

CUSTOMER CREDIT APPLICATION

TEKSYS

Teksys Limited
 Teksys House, Ancells Road
 Ancells Business Park
 Fleet, Hants, GU51 2QA

Tel: 01256 827555
 Fax: 01256 827 557

Please print details in BLOCK CAPITALS All information supplied is strictly confidential

Customer Contact:		Teksys Contact:	
Company Name:			
Invoice Address:			
Postcode:		Fax No:	
Tel No:		Email:	

Business Information

Nature of Business:	No. of years trading:
VAT No.:	Company Registration No.:
Credit Limit applied for:	Legal Status of customer (Ltd, Plc etc):
Accounts Payable contact/email address	Accounts Manager contact:

AGREEMENT TO TEKSYS TERMS AND CONDITIONS

1. I have read and understood the Teksys terms and conditions described in pages 2 to 8 of this application for the supply of goods and services and agree to abide by them.
2. I am aware that Teksys must be notified of any discrepancies or queries as follows:
 - a) Invoice queries – within 7 days of receipt.
 - b) Product quantity or description problems – within 7 days of receipt.
 - c) Faulty products – within 7 days of receipt.
3. I confirm acceptance of the Teksys payment terms of 30 days.

Signature		Print Name:	
Position		Date:	

Please FAX this page only to number at the top of the form

TEKSYS CREDIT CONTROL USE ONLY			
Credit Limit:		Date Set:	
Account No.		Authorised by:	

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TEKSYS LIMITED TERMS & CONDITIONS

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 10.

1. Company's Obligations

- 1.1. The Company's obligation is to use its reasonable endeavours to supply and install the Equipment and/or provide the Services and/or Software in compliance with the Agreement.
- 1.2. The Company shall use all reasonable care, skill and diligence to perform its obligations under 1.1 which shall be rendered by appropriately experienced, qualified and trained personnel in accordance with good industry practice.

2. Customer Information and Services

- 2.1. When placing an Order the Customer must have first satisfied itself that the content of that Order is appropriate for its purpose.
- 2.2. The Customer will cooperate fully with the Company and allow the Company such opportunities and access as is reasonable in order for the Company to:
 - 2.2.1. carry out the Agreement; and/or
 - 2.2.2. remedy any of the works/equipment/services provided in respect of the Agreement.

In any event, without limitation, the Customer shall provide to the Company without charge or delay on request all reasonable assistance, information and data as may be requested by the Company for the purpose of enabling the Company to undertake the above and in the event that any remedial work is caused by defects which do not relate to the Company's fault, the Customer shall compensate the Company its time in reviewing such matters.

- 2.3. In the event that:
 - 2.3.1. the Customer wishes to amend the Customer Information and/or the Order; and/or
 - 2.3.2. the Customer Information is subsequently found to be inaccurate and/or not complete for any reason (other than the Company's negligence); and/or
 - 2.3.3. the Customer breaches its obligations under the Agreement

the Company will be entitled to alter the terms of the Agreement (including without limitation increasing the Price).

3. Price

- 3.1. Unless otherwise specified the price of the Equipment/Services shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage, insurance and similar charges shall be at the cost of the Customer and shall be paid in addition to the Price.

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- 3.2. Catalogues, price lists and other advertising material supplied by the Company (including any descriptions or other particulars contained therein) provide only an indication of the range of equipment and services (and prices for the same) available and shall not be binding on the Company.

4. **Payment Terms**

- 4.1. Payment of the Price is due in full without any deductions (whether by way of set-off, counterclaim, discount, abatement or otherwise) within 30 days of the date of invoice. No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.2. If any sum due from the Customer is not paid when due, that sum shall bear interest from the due date until it is paid in full (both before and after judgment) at 8% per annum above the Bank of England base rate from time to time.
- 4.3. In the event of late payment, the Company may suspend or cancel the supply of the Order or may, at its discretion, request security for payment from the Customer if it considers the Customer's financial circumstances or standards of operation cease to justify the above credit arrangements.

5. **Delivery**

- 5.1. Any dates specified by the Company for delivery in relation to the Agreement are an estimate only and in relation to the same time shall not be of the essence nor shall time be made of the essence against the Company by notice. If no delivery dates are specified, delivery will be within a reasonable time.
- 5.2. The Customer must give notice to the Company within 7 days of delivery of the Equipment and or Services of any damage to the same, failing which the Order shall be deemed delivered undamaged and the Company is discharged from any liability in respect of the same.
- 5.3. In relation to any on site attendance obligations of the Company, such obligation shall be limited to using reasonable endeavours to despatch somebody of the appropriate experience within the agreed time period but such response times are target times only and will not bind the company.

6. **Non-Delivery**

- 6.1. The quantity of any consignment as recorded by the Company upon despatch from the Company's place of business and the signing of any time sheet in respect of any Services shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary.
- 6.2. Any liability of the Company for non-delivery and/or delivering faulty goods shall be limited to replacing the same within a reasonable time or (at the Company's discretion) issuing a credit note at the pro rata agreement rate against the relevant invoice.

7. **Risk/Title**

- 7.1. Any Equipment is at the risk of the Customer from the time of delivery.
- 7.2. Ownership of the Equipment shall not pass to the Customer until the Company has received in cleared funds all sums due to it in respect of:
- 7.2.1. the Equipment; and

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- 7.2.2. all other sums which are or which become due to the Company from the Customer on any account.

For the avoidance of doubt ownership of any Software shall not pass to the Customer.

- 7.3. The Company shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from the Company.

8. Termination

- 8.1. Either party may terminate the Agreement forthwith at any time by written notice if the other party commits a material breach of any term of the Agreement and fails to remedy the same in all material respects within 30 days of being required in writing by the innocent party to do so. For the avoidance of doubt any breach relating to a time limit shall not be material unless the relevant party fails to rectify the relevant problem within 30 days of being requested to do so.
- 8.2. On termination, howsoever arising, the Customer shall pay to the Company all Liabilities and all outstanding charges or other payments arising in respect of the termination and without limitation the Company shall be entitled to charge the Customer for those parts of the order already provided.
- 8.3. The Company reserves the right to defer the date of delivery, or to amend or cancel the Agreement if it (or any of its suppliers) is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control.
- 8.4. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Company may have under these Terms or in law, and the clauses of these Terms shall (in so far as they remain relevant) survive termination.

9. Warranty

- 9.1. The Customer will receive the Manufacturers standard warranty in relation to all Equipment (other than Equipment manufactured by the Company) unless otherwise specifically agreed in writing between the parties. It is acknowledged and agreed that no warranties or representations are made by the Company in relation to such Equipment and the Company shall have no obligations to the Customer in relation thereto.
- 9.2. The Company will not be liable for, or in respect, of any loss or damage caused by, or resulting from, any variation (for whatever reason) in the Manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation or supply following such variation. The Company will endeavour to advise the Customer of any such impending variation as soon as it receives notice thereof from the Manufacturer.
- 9.3. If the Company is unable to perform the order due to the non-availability of equipment and/or parts and/or technical data and/or software licences relating to any item, from the Manufacturer the Company shall have the right to alter the Agreement accordingly.

10. Limitation Of Liability

- 10.1. The Company shall not be liable for any delay or failure to provide any part of the order and/or Event of Default caused by:
- 10.1.1. any act or omission of the Customer which is contrary to its obligations under the Agreement; and/or

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- 10.1.2. any failures of any third parties to provide the Equipment and/or the Services; and/or
- 10.1.3. any disruption to the Customer's system which occurs while any Equipment is being repaired or replaced.
- 10.2. The Customer acknowledges that in the event that the Company has relied on the Customer Information and the Customer Information is subsequently found to be inaccurate and/or not complete for any reason (other than the Company's negligence) ("Defective Information") the Customer acknowledges that the Company shall have no liability in respect of the suitability of the Equipment which has been selected by the Company in accordance with such Customer Information and/or any defects in the Equipment and Services, which arise because of the Defective Information.
- 10.3. Subject to clause 10.7 the Company shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or any type of special indirect or consequential loss or damage (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 the Company had been advised of the risk of incurring the same.
- 10.4. Subject to clause 10.7 the Company's entire liability to the Customer in respect of any individual Event of Default shall be limited to a sum equal to 50% of the aggregate fee paid by the Customer in relation to the Agreement in respect of which the Event of Default arose provided always that if it took more than 12 months to complete the Agreement then if required by the Company the fee will be limited to the fees paid during the twelve months preceding the date acknowledged by the Customer as being the date of the Event of Default (such acknowledgement not to be unreasonably withheld or delayed).
- 10.5. Subject to clause 10.7 the Company's aggregate liability to the Customer in respect of all Events of Default shall be limited to 1.5 times the aggregate fee paid by the Customer in relation to the Agreement in respect of which the Event of Default arose provided always that if it took more than 12 months to complete the Agreement then if required by the Company the fee will be limited to the figure acknowledged by the Customer as being the average fees paid during a twelve month period of the Agreement (such acknowledgement not to be unreasonably withheld or delayed).
- 10.6. In the event that any advice provided to the Customer by the Company was provided free of charge by the Company then such advice is provided "as is" without any warranty of any kind from the Company and the Company shall have no liability in relation thereto.
- 10.7. Notwithstanding any other provision under these terms or otherwise each party's liability to the other for:
 - 10.7.1. death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; and/or
 - 10.7.2. any breach of its obligations implied by Section 12 of the Sale of Equipment and Services Act 1979 or Section 2 of the Supply of Equipment and Services Act 1982; and/or
 - 10.7.3. in relation to any fraudulent misrepresentation or fraudulent acts of its employeesshall not be limited.
- 10.8. All warranties whether express or implied by statute common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law
- 11. Copyright, Patents, Trade Marks And Other IPR**
 - 11.1. The Customer acknowledges that any and all IPR created, subsisting or used in or in connection with the Equipment, Software and/or Services including all documentation and

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manuals relating thereto are legally and/or beneficially owned by the Company or (as the Company may direct) the Company's supplier.

- 11.2. For the avoidance of doubt other than a specific written licence nothing shall be interpreted as granting the Customer any rights in the Company's or any third party's IPR (including any Software or any development or enhancement of any Software by a third party).
- 11.3. In the event that new inventions, designs or processes evolve or are generated in the performance of or as a result of the Agreement the Customer acknowledges that all rights in the same shall vest in the Company or (as the Company may direct) the Company's supplier.
- 11.4. It is the practice of Manufacturers of Equipment consisting of or including computer software products or copies thereof ("Proprietary Software") to retain title to any copyright or other IPR therein (the "Rights"). The Company can only transfer to the Customer such title in the Equipment as the Company may have and, save as herein provided for, no warranty is given in respect of the exercise by any third party of such rights against the Customer. Subject to any limitations contained in any licence entered into by the Customer with the Company or with the owner of such rights, the limit of the right or interest in any software which the Customer shall receive shall be such Right or licence to use or enjoy such Proprietary Software as may be permitted or conferred by the Company or, other, by the owner of the right, and which is either manifest from the Proprietary Software concerned (or any document attached to or accompanying such Proprietary Software) or which has otherwise been notified by the Company to the Customer in writing. The Company shall be entitled to stipulate express restrictions on the Customer's use from time to time provided that they shall be reasonable.

12. Confidentiality And Non Poaching

- 12.1. Both parties shall treat each other's Confidential Information as confidential and shall not at any time (save as required by law or any relevant regulator) disclose such information to any third party (other than those of its officers, employees advisers and agents whose responsibilities require them to know the same) or use it for any purposes other than for the performance of the Agreement (unless such information is in the public domain or is already known to the non-disclosing party otherwise than as a result of a breach of any duty of confidentiality owed in respect of such information).
- 12.2. During the Agreement, and for twelve months after termination, neither party shall solicit or seek to entice away any officer or employee of the other party who:-
 - 12.2.1. to a material extent is involved with the implementation of the Agreement;
 - 12.2.2. is a senior officer or employee (one who had an annual guaranteed gross remuneration, including salary and bonuses, of £25,000 or more).

13. General

- 13.1. The Parties to this Agreement do not intend any term of the Agreement to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 13.2. The Customer shall not be entitled to assign the Agreement or any part of it without the prior written consent of the Company. In the event of a sale of the Company's business it shall be entitled to assign the contract to the purchaser.
- 13.3. The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. Interpretation

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- 14.1. References to a statute or statutory provision include a reference to it as from time to time amended, extended or re-enacted.
- 14.2. A reference to one gender includes a reference to the other gender.
- 14.3. For the avoidance of doubt the phrase "either party" shall mean "either the Company or the Customer".
- 14.4. Term headings do not affect the interpretation of these terms.
- 14.5. The following definitions and rules of interpretation apply to this Agreement:

"Agreement" means the agreement which arises out of the Order and the Company's acceptance of the Order ;

"Customer" means the person(s), firm or company who purchases the Equipment and Services from the Company;

"Company" means Teksys Limited;

"Confidential Information" means any and all information of whatever kind or nature which is of a confidential nature and which is now or at any time hereafter in the possession of the Company or the Customer (as the case may be) which has been provided by the other party;

"Customer Information" means the information that the Customer provides to the Company in relation to the Agreement;

"Equipment" means collectively or individually the equipment ordered by the Customer to be supplied by the Company (including any part or parts of them) including without limitation any third party software and to the extent necessary any software written by the Company;

"Event of Default" means i) any breach by the Company of its contractual obligations arising under the Agreement (other than a breach arising from wilful default or recklessness); ii) any misrepresentation by the Company in connection with (whether or not contained in the Agreement) the Company (other than a fraudulent misrepresentation); iii) any tortious, act or omission, including negligence, arising in connection with the Company's performance under the Agreement (other than any act or omission which is fraudulent or dishonest); and/or iv) any other act giving rise to a liability in respect of the Agreement.

"IPR" means all vested, contingent and future intellectual property rights including but not limited to copyright, trade marks, trade names, patents, service marks, design rights (whether registered or unregistered) know-how, trade secrets, inventions, get up, database rights and any applications for the protection or registration of these rights and all renewal and extensions thereof existing in any part of the world whether now known or in the future created to which the Company may be entitled and other intellectual property rights created, developed, subsisting or used in or in connection with the Agreement by the Company;

"Liabilities" means all liabilities, losses, costs and claims that may be suffered by the Company including without limitation any sums due from the Company in respect of orders placed by the Company in relation to the Agreement;

"Manufacturer" means the person(s) who manufactures the Equipment and/or the software but shall include any intermediary supplier;

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"Order" means the Customer's instruction to the Company (which shall be deemed to incorporate these terms) to provide a particular package of Equipment and/or Services (as applicable);

"Services" means any services ordered by the Customer to be provided by the Company;