

# Lodge Information Services Limited

*General Terms of Trade – Correct as of 1<sup>st</sup> January 2011*

## 1. Definitions

**1.1 LIS** means Lodge Information Services Ltd, Slough Lane Danbury Essex CM3 4LX

**1.2 The Company** means LIS Ltd

**1.3 Conditions** means the terms and conditions for supply of goods or services set out in this document and any special terms and conditions agreed in writing by LIS

**1.4 Customer** means any person, firm or company who requests the Company to supply goods or services.

**1.5 Goods** include but are not limited to any items, products, hardware, software or licenses with or without media, whether owned outright or on a time limited or subscription basis resold by the Company.

**1.6 Services** include but are not limited to telephone advice and support, on or off-site support technician's time, software development and support, website design and maintenance, systems monitoring and management, consultancy, design and project management whether offered on a time-chargeable or fixed price subscription basis.

**1.7 Control Panel** means any system which LIS may at its sole discretion provide for the Customer to directly control or report on the provision of Goods or Services through an automated or semi-automated interface.

**1.8 The Term** of any subscription means the period of twelve (12) months commencing from earliest of the date of payment of the relevant fee or the first delivery of the service unless agreed otherwise in writing.

**1.9 Working Day** means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday

## 2. Conditions Applicable

**2.1** Except as provided for in any addendum for a specific product these Conditions apply to, and are incorporated in, all contracts for Goods and or Services supplied by LIS to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the customer may purport to apply under any order confirmation of order or similar document.

**2.2** These conditions shall supersede all earlier conditions of the Company and shall take precedence over any conditions of the Customer and shall not be varied by the Customer without the written consent of a Director of the Company.

**2.3** All orders for Goods or Services from LIS shall be deemed to be an offer by the Customer to buy the Goods or use the Services pursuant to these Conditions

**2.4** Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a Director of LIS.

**2.5** LIS may at its sole discretion modify these Terms of Trade at any time without notice. The Customer may find details of all LIS products and services and updates to these Conditions via the Company website at [www.lisltd.co.uk](http://www.lisltd.co.uk) or they may be sent out on request.

## 3. Services

**3.1** Subject to clauses 7.2 and 18 of these Conditions LIS undertakes to provide Services between the hours of 9am to 5pm on each Working Day during the Term.

**3.2** Whilst LIS shall endeavour to respond to any request by the Customer as soon as practically possible, LIS shall be under no obligation to supply any Goods or Services within any specified period of time.

## **4. Delivery**

**4.1** Any delivery dates quoted for Goods or Services whether verbally or otherwise are estimates only and in regard to any such date, time shall not be of the essence.

**4.2** Delivery of Goods to the customer's address or any other place stipulated shall constitute Delivery and the risk therein shall pass on such delivery to the customer.

**4.3** Where additional services (such as pre-installation) have been requested by the customer, delivery of Goods to the Company's engineers at LIS' offices or elsewhere shall constitute Delivery and the risk therein shall pass on such Delivery to the customer.

**4.4** The Company shall be entitled to make partial deliveries or deliveries by instalments and these conditions shall apply to each partial delivery.

## **5. The Title of Goods**

**5.1** Immediately upon Delivery to the Customer of any Goods agreed to be sold by the Company to the Customer, the Customer shall become the bailee thereof, and the Customer shall store such Goods in a suitable and separate place where they can be readily identified as property of the Company. The legal title thereto shall be retained by the Company as bailor.

**5.1.1** The risk in the Goods shall pass from the Company to the Customer upon delivery of such goods to the Customer. However, 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 cleared funds payment in full for all Goods delivered to the Customer under this and all other contracts between the Company and the Customer.

**5.1.2** Payment of the full price of the Goods shall include the amount of interest or other sum payable under the terms of this and all other contracts between the Company and the Customer under which Goods or Services were delivered.

**5.1.3** The Customer grants to the Company an irrevocable licence to enter upon its premises for the purpose of inspecting the Goods, taking an inventory and repossessing the same, should the Customer be in breach of any contract entered into between the Company and the Customer.

## **6. The Price**

**6.1** Unless otherwise stated any prices quoted by the Company are exclusive of value added tax and any other taxes, exclusive of carriage, packing and insurance, exclusive of any release certificates and the Company shall charge extra in respect of these items.

**6.2** Prices quoted for Goods are those current at the time of quotation and the price payable by the customer shall be that which is current at the time of delivery to the customer.

**6.2.1** Where agreed volumes are not adhered to by the Customer, the Company reserves the right to amend the price structure in accordance with the quantities delivered.

**6.3** Prices quoted for subscription Services are calculated by LIS upon the basis of information supplied by the Customer to LIS of the computer systems and software used by the Customer and the expected use of Services.

**6.3.1** In the event that the Customer's use of subscription Services exceeds the expected use of Services then LIS may serve one (1) months notice in writing upon the Customer varying the Price and such varied Price shall be paid by the Customer to LIS within seven (7) days of the expiry of such notice

**6.3.2** If the Customer is unwilling to accept the variation of Price pursuant to clause 6.3.1 of these Conditions then the Customer shall inform LIS of this in writing within seven (7) days of receipt of the notice of variation of Price.

**6.3.3** LIS may elect within 1 month of receipt of the Customer's refusal of the variation of the Price to terminate the subscription Service agreement when an appropriate portion of the Price shall be refunded to the Customer apportioned on a monthly basis less administration charge of ONE HUNDRED POUNDS (£100.00) plus VAT

**6.3.4** If LIS has not received either a refusal of the variation in Price or payment of the varied Price in cash or cleared funds by the deadlines set out in 6.3.1 or 6.3.2 respectively, LIS may elect to temporarily suspend or terminate the subscription Service agreement at its sole discretion.

## **7. Payment**

**7.1** The price is payable on demand and is dependent on the type of Customer account in force.

**7.1.1** Pre-paid Account: All invoices must be paid in full before the Goods are despatched or Services are performed.

**7.1.2** COD Account: All invoices must be paid in full upon Delivery.

**7.1.3** Credit Account: All invoices must be paid not later than 30 days from invoice date or by the due date on the invoice, which ever is sooner.

**7.2** The Company reserves the right to suspend delivery of Goods or Services where payment is not received in accordance with clause 7.1 or in accordance with any alternative terms of payment agreed in writing.

**7.2.1** Where payment is not made in accordance with clause 7.1, the customer shall pay interest on any unpaid amounts calculated at 5% above NatWest Bank PLC's base rate for the time being in force calculated on a daily basis.

**7.3** No cash or other discounts will be allowed unless agreed in writing by a Director of the Company.

**7.4** If the Company is able to deliver some Goods or perform some Services subject of an agreement but unable to deliver all such items due to any cause, the customer shall pay for such items as are delivered or performed.

## **8. Suspension of Supply**

**8.1** LIS may suspend the supply of Goods or provision of Services where the cause of the suspension is beyond the control of LIS including, without limitation, breakdown of plant or machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, hardware or software incompatibility, failure of suppliers' technical support, act of war (whether declared or not), act of God, or any law or regulation of any government or any local or municipal authority.

**8.1.1** LIS will not be deemed to be in breach of any of its obligations or otherwise be liable to the Customer due to any delay in performing or any failure to perform any such obligations by

reason of any cause detailed in 8.1. If any such event continues for more than 28 days the Company may terminate the agreement forthwith by written notice to the Customer without prejudice to the accrued rights of either party.

**8.1.2** In the event that LIS suspend the provision of prepaid subscription based Services in accordance with clause 8.1 the Customer may at LIS sole discretion be offered an extension of the Term for the same period as the period of suspension.

## **9. Specifications**

**9.1** All drawings, descriptive weights, dimensions, specifications and the descriptions and illustrations contained in sales literature, reports and price lists are approximate only and shall not form part of any agreement. In addition, technical documents issued either before or after the conclusion of any Agreement for the use or information of the Customer and such other information as may be supplied to the Customer including specifications shall not be copied, reproduced or communicated to any third party without the Company's prior written consent.

## **10. Customer Obligations**

**10.1** The Customer warrants that they meet the following criteria:-

**10.1.1** Individual Customers must be at least 18 years of age.

**10.1.2** Persons ordering Goods or Services must have full power and authority to accept these terms and any relevant addendums and to perform their obligations hereunder.

**10.2** The Customer must ensure that all information that the Customer has provided, and may from time to time provide, to LIS is, and unless written notice to the contrary is delivered to LIS, shall continue to be, true and complete. Any falsifying of information provided will be the Customer's sole responsibility under law.

**10.3** The Customer must provide LIS with all reasonable courtesy, information, cooperation and facilities and access to allow LIS to perform any Services as agreed, failing which LIS shall not be obliged to perform such Services.

**10.4** The Customer must ensure that all software present on their machines is fully and properly licensed and that all use of their computer systems complies with the applicable regulatory and legal requirements.

**10.4.1** LIS has no wish to be associated in any way with a Customer who persistently and knowingly breaks these rules. Accordingly, where such breach is identified, the Customer will be advised and assisted to return to compliance. If the Customer is unwilling or unable to redress the problem LIS may at its sole discretion terminate any or all contracts with the Customer with immediate effect.

**10.5** The Customer is responsible for arranging adequate insurance for any equipment which is handed over to the care of the Company whilst in transit to and from LIS and whilst on LIS premises.

**10.6** The Customer acknowledges that all LIS Staff and subcontractors are contractually bound not to enter into a contract of any sort directly or indirectly with the Customer on their own account or on the account of any entity except LIS in which they have a beneficial interest during the period of their employment or contract with LIS and at least 12 months thereafter.

**10.7** The Customer agrees not to approach, engage or enter into a contract of any sort with any LIS staff or subcontractors or LIS staff or subcontractors whose term of service ended in the

preceding 12 months, directly or indirectly without the express written permission of a Director of LIS for twelve months after the termination of any contract with the Company.

**10.8** The customer is advised that some or all communication with LIS may be monitored for training or quality control purposes.

**10.9** The Customer agrees to defend, indemnify and hold LIS harmless from and against any suit or proceedings brought against LIS that arises from any illegal activity by the Customer or any associated person, breach of their obligations, representations or covenants under any and every contract with LIS.

**10.10** LIS may at its sole discretion issue the Customer with a user name and password for accessing a Control Panel.

**10.10.1** It is the Customer's responsibility to ensure that they are kept confidential, secure and are used in accordance with all relevant instructions.

**10.10.2** The Company shall be entitled to assume that actions taken or instructions issued in systems secured by the Customer's user name and password are fully known to and authorised by the Customer.

**10.10.3** If it comes to LIS notice that there has been or is likely to be a breach of security or misuse of the Control Panel, LIS may change the password and notify the Customer of this or LIS may suspend access to the Control Panel.

**10.10.4** If the Customer becomes aware that any username or password is known by someone not authorised to use it, or if any password is being or is likely to be used in an unauthorised way, it is the Customer's responsibility to inform LIS immediately.

## **11. Transfer of Staff**

**11.1** The Customer recognises that an ongoing contractual relationship exists between the Company and its staff and agrees not to interfere with or disrupt this relationship while said staff are on assignment to the Customer.

**11.2** The Customer further recognises that the Company incurs significant costs in recruiting and training staff and that in the event of an employee or subcontractor leaving the Company and within 12 months working for the Customer directly or indirectly, on a permanent, contract, full, part-time or any other basis, compensation for this cost is to be paid. Unless negotiated in advance between the Customer and the Company and subject to an overall minimum of £1000, the amount of compensation shall be the greater of:-

**11.2.1** The value of any fees earned or paid by the Customer to the employee or subcontractor or any entity in which they have a beneficial interest, in the 12 months prior to them leaving the Company and the 12 months after they left the Company;

**11.2.2** The total of all fees paid to the Company by the Customer for the services of the employee or subcontractor in the 12 months prior to them leaving the Company;

**11.2.3** Any amounts paid by LIS to the employee or subcontractor during the 12 months preceding their departure from the Company.

**11.3** The Customer shall supply on request a detailed breakdown of their dealings with the employee or subcontractor and the Company shall raise invoices for the amounts as specified above.

**11.4** In the event that the Customer shall fail to supply information as reasonably requested or should the information prove to be materially inaccurate, the amounts given in 11.2.3 will apply and be invoiced accordingly.

## **12. Telecommunications Costs**

**12.1.1** In the nature of Services provided by LIS the Customer may incur telecommunications charges during the normal course of using the Services. These may be as a result of automatic or manual computer to computer communications as well as voice, fax or other calls. The Customer accepts liability for all such charges and assumes full responsibility for controlling and monitoring them as they see fit.

**12.2** Where the Customer's equipment includes automatic dialling equipment, there is always a risk of unexpectedly high call charges due to a variety of conditions. The Customer accepts full liability for these charges howsoever caused and agrees that these form part of the liability implicit in this type of system. LIS undertakes to inform the Customer of any such condition as soon as practical once it becomes apparent, and to minimise any such costs.

## **13. Renewals**

**13.1** Certain Goods and Services, for example domain names or software subscriptions, require renewal through third party suppliers. The invoices for such Goods and Services will specify the expiry date and the Customer shall ensure they advise LIS in good time of their wishes at renewal. LIS will use its best endeavours to remind the Customer in advance of such expiry but shall be under no obligation to do so.

**13.2** In the absence of any specific instruction from the Customer to either renew or cancel a product by the due date LIS may at its sole discretion elect to renew, cancel or allow the subscription to lapse.

**13.3** Where LIS invoices the Customer in advance in respect of the renewal either with or without instruction to renew from the Customer, LIS shall be under no obligation to process the renewal unless and until the invoice is settled in full.

**13.4** Where LIS reasonably elects to renew a product on behalf of the Customer even without specific instruction to do so, the Customer shall meet the charge for the renewal when invoiced;

**13.5** Where LIS elects to cancel or not to renew the product on behalf of the Customer where no specific instruction for renewal has been received or where no payment has been made or for any other reason, the Customer accepts full liability for any and all consequences of their failure to instruct LIS or to settle the invoice in respect of the renewal.

## **14. Customer Equipment**

**14.1** LIS may accept Customer equipment on its premises for storage, operation, repair or other purposes. The Company shall have a general lien on any and all Customer equipment left with the Company for all monies owing to the Company by the Customer on any contract.

**14.2** Customer equipment which is left with LIS for a period exceeding 30 days may at LIS sole discretion incur a storage fee which LIS may invoice the Customer for.

**14.3** If no instruction to the contrary is given in advance then any parts removed from the Customer equipment in course of repair or otherwise shall if not claimed within 30 days be deemed wholly abandoned to the Company accordingly.

**14.4** Customer equipment which is left with LIS for a period exceeding 60 days without agreement in advance shall be deemed abandoned and become the Company's absolute property accordingly. Whilst LIS shall use its best endeavours to contact the Customer in this

circumstance, it is the Customer's sole responsibility to ensure their equipment is claimed from LIS.

**14.4.1** Abandoned equipment may be sold, broken, or reused at LIS sole discretion.

**14.4.2** If the Customer has a debt to LIS then any proceeds realised (after costs) by the disposal of the Abandoned equipment will be used to reduce the amount of that debt.

**14.4.3** If LIS incurs any costs for the disposal of the abandoned equipment including but not limited to waste handling charges, labour for removing existing data etc then these will be added to the Customer's debt.

## **15. Limitation of Liability**

**15.1** LIS accepts liability for any private property loss or damage, death or personal injury caused by the negligence or deliberate misconduct of its employees, agents or subcontractors. Except for death or personal injury this liability is limited to the lesser of £250,000 or the Price paid.

**15.2** Other than as accepted in clause 15.1, LIS shall not be liable to the Customer for any loss or damage suffered by the Customer howsoever caused through the supply of Goods or use of the Services or as the result of any failure to supply the Goods or Services or interruption to supply of the Services or suspension of the Services. LIS specifically does not accept liability for, but not limited to, indirect or consequential loss; loss of business profits, salary, revenue or savings; increased operating costs, loss avoidable by the Customer through reasonable conduct including backing up all data and following LIS' reasonable advice generally;

**15.3** The value of any claim against LIS by the Customer shall not exceed the Price paid.

## **16. Termination**

**16.1** LIS shall be entitled to immediately terminate any agreement by serving written notice on the Customer upon the occurrence of any of the following events:

**16.1.1** default in payment by the Customer of any sum within seven (7) days of the due date

**16.1.2** failure on the part of the Customer to perform its obligations

**16.2** LIS shall be entitled to terminate any contract at its sole discretion and without disclosing any reason by service upon the Customer of one (1) months notice in writing of termination

**16.2.1** In the event of termination of any prepaid contract for subscription Services by LIS in accordance with clause 16.2 a proportionate part of the Price calculated by reference to the unexpired period of the Term shall be repaid to the Customer

## **17. Notices**

**17.1** Any notice to be served by LIS on the Customer shall be deemed to have been duly served if sent by e-mail or first class post to the Customer at their last known address.

**17.2** Any notice to be served on LIS should be served by sending said notice by post to the Company's registered address or by email to [accounts@lisltd.co.uk](mailto:accounts@lisltd.co.uk).

**17.3** Any notice served by first class post shall be deemed to have been served three days after posting and any notice served by e-mail shall be deemed served 48 hours after sending.

## **18. Force Majeure**

**18.1** LIS shall be released from its obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the control of LIS renders the performance of any agreement impossible

## **19. Non Assignment or Sub-contracting**

**19.1** The customer shall not assign the benefit of any contract without the consent in writing of LIS.

## **20. Proper Law of Contract**

**20.1** All contracts are subject to the law of England and Wales

**20.2** Each Clause contained in these Conditions shall be construed as a separate Clause and if one or more of these clauses shall be held to be against the public interest or unlawful the remaining clauses will still bind the parties

## **21. Headings**

**21.1** Headings contained in these Conditions are for reference purposes only and should not be incorporated into this Conditions and shall not be deemed to be any indication of the meaning of the clauses to which they relate