

SUPPORT CONDITIONS

These Support Terms & Conditions (“Conditions”) are the terms of business governing the provision of support and maintenance by **Synergy Computer Consultancy Limited** (“Synergy”) and you (“the Customer”) for the Equipment and or any software supplied by Synergy to the Customer or otherwise described in the Maintenance Order.

1. DEFINITIONS

1.1. In these conditions the following expressions will have the following meanings:

“ Commencement Date” means the date of acceptance of Equipment or Software supplied by Synergy, or the first date on which the Services will start for any Equipment set out in the Support Specification if different;

“ Equipment” means the equipment supplied by Synergy to the Customer or as otherwise described in Support Specification;

“ Location” means the place at which the Equipment is situated and the location of the Equipment upon the Customers premises;

“Support Agreement” means the Agreements between Synergy and the Customer incorporating Conditions and an agreed Support Specification (if any);

“Support Charge” means the sums payable in advance by the Customer to Synergy for the provision of the Services in accordance with the Support Specification;

“Services” means the Support of the Equipment pursuant to these Conditions and the Support Specification (if any);

2. SYNERGY’S UNDERTAKING

2.1. Synergy shall provide support for the Equipment on the terms & conditions set out herein.

2.2. Synergy may carry out any discretionary preventative maintenance that it deems necessary to keep the Equipment in working order in accordance with the OEM recommended published preventative maintenance schedule where applicable.

2.3. The obligation of Synergy to support the Equipment shall be subject to the Location constituting an appropriate environment and the operation of the Equipment and the Software in accordance with the respective manufacturers' published specifications.

2.4. The Service does not include:

2.4.1. electrical work external to the Equipment;

2.4.2. maintenance of accessories, attachments, machines or other devices not listed in the Support Specification or the recovery or reconstruction of any data or programs lost or degraded as a result of any breakdown of or fault in the Equipment;

2.4.3. repair or renewal of consumable items including but not limited to rubber parts, batteries, dust covers, CD ROM's, flash cards, floppy disks and backup tapes for all of which the Customer will be charged in addition to the Support Charge;

2.4.4. Manufacturer defined user maintenance;

2.4.5. repair of damage arising from:

2.4.5.1. accident, transportation or relocation of the Equipment not performed by Synergy;

- 2.4.5.2. failure or fluctuation of electrical power, air conditioning or humidity control or other environmental conditions;
- 2.4.5.3. changes alterations or additions to Equipment not performed by Synergy;
- 2.4.5.4. operator error or omission;
- 2.4.5.5. modification to software other than those made by the manufacturer of the software;
- 2.4.5.6. failure of hardware not set out in the Support Specification or software products not maintained by Synergy;
- 2.4.5.7. damage caused to the Equipment or the Software by malicious or negligent activities including software virus, of the Customer or it's employees or agents or any third party;
- 2.4.5.8. failure or damage due to act of God, strikes, wars, revolutions, act of violence, fires, floods, explosions, earthquakes. adverse weather conditions, government regulations or orders or other causes of a like nature beyond its control;
- 2.4.6. attendance to faults caused by operating the Equipment outside design specifications or otherwise than in accordance with the published requirements supplied by the manufacturer of the Equipment;
- 2.4.7. the implementation of software other than that supplied by the manufacturer;
- 2.4.8. all upgrades, software patches or service packs required to fix problems related to the Year 2000;
- 2.4.9. all Virus checking and updating software.

3. COMMENCEMENT AND DURATION

- 3.1. The Support Agreement will come into effect on the Commencement Date and shall continue in respect of Equipment for the period of the warranty set out in clause 12 of Synergy's Supply terms & conditions.
- 3.2. In addition to Equipment supplied by Synergy the Service shall apply to any additional Equipment set out in the Support Agreement for the Charges set out therein.
- 3.3. The Support Agreement shall endure from the Commencement Date for one year.
- 3.4. Synergy reserves its right to suspend the provision of Services or any part thereof to be performed by it pursuant to any Support Agreement for any period from the Commencement Date to the date upon which the Support Charge is paid by the Customer.

4. CONDITION PRECEDENT

- 4.1. In all cases these conditions and any Support Agreement shall be subject to the condition precedent of the Equipment being in serviceable condition upon inspection by Synergy and the configuration of any system being acceptable to Synergy. If Synergy recommends changes in the configuration of the Equipment, Synergy's obligations under these Conditions shall be conditional upon such changes being carried out to the reasonable satisfaction of Synergy.

5. CHARGES

- 5.1. The Support Charge specified in the Support Specification shall be payable in advance in accordance with sub-clause 5.5 below.

- 5.2. The Support Charge may be increased upon 30 (thirty) days prior written notice from Synergy such increase to take effect on the next anniversary day of the Commencement Date.
- 5.3. Synergy shall be entitled to make additional charges over and above the Support Charge in respect of any services provided by Synergy other than specified in the attached Support Specification. Such charges shall be paid within thirty (30) days of the invoice date.
- 5.4. All charges are exclusive of Value Added Tax any other taxes and charges which Synergy may be required to pay. These will be added at the prevailing rate at time of invoice.
- 5.5. Payment of Support Charges and all other sums hereunder shall be due within thirty (30) days of the invoice date.
- 5.6. Without prejudice to any other rights it may have, Synergy reserves the right to charge interest at four percent (4%) per month above the prevailing base rate of Lloyds TSB Bank Plc on all overdue payments, such interest payments to run from the due date of payment until payment in full is received (both before and after any judgment) and/or to suspend the provision of Services until payment in full, including any accrued interest, is received.
- 5.7. The Customer shall indemnify Synergy for and against all costs and expenses incurred by Synergy in recovering any sum due to Synergy from the Customer in the event that the Customer fails to pay in accordance with Condition 5 above.

6. **WORKSHOP REPAIRS AND OVERHAULS**

- 6.1. Where Synergy is of the view that a workshop repair to any of the Equipment is necessary the Customer will allow Synergy to remove the Equipment for repair.
- 6.2. Workshop overhauls are not included in the Service provided under these Conditions. If in Synergy's reasonable opinion overhaul or reconditioning becomes necessary due to any of the Equipment not being kept in a satisfactory condition by normal repair and parts replacement or due to fair wear and tear Synergy will submit an estimate for the cost of such overhaul or reconditioning. If the estimate is not accepted by the Customer in writing within a period of fourteen days then Synergy reserves the right to sever that particular item of Equipment from the Services. For the avoidance of doubt in the case of such termination by Synergy the Customer shall not be entitled to any refund of the Support Charge or any part thereof.

7. **REPLACEMENT PARTS**

- 7.1. The Customer agrees that any replacement parts fitted by Synergy shall, either upon payment in full of Synergy's charges for fitting or if no additional charges are due, upon fitting become the property of the Customer and any parts or items that are replaced shall become the property of Synergy.
- 7.2. The maintenance service shall include the supply and fitting of spare parts for the Equipment by Synergy free of charge always provided that:
 - 7.2.1. Synergy shall not be responsible for any failure to supply or delay in supplying the necessary spare part where the spare part concerned is unobtainable either permanently or temporarily from Synergy, its suppliers, or the manufacturer of the Equipment: and
 - 7.2.2. this provision shall not extend to the supply and replacement of consumables items including but not limited rubber parts, batteries, dust covers, CD ROM's, flash cards, backup tapes and floppy disks for all of which the Customer will be charged in addition to the Support Charge.

8. CUSTOMERS RESPONSIBILITIES

- 8.1. Throughout the term of this Agreement the Customer shall maintain conditions at the Location within the specifications provided by the manufacturer or supplier of the Equipment prior to installation.
- 8.2. The Customer shall afford to the authorised personnel of Synergy at all reasonable times full and safe access to the Customer's premises for the purposes of maintaining the Equipment and (where applicable) the Software and shall ensure that the Services may be provided remotely at Synergy's discretion.
- 8.3. The Customer shall ensure at all times during the term of any Support Agreement that the Software is only used for the purposes for which it was designed and in conjunction with the Equipment approved for use with the Software.
- 8.4. Whenever on-site services are provided by Synergy the Customer will ensure that a member of the Customer's staff properly trained to use the Equipment and the Software will be in attendance.
- 8.5. The Customer shall carry out regular software and data back-ups using such media as magnetic disk and/or tape cartridges as may be recommended for the Equipment in accordance with the manufacturer's recommendations.
- 8.6. The Customer shall be responsible for maintenance, installation and proper functioning of any equipment other than the Equipment including any upgrades and the Customer shall ensure at its own risk that appropriate anti-virus software has been installed and is active using the latest updates at all times.
- 8.7. The Customer shall procure that all passwords and usernames or any other security measure affecting access to or into the Product or that affected systems to which Synergy require access are disclosed to Synergy to permit Synergy to perform the Services without delay.

9. CONFIDENTIAL INFORMATION

- 9.1. All materials or documents in which Synergy possesses copyright, design right, know-how or has a proprietary interest including without limitation all written information, drawings, diagrams, videos, data and audio tapes and data diskettes disclosed to the Customer in relation to the supply of goods or services to the Customer shall constitute confidential information and shall not be copied or reproduced or disclosed to any third party without Synergy's prior written consent.
- 9.2. The Customer shall ensure that its employees, agents and all others to whom the Customer is authorised by Synergy to disclose confidential information comply with the obligations not to disclose confidential information set out in condition 9.1

10. SUSPENSION AND TERMINATION

- 10.1. In addition to the provisions for termination contained in these conditions Synergy shall have the right to terminate this Agreement forthwith by notice in writing to the Customer if:
 - 10.1.1. the Customer fails to pay any sum on the due date of payment; or
 - 10.1.2. the Customer changes the Location of the Equipment or the Software without Synergy's prior written consent; or
 - 10.1.3. any distress or execution is to be levied or has been levied on the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition of its creditors or any bankruptcy petition would be presented against him or (if the Customer is a company) if any resolution or petition to wind up, such company shall be passed or presented or if the receiver, administrative receiver or administrator of the whole or any part of such company undertaking property or assets shall be appointed.

- 10.2. Synergy reserves the right to immediately suspend the provision of its services if:
- 10.2.1. the Customer fails to meet any of its obligations under condition 8; or
 - 10.2.2. if the Customer is indebted to Synergy whether such indebtedness has arisen pursuant to any Support Agreement or not and the sum owing to Synergy is overdue for payment.
- 10.3. Without prejudice to the provisions set out in this Clause 10 either party may terminate this Agreement if the other commits any breach of these Conditions provided that if the breach in question is one which is capable of remedy then the said notice of termination shall not be effective to terminate the Support Agreement unless the party in breach fails within twenty one days of the date of such notice effectively to remedy the breach complained of.
- 10.4. Suspension of Synergy's services pursuant to clause 10.2 may continue until in the case of a suspension pursuant to paragraph 10.2.1, the Customer's breach of the provisions of the Support Agreement are remedied and. in the case of a suspension pursuant to paragraphs 10.2.2 and 10.2.3 until the sums owing to Synergy are paid.

11. **SYNERGY'S LIABILITY**

- 11.1. Synergy can help Customers to select Products, but the assessment and selection of the Products remain the Customer's sole responsibility. Synergy undertakes only that in giving such assistance (if any) it has acted in good faith and has not been wilfully misleading.
- 11.2. In no event shall Synergy's liability to the Customer for direct damage to the Customer's property arising from the supply of Products or Services exceed £1,000,000.
- 11.3. Synergy shall not be liable to the Customer for indirect loss including but not limited to loss of profits, data, goodwill or including loss or damage suffered by the Customer as a result of an action brought by a third party, even if such loss was reasonably foreseeable or Synergy had been advised of the possibility of the Customer incurring the same.
- 11.4. Synergy's liability to the Customer for any direct loss or damage of whatsoever nature and howsoever cause shall be limited to and in all circumstances other than the direct damage to the Customer's property shall not exceed the Price.
- 11.5. Synergy shall not be liable for imperfect work caused by any inaccuracies in any drawings, bills of quantities or specifications supplied by the Customer.
- 11.6. The Customer indemnifies and shall hold Synergy harmless against all and any loss, damage, claim or liability otherwise arising due to the death, personal injury or damage to the property of employees, agents or Synergy's sub-contractors whilst on the Customer's premises for the purposes of provision of the Services and which arise due to the negligence, acts or omissions of the Customer, its agents or employees.

12. **FORCE MAJEURE**

- 12.1. Neither party shall be liable for delay in performance of its obligations under this Agreement due to strikes, supply failures, wars, revolutions, fires, floods, explosions, earthquakes, government regulations, or orders or other causes of a like nature beyond its control.

13. **ENTIRE AGREEMENT**

- 13.1. These Conditions supersede all prior agreements arrangements and understandings between the parties concerning the Services and constitute along with Support Specifications agreed by Customer and Synergy the entire agreement between the parties relating to Services. No addition to or modification of any provision of these Conditions or any Support Agreement shall be binding

13.2. upon the Customer or Synergy unless made by a written instrument signed by duly authorised representatives of the Customer and Synergy.

14. **WAIVER**

14.1. No relaxation forbearance or delay by Synergy in enforcing any of the conditions here-in shall prejudice affect or restrict the rights of Synergy hereunder nor shall any waiver by Synergy of any breach operate as a waiver of any subsequent or continuing breach thereof.

15. **THIRD PARTIES**

15.1. The Parties agree that all rights (express or implied) afforded to any third parties by operation of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded under these Conditions.

16. **GOVERNING LAW**

16.1. These Conditions and the Support Agreement in all aspects shall be governed by English law and be deemed to have been made in England and the Customer and Synergy agree to submit to the exclusive jurisdiction of the English courts.