitability. Since the conditions of installation, configuration and use of the Goods are beyond the Company's control, the Company shall not be liable for any failure of Customer's application or system incorporating the Goods. Authorisation must be obtained prior to returning any Goods. Return shipping costs are the responsibility of the Customer.

Supply of Services

Prices quoted refer to the provision of Services conforming to a Requirements Specification agreed between the Company and the Customer. Any changes to the specification must be agreed between the Customer and the Company. Any additional work undertaken as a result of such changes will be charged at the Company's standard daily rate.

The Company reserves the right to suspend or discontinue the supply of Services if the Customer fails to make promptly any payment due.

The Company may at its sole option provide ongoing system maintenance or technical support services for this project after completion of the Services, for an additional charge and subject to availability of suitable technical resources. Unless otherwise agreed in writing, provision of such services shall be the subject of a separate contract between the Company and the Customer.

Foreground intellectual property developed under this Contract (including all designs and software source codes) remains the property of the Company. Background intellectual property used in the application remains the property of the Company ands its respective supplier(s).

The Company may assign or subcontract all or part of this work to one or more other companies, firms or individuals which, in the Company's opinion, are competent to execute the specified work.

Supply of Web and Information Services

The Customer shall pay promptly any fees due for the supply of Web and Information Services.

Where Web and Information Services are provided using a domain name selected by the Customer, the Customer shall be responsible for registering and maintaining the registration of the domain name. The Customer shall ensure that the use of any selected domain name does not infringe the trademark or copyright of any third party.

The Customer acknowledges and accepts that computer and telecommunications systems are not fault free and may from time to time require periods of downtime (being periods during which the Web and Information Services are not available to the Customer) for the purposes of repair, maintenance and upgrading. Accordingly, the Company does not guarantee uninterrupted availability of the Web and Information Services, but it shall make reasonable effort to minimise any periods during which the Web and Information Services are is not available. The Customer accepts that he or she or it shall have no claim for breach of contract or otherwise in respect of any such period of unavailability.

The Customer accepts and acknowledges that the Company, its officers, employees, agents, representatives of any sort, and advisers shall not in any way be liable for any damages, loss, costs or expenses arising directly or indirectly from the Customer's use of any of the Contents from the Web and Information Services, or its reliance on or use of any of the Contents for any purpose.

If the Customer wishes to terminate this agreement for any reason other than as a result of specific changes in these Terms & Conditions prior to the end of the Term, the Company shall not refund to the Customer any fees paid in advance of such termination, and the client shall be required to pay all remaining charges which fall due under this agreement for the remainder of the Term and other supplemental charges that fall due. If the Company terminates this agreement or if the Customer terminates this agreement as a result of specific changes in the Terms & Conditions contained herein, which should be identified in writing, the Company shall refund to the Customer the pro-rata portion of the pre-paid fees attributable to services not yet rendered as of the date of termination.

General

These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Customer, whether in negotiation or at any stage in dealings between the Company and the Customer with reference to the Goods to which this Contract relates. Unless otherwise specifically agreed in writing these terms and conditions shall be incorporated in every offer quotation acceptance and contract for the sale or supply of goods or services by the Company and together with the order to which they relate constitute the entire Contract between the Company and the Customer. The Company shall not be bound by any standard or printed terms furnished by the Customer unless specifically agreed in writing.

Unless otherwise specified in writing, all prices are quoted in pounds sterling, F.O.B. Runcorn, Cheshire and are valid for thirty days from the date of quotation. All prices are subject to VAT where applicable.

In the case of an exchange rate fluctuation or increase in material or labour costs of greater than 2% occurring between the date of quotation and the date of delivery, the Company shall have the right (at its sole option) to amend the prices invoiced accordingly. Orders placed by the customer which are not called off

Payment terms are as stated above or as quoted in writing. The Company reserves the right to review from time to time and amend without notice the payment terms and/or amount of credit offered to the Customer.

Where the Customer is a limited company and the Goods or Services are supplied on credit terms, the Director or other officer of the Customer signing the Application for a Credit Account agrees by his / her signature to make payment of any outstanding amount on demand if the Customer shall fail to make due payment(s).

All orders are subject to written acceptance by the Company and no Contract shall be concluded until such confirmation is given or the Customer's order is otherwise accepted. Unless otherwise stated in writing by the Company each order when accepted shall constitute a separate Contract. An order consisting of more than one line item (whether as set out in the Customer's order or by reference to a quotation issued by the Company containing multiple line items) is deemed to be divisible and the Company may supply and invoice for any part of the order independently of any other. In particular, where an order includes the supply of both Goods and Services, the Customer accepts that the Company may supply and invoice the Goods independently from the supply and invoice of Services, or vice versa.

Cancellation of the order following acceptance by the Company but prior to delivery shall render the Customer liable to pay a cancellation fee equal to the greater of either 15% of the order value, or the proportion of the total order value (at the prices quoted) expended or committed by the Company on Goods, labour and materials in connection with the order up to the point of cancellation.

In the event that any invoice balance shall be outstanding 14 days after the due date, any and all sums owed by the Customer to the Company shall become due for immediate payment and the Company may suspend or determine the Contract or any unfilled part thereof, without penalty to the Company. Any overdue balances may incur a late payment charge of 2% of the outstanding balance per month. The Customer agrees to pay any such charges, together with any costs incurred by the Company in recovering any overdue payment, whether before or after judgement.

Delivery times specified are approximate only. The Company will use its best efforts to ensure that the product(s) are delivered and / or services performed within the specified time scale, but shall not be liable for any failure to meet any specified or preferred delivery date.

The Customer shall not assign its interest in the Contract without the written consent of the Company. The Company may assign its interest in the Contract or in any part thereof.

The Customer warrants that it has complied with every applicable lawful requirement or instruction and (without Limitation) that it has obtained every necessary licence permit or authority that may be required in connection with the supply of Goods and Services to be carried out hereunder.

The Customer shall indemnify the Company for any loss damage expense or liability in any suit or proceeding based upon any claim for the infringement of Intellectual Property Rights brought against the Company resulting from the Company's compliance with the Customer's designs or specifications and for any such infringement involving any marking or branding applied by the Company at the request of the Customer

The Company will exercise reasonable skill and care in the performance of Services. However, the Company shall not be liable for any losses or damage, whether direct or consequential, arising directly or indirectly from the use of any Goods supplied or Services performed.

The Company shall not be liable to the Customer for any failure to fulfil its obligations under the Contract if such failure is caused by circumstances beyond its reasonable control. In such event the Company undertakes to notify the Customer as promptly as possible of any such failure.

Failure by the Company to fully exercise any provision in these terms and conditions or to take advantage of any of its rights hereunder shall not be construed as a waiver of such provision or the relinquishment of such right.

If any part or clause of this Contract shall be found to be unenforceable, this shall not prejudice the Company's right to enforce the remaining clauses of this contract.

Limitation of Liability

All conditions, terms, representations and warranties relating to the Goods and or services supplied under this agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to the following:

Nothing in these terms and conditions shall exclude the Company's liability for death or personal injury resulting from our negligence.

The Company's total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the goods and services shall be limited to the charges paid by you in respect of the goods and services which are the subject of any such claim.

In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever. The Customer shall indemnify the Company against all damage or injury to any person firm or company and against all actions claims demands costs charges and expenses (including costs charged on *a* reasonable basis for the time of the Company's executives) for which the Company may become liable in respect of the Goods sold or Services supplied under a contract except to the extent admitted expressly in these Conditions and unless such damage or injury shall have been a direct result of the negligence of the Company and can be attributed to no other cause (whether in whole or in part).

Jurisdiction

The performance of this contract shall be governed by the laws of England and the English Courts shall have sole jurisdiction. E. & O. E. [v9.97]