

Invictus Technology Ltd
Terms and Conditions for the Supply of Goods & Services
Prepared for "Company Name"

1 Interpretation

1.1 In these Conditions:-

"Customer"	means the person, firm, organisation or company named on the Proposal to whom the Company has agreed to provide the Specified Service in accordance with these Conditions;
"Conditions"	mean these terms and conditions;
"Contract"	means the contract for the provision of the Specified Service created by the Customer's acceptance of a Proposal subject to these Conditions;
"Price"	means the price detailed in the Proposal exclusive of VAT, plus any Additional Charges as referred to at Condition 7 hereto;
"Company"	means Invictus Technology Ltd whose registered office address is at 30A The Green, Birmingham. B38 8SD;
"Goods"	means all goods supplied by the Company as part of the Specified Service;
"Project Schedule"	means the schedule provided by the Company which details the delivery of the Specified Service by the Company varied by any Change Confirmation;
"Proposal"	means any written proposal estimate or quotation submitted to the Customer by the Company prior to the Contract being made;
"Specified Service"	means the Goods and services to be provided by the Company to the Customer detailed in the Proposal.
"Working Days"	means any day Monday to Friday excluding statutory and public holidays.

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2. Supply of the Specified Service

- 2.1 The Company shall provide the Specified Service to the Customer subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the Company and the Customer.
- 2.3 The Proposal shall remain valid for a period of 30 days unless stated otherwise in the Proposal but shall not constitute an offer from the Company. The Contract shall only be made once the Company acknowledges the order placed by the Customer in writing subject to these Conditions in accordance with the provisions of Condition 13.2.
- 2.4 Where the Company confirms the details of the Contract in writing, the Customer shall be under a duty to bring any discrepancies to the notice of the Company immediately, and if the Customer fails to do so the Customer shall be bound by the details set out in such written confirmation.
- 2.5 The Company may at any time without notifying the Customer make any changes to the Specified Service which does not materially affect the nature or quality of the Specified Service or which does not significantly affect the Goods.
- 2.6 The Company's employees or agents are not authorised to make any representations concerning the Specified Service unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. Nothing in these Conditions excludes the Company's liability for fraudulent misrepresentation.
- 2.7 Where the Customer delays the Project Schedule or other performance of the Contract by more than 5 Working Days, the Company may by notice to the Customer elect to treat the Contract as having been suspended by the Customer and the provisions of Condition 12.3 below shall apply.

3. Change Control

- 3.1 If the Customer wishes to amend or vary the scope of the Specified Service after the Contract has been formed it must notify the Company in writing of its requested amendments and variations ("the Change Request").
- 3.2 Within 7 Working Days of receipt of the Change Request the Company will forward to the Customer in writing the details of the impact (if any) on the Price, the Specified Service and Project Schedule and any other effect which the Company considers the amendments or variations in the Change Request will have ("the Change Specification"). Until such time as the parties agree a Change Request, the Contract shall be deemed to be suspended.
- 3.3 Any agreement on the proposed amendments or variations set out in a Change Request or Change Specification shall be recorded in an agreed contract amendment and signed by both parties ("the Change Confirmation") whereupon the Specified Service, Project Schedule and Price shall be deemed to be amended or varied to the extent set out in the Change Confirmation.

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3.4 If the parties are unable to agree a Change Confirmation within 14 Working Days of the Change Request either party may within 2 Working Days thereafter terminate the contract by notice in writing to the other party and the provisions of Condition 12.3 shall apply.

4. Delivery

4.1 If the Customer requires delivery of the Specified Service, the Company shall reasonably endeavour to deliver the Specified Services to the Customer at such address notified by the Customer to the Company on the date indicated by the Company or the date agreed by the parties, but the time of delivery shall not be of the essence and if despite those endeavours, the Company is unable for any reason to fulfil any delivery of the Specified Service on the date so indicated, the Company shall not be deemed to be in breach of Contract nor have any liability to the Customer.

4.2 Notwithstanding Condition 4.1 above, in the event that the parties agree that time of delivery shall be of the essence and the Company fails to deliver the Specified Service for any reason other than any cause beyond the reasonable control of the Company or the Customer's fault, and the Company is accordingly liable to the Customer the liability of the Company shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of a similar service to replace the Specified Service not delivered which is in excess of the Price, subject always to the limitations on liability as detailed in Condition 11.4.

4.3 Where delivery of the Specified Service is to be made in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any more of the instalments in accordance with this Contract or any claim by the Customer in respect of any one or more of these instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

4.4 If the Customer fails to take any delivery or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:-

4.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

4.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expense) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

5. Export Licence Control

5.1 Many Goods sold by the Company are subject to export licence control. The Customer undertakes to ensure that they comply with all laws in force at the time when reselling the Goods, particularly the Export of Goods Control Order 1987.

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6. Risk and Title

6.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery (whether delivery takes place at the Customer's premises or by way of collection by the Customer from the Company's premises), or if the Customer wrongfully fails to take delivery, the time when the Company has tendered delivery of the Goods.

6.2 Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Customer until the Company has received in cash or cleared funds payment in full for:-

6.2.1 all Goods delivered to the Customer under this Contract; and

6.2.2 any other goods delivered to the Customer under all other contracts between the Company and the Customer for which payment of the full price of the goods has not be paid.

Payment of the full price of the Goods shall include the Price and any amount of any interest, Additional Charge or other sum payable in accordance with Condition 7 below.

7. Price

7.1 The Customer shall pay the Price detailed in the Proposal for the provision of the Specified Service, in the event that any instructions supplied by the Customer are; incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or are provided to the Company too late to enable it to meet a deadline, and result in additional work being undertaken over and above that which would otherwise be required, or financial penalties are being incurred by the Company, the Company reserves the right to charge the Customer to compensate it for such additional work and financial penalties (“Additional Charge”).

7.2 The Company reserves the right to charge the Customer for the cost of carriage and/ or other expenses incurred by the Company in relation to the delivery of the Specified Service to the Customer (“Additional Charge”).

7.3 The Price and any other charges, quotations or estimates given by the Company shall be exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.

7.4 The Company shall be entitled to invoice the Customer for the Price and Additional Charge (or part thereof) at:-

7.4.1 the point of risk transfer in accordance with Condition 6.1; or

7.4.2 such time as specified within the payment plan detailed within the Proposal.

7.5 Unless otherwise stipulated in the Proposal or the Project Schedule, any such invoice shall be due and payable without any set-off or other deduction within 30 days of the invoice date.

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- 7.6 If the Customer shall fail to make payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
- 7.6.1 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above the base rate of the Company's usual bank current from time to time; and
 - 7.6.2 withhold delivery of any Goods; and
 - 7.6.3 suspend the performance of the Specified Service
- until payment in full is received.
- 7.7 Notwithstanding the provisions of Condition 7.6 above, in the event that the Customer fails to make payment for the Specified Service together with any Additional Charges by the due date, all invoices issued to the Customer by the Company in respect of any Specified Services sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Company to the Customer in respect of the same shall be cancelled forthwith.
- 7.8 The time of payment of the Price shall be of the essence of the Contract.

8. Timing

- 8.1 The Project Schedule shall be prepared by the Company having regard to the different stages required to carry out the Specified Service. No alterations to the Project Schedule will be accepted by the Company unless fully negotiated and agreed in accordance with Condition 3.

9. Intellectual Property Rights in Goods

- 9.1 The Customer acknowledges that any and all intellectual property rights subsisting in or used in connection with the Specified Service, more particularly, in connection with the Goods, including all documentation literature and manuals relating thereto, are and shall remain the property of the Company or such other third party supplier to the Company as the case may be and the Customer shall have no property rights therein, unless the same shall be granted in writing by the Company or said third party.

10. Inspection of Goods

- 10.1 The Customer shall inspect the Goods immediately upon delivery.
- 10.2 If it is apparent on delivery that the Goods are defective or damaged the Customer shall notify the Company by telephone within 48 hours of receipt, and confirm in writing detailing the serial number, details of the defect and delivery date. Condition 11.3 shall then apply.
- 10.3 In the event of a defect which is not apparent on delivery the Customer shall inform the Company of such defect immediately on discovery but in any event within 10 Working Days of delivery. Condition 11.3 shall then apply.

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- 10.4 The Customer shall not be entitled to reject the Goods where the alleged defect or breach of Contract is so slight that it would be unreasonable for the Customer to reject the Goods.
- 10.5 Upon request from the Company, the Customer shall return the Goods which are defective if notification is given in accordance with Conditions 10.2 or 10.3 above.
- 10.6 All returned Goods must be in the same condition as they were on delivery to the Customer and complete with all accessories, cables, manuals and all original packaging.
- 10.7 The reasonable cost of packaging and carriage of returned Goods incurred by the Customer will be reimbursed by the Company if the Goods are found to be defective.

11. Warranties and Liability

- 11.1 Subject to the Conditions set out below and subject to the proviso that the Company shall be under no liability arising from the Customer's failure to follow the Company's or the manufacturer's instructions (whether oral or in writing), inappropriate storage, improper use, inadequate maintenance or misuse of the Goods, the Company warrants that:
- 11.1.1 the Goods will correspond with the Company's specification for them on delivery; and
- 11.1.2 subject to the Customer complying with its obligations and warranties in these Conditions, the Specified Service will be performed by the Company with reasonable care and skill; and
- 11.1.3 where practicable, the Company agrees to assign to the Customer the benefit of any manufacturer's warranties granted in relation to the Goods.
- 11.2 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law save that nothing in these conditions shall affect a consumer's statutory rights.
- 11.3 Where any valid claim in respect of the Specified Service is made by the Customer the Company shall be entitled to replace or repair or correct the relevant part of the Specified Service at the Company's cost or, at the Company's sole discretion, refund to the Customer the price of the relevant part of the Specified Service (or a proportionate part of the price), and the Company shall have no further liability to the Customer. For the avoidance of doubt, nothing in this sub-condition shall limit the Company's liability for death or personal injury.

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- 11.4 The Company's liability in connection with the sale of the Goods and the provision of the Specified Service to the Customer shall be as follows:-
- 11.4.1 in respect of death or personal injury, the Company's liability shall be unlimited;
- 11.4.2 in respect of physical damage to or loss of the Customer's tangible property to the extent that it results from the wilful default or negligence of the Company, its employees, agents or contractors, the Company's liability shall be limited to an amount of £5,000,000 in respect of each incident or series of connected incidents;
- 11.4.3 in respect of all other direct loss (whether in contract, tort, or otherwise) the Company's total liability shall not exceed £ 2,000,000; and
- 11.4.4 in respect of any loss goodwill or for any type of consequential, special or indirect loss or damage, the Company's liability shall be nil.
- 11.5 The Company shall not be liable to the Customer nor be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any obligations of the Company in relation to the Specified Service, if the delay or failure was due to any cause beyond the reasonable control of the Company.
- 11.6 Any valid claim by the Customer under this Condition 11 in respect of any Specified Service shall not entitle the Customer to withhold or delay payment in respect of any other Specified Service in respect of which no such claim has been made whether or not those Specified Services form part of the same consignment.

12. Termination

- 12.1 Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract if:-
- 12.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.1.2 an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Customer; or
- 12.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 12.1.4 the Customer has not paid the Price and/or Additional Charges (or part thereof) in accordance with Condition 7 and such amount remains outstanding after 30 days of the invoice due date; or
- 12.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

and if the Specified Services have been delivered but not paid for, the Price together with any Additional Charges shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

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12.2 Where the Contract is terminated under Condition 12.1, the Customer shall indemnify the Company 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 the Company as a result of cancellation.

12.3 Except where this Contract is terminated in accordance with Condition 12.1, in the event of termination of this Contract the Customer shall become liable to pay:-

12.3.1 a part of the Price attributable to the Specified Services undertaken; and

12.3.2 any Additional Charges reasonably and properly incurred

up to and including the date of the termination.

13. General

13.1 These Conditions together with the Proposal constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and any such notice shall be deemed served on the next working day following posting where the recipient's address is in Great Britain, or on the seventh working day following posting where the recipient's address is outside of Great Britain. Any notice sent by facsimile or delivered personally shall be deemed served on successful transmission of the facsimile or at the time of personal delivery, provided the same occurs on a working day. Any notice sent by electronic mail shall be deemed served 24 hours after being sent to the correct electronic mail address of the addressee provided the same occurs on a working day.

13.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.5 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce a term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13.6 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

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