

## **GENERAL TERMS OF BUSINESS**

### **DATA TRANSLATION LIMITED**

Orders are only accepted subject to the General Terms of Business of Data Translation Limited (hereinafter called the "Supplier") as detailed below.

Purchasers of Supplier Products will on accepting delivery be deemed to have agreed that any printed conditions on their orders or other documents shall only be binding where they are not at variance with these terms and conditions. Any purchaser who objects to these terms below, must prior to delivery of Products, inform the Supplier of the objections in writing whereupon the order shall be deemed cancelled unless any proposed variation is accepted in writing by a authorised employee of the Supplier.

1. **ORDERS** made by telephone must be confirmed in writing before delivery. Written orders (including fax) will be acted upon immediately.

All orders shall be subject to the General Terms of Business then current. The acceptance of orders shall be subject to the Purchaser's credit worthiness as determined by the Supplier.

From time to time, upon request by the Supplier the Purchaser shall furnish the Supplier with such financial information requested by the Supplier as will enable the Supplier to evaluate the Purchasers financial status.

The Supplier may, in its sole discretion, limit, modify or cancel the credit of the Purchaser both as to time and amount, and the Supplier shall have the right to cancel any orders placed by the Purchaser or refuse or delay shipment if the Purchaser shall fail to meet payment schedules or other creditor financial requirements established by the Supplier from time to time. Such cancellation, refusal, or delay shall not constitute termination or breach of any order, contract or agreement by the Supplier.

2. **PAYMENTS:** All invoices shall be paid within 30 days of the date of invoice.

All accounts still overdue by the 1st of the month following due date of payment are liable to suspension of supplies.

Payment becomes immediately due upon commencement of any proceedings or commission of any act in which the Purchaser's insolvency is involved.

3. **PRICES,** will unless otherwise specified be those ruling at the date of order acceptance.

Quantity rates will apply only to each individual order; orders may not be aggregated to obtain quantity rates.

All special rates, quantity rates, price reductions or discounts from the Supplier's current End User Price, quoted or charged are subject to the Purchaser complying with all the terms and conditions of this Agreement.

Any amount unpaid 60 days after the due date shall automatically and with no prior formal notice produce interest for late payment contractually set at 4% over the base rate quoted by the HBSC bank from the day the amount became due.

4. **DELIVERY** will be made by the method of the Supplier's choice unless otherwise agreed and will be made only to any of the Purchaser's permanent business addresses.

Every effort will be made to effect delivery on the dates or to any programme of dates agreed but no guarantee of delivery dates can be given and time is not of the essence of the contract for delivery.

Failure in any one delivery shall not invalidate the contract as to the remaining deliveries (if any).

5. **EXPORT:** Where Products are to be exported from the Purchaser's territory it is the responsibility of the Purchaser to ensure that all necessary licences are obtained for the Products covered by COCOM or U.S. regulations or any other applicable regulations.

6. **TITLE:** Until the supplier has been paid in full for the Products comprised in the order or in any other sales contract between the Supplier and the Purchaser or until title to the goods is in terms relinquished to the Purchaser by the Supplier by writing under the personal hand of a Director of the Supplier:-

- a) The products comprised in the order remain the Supplier's property and the Supplier reserves the right to dispose of the Products or any of them.
- b) The Supplier may repossess (and for this purpose follow or trace) the Products at any time from the Purchaser, if in his possession, if the Supplier considers that the amount outstanding is in excess of the credit limit and overdue for payment. The Supplier, its servants and agents may enter the Purchaser's premises where the Supplier has reason to believe any of the Products are situated.
- c) The Purchaser as bailee undertakes to keep the Products safe and in good order and condition and shall not amend, obliterate or remove the identification marked on the Supplier's Products.
- d) Should the Purchaser have passed the Products or any of them to a third party (or have incorporated them into work of a third party) this will be deemed to have been done as the Supplier's agent only and sums received by the Purchaser in respect of such Products or such works shall be held in trust for the Supplier until all sums due to the Supplier are discharged.
- e) Upon the commission of an act of bankruptcy by an individual Purchaser the immediate right of possession of the Products shall forthwith automatically revert to the Supplier.
- f) All costs (including legal fees) occasioned in the recovery of Products shall be paid by the Purchaser.

## 7. **WARRANTY:**

All Data Translation hardware products and software media are covered by a full one-year warranty. All Data Translation software products are non-returnable and non-refundable. Products repaired or replaced within this warranty period maintain their original warranty. Products repaired or replaced outside the warranty period are warranted for 90 days from invoiced date of return.

All product warranties apply only to the first customer purchase from the Supplier or its Dealers/Distributors and where the Products are covered by a warranty the terms of such warranty shall be deemed to be part of these conditions.

The Supplier warrants all Products to be free from defects in material and workmanship under normal use provided the Products have been operated in accordance with the instruction manual.

Commencement date for all warranties is the date of delivery to the Customer from the Supplier or its Dealer/Distributor or in any case not later than 6 months after the Supplier's invoice date to the Purchaser.

The Supplier makes no warranty, express or implied, with respects to Products, their marketability, quality or fitness for any particular use or purpose.

The warranty does not cover Products which have been tampered with or modified in any way, or to damage caused by accident, negligence, alteration or misapplication.

In particular but without prejudice to the general provisions of these conditions no responsibility is assumed for incidental or consequential damages by reason of any warranty express or implied.

The Supplier's liability in the event of any repair under warranty due to failure in service is limited to repair or replacement of defective parts at the Suppliers discretion, the Purchaser being responsible for all labour and other costs including carriage unless otherwise stated in an individual warranty.

The Supplier's liability where the Purchaser undertakes warranty work will under no circumstances extend beyond the replacement or repair of such parts which have been returned to the Supplier and accompanied with full information as to delivery and invoice numbering, fault, symptoms and any circuit references.

In the event of any warranty claim being made the Purchaser shall promptly inform the Supplier and provide the evidence as required so that the Supplier may supply the Purchaser with the appropriate replacement parts.

The Supplier under its warranty undertakes to repair free of charge all faults found (excluding damage in transit) when Products are unpacked by the Purchaser subject to written notice being received by the Supplier 30 days from the date of delivery and the goods being returned in their original carton carriage paid by the Purchaser.

The Supplier shall have the right at any time to amend its warranty and upon notice thereof to the Purchaser.

8. **CLAIMS** may be made subject to the Purchaser :-

- a) Examining the Products on their delivery for any obvious damage or shortage and reporting any damaged or short delivery in writing to both the Supplier and the Carrier within 5 days of the delivery date.
- b) Reporting non-delivery by fax or by telephone (and confirmed in writing) to the Supplier within 10 days of the invoice or expected delivery date.

If the Purchaser fails to give notice or to report in accordance with these terms or shall deal with the goods in any manner or if there shall be any conduct by the Purchaser inconsistent with rejection of the Products, then the Products of the quality specified in the contract shall be deemed to have been delivered to the Purchaser. No claim or rejection properly made pursuant to these Conditions of Sale in respect of any part delivery of Products shall be a ground for cancellation of the contract or order.

9. **REPAIRS:** The Supplier guarantees for a period of 3 months (from the date of notification of the completion of the repair) such repairs that are carried out by the Supplier. The guarantee shall not apply to any repairs undertaken by another party. Such guarantee covers only those specific faults reported, identified and repaired and shall not cover any other faults irrespective if they produce the same symptoms.

In all cases, except agreed repairs under warranty, written authority to prepare estimates and to proceed with the repair must be provided. In the event of authority to proceed with repairs being withheld, then the Supplier reserves the right to charge the cost of preparing the estimate.

A storage charge will be made for any items remaining uncollected 3 months after notification of availability for collection. The Supplier may at its discretion return any such items and shall be reimbursed in full for any carriage, insurance, storage and other costs incurred.

The Supplier shall be entitled to dispose of or sell any items remaining uncollected 12 months after notification of availability for collection.

10. **RETURNS** for credit are only permitted with the Supplier's prior consent in writing. Such returns must be sent to the Supplier freight pre-paid in an unused condition, quoting all relevant invoice/shipping numbers. A re-stocking charge may be made of 20% of the invoice value; however, a higher rate will apply if re-packing is necessary.

11. **RIGHT OF CANCELLATION BY THE SUPPLIER** will become operable if the Purchaser should fail to meet his obligations as they fall due for any reason or if any distress or execution shall be levied upon the Purchaser's property or if the Purchaser shall commit an act of bankruptcy or being a Limited Company any resolution or petition to wind-up it's business shall be passed or presented (excepting winding-up for the purposes of reconstruction) or if the receiver of such company's undertaking property or assets shall be appointed then the Supplier reserves the right in such circumstances to

cancel the contract or order and to be reimbursed for any fair and reasonable costs occasioned due to such cancellation.

12. **TRADEMARKS:** The Purchaser shall not be entitled to remove, obliterate, delete from, add to, or otherwise alter trademarks and/or trade names affixed to Products delivered to the Purchaser without written consent of the Supplier in each instance. The Purchaser shall not acquire any property right, title or interest in any or to any such trademarks or trade names. The Purchaser further agrees not to contest directly or indirectly the property interest of the Supplier, it's suppliers and/or manufacturers in or to any trade names or trademarks or patents if any, relating to Products. The Purchaser will bring immediately to the Suppliers notice any third party infringement of trademarks of which the Purchaser becomes aware.
13. **FORCE MAJEURE:** The Supplier shall not be responsible or liable for its failure to perform it's obligations, if such failure is beyond the control of the Supplier, or beyond the control of the suppliers of the Supplier, whether caused by acts of God, unavailability or shortages of materials or energy necessary to produce and/or deliver Products by usual modes of transportation, fire, floods, wars, embargo, strikes, labour disputes, explosions, riots, of laws, rules, regulations, restrictions or orders of any governmental authority, or any other cause, other than financial beyond the control of the Supplier or it's suppliers.
14. **RELATIONSHIP** is that of Seller and Buyer, and neither the Supplier or the Purchaser nor any of their employees, customers or agents shall be deemed to be the representative, agent or employee of the other for any purpose whatsoever, nor shall any of them have any right or authority to assume or create an obligation of any kind or nature, express or implied on behalf of the other, not to accept service of any legal process addressed to or intended for the other, nor to pledge the other's credit. The Purchaser warrants and represents that there is no legal impediment preventing acceptance of these terms and that the acceptance of these terms has been duly authorised and that the obligation hereunder does not conflict with or violate any terms or conditions of any other agreement or commitment by the Buyer.
15. **AFFILIATED COMPANIES:** In the event that the Purchaser requests the Supplier to supply Products to any other company which for the purposes of Chapter IV of the Income and Corporation Taxes Act 1988 would be deemed to be a member of the same group as the Purchaser ("the Group Member") and the Supplier accedes to such request and effects such supply accordingly, the Purchaser hereby agrees to be responsible to the Supplier for the price of all such goods as may hereafter be supplied in manner aforesaid by the Supplier to such Group Member and so that this guarantee is to be a continuing guarantee and the liability of the Purchaser under it shall not be any way diminished or affected by the Supplier giving time or any indulgence to such Group Member in connection with such supply, nor by any release or agreement not to sue, composition or arrangement of any description granted or entered into by the Supplier to or with such Group Member and further, the Purchaser shall be liable to the Supplier in respect of any such supply as aforesaid as if the Purchaser were a principal in respect of such supply and not a surety in respect thereof. Such guarantee shall continue until notice of revocation thereof is given by the Purchaser to the Supplier, any such notice shall be in writing and to become effective only upon its actual receipt by the Supplier at it's office at Plover House, Aviary Court, Wade Road, Basingstoke, Hampshire RG24 8PE, but so that no such revocation shall in any way diminish or affect the Purchasers liability to the

Supplier in respect of any indebtedness of any such Group Member as aforesaid by reason of any supply effected by the Supplier or contracted prior to receipt of such notice.

**16. ARBITRATION – GOVERNING LAW:-**

- a) Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the Rules of the Chartered Institute of Arbitrators, (latest edition). These Rules are deemed to be incorporated by reference into this clause.
- b) The Agreement and the rights of the parties hereto shall be governed and construed in accordance with English Law including statute law.

**17. MISCELLANEOUS:**

- a) Severability. In the event this document is found to be invalid, illegal or otherwise unenforceable, the validity and enforceability of the remaining provisions shall not be affected in any way or impaired as a result. The clause shall, in as much as possible, be replaced or interpreted according to the intent expressed by the parties.
- b) Clause Headings. Clause headings are included for ease of reference and do not form part of or affect the interpretation of the Agreement.