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TERMS and CONDITIONS

1. DEFINITIONS

“You the Client” - a person or company buying or using Elysium Products.

“Consumer” - a private person buying Products for private use.

“Elysium (us, our)” - the Product vendor as identified on your invoice and, where relevant, Service Provider.

“Bespoke” work commissioned by you or carried out specifically for you in connection with the supply of goods or services by Elysium.

“Integration Material (IM)” - 3rd Party Products or Elysium Integration (EI) Software.

“Order Confirmation” - acknowledgement of Product ordered by you, sent by Elysium.

“Price” - stated in Order Confirmation.

“Product” - as described in Order Confirmation, may include 3rd Party Products and Service Offerings.

“Service Offering” - as described in Order Confirmation and Elysium service description document.

“Service Provider” - Elysium or its authorised service experts.

“3rd Party Products” - stated in Order Confirmation, not branded or manufactured by Elysium.

“Software” - computer operating systems or applications.

“Open Source Software” - software supplied under a license, which guarantees source code availability on request to Elysium

2. APPLICATION. This Agreement applies to this sale, service and all statements made by Elysium in brochures, price lists, adverts, quotations (including those available on the internet or communicated verbally). All other terms and conditions including any terms and conditions referred to in purchase orders are excluded. No variations to this Agreement shall be binding on Elysium unless made in writing and signed by an authorised representative of Elysium. Placing your order means acceptance of this Agreement. Elysium may change this Agreement at its choosing. Any change will be notified to you, the Client, either specifically or generally by publication on Elysium’s website and will apply to all Products or Service Offerings supplied after the date of notification.

3. ORDERS. Orders may be placed in writing or by email, internet forms, telephone or fax but are only binding when accepted by Elysium sending out a written Order Confirmation. Official order numbers may be required where client procedures require them, or where payment is deferred because of bespoke work. Please check the Order Confirmation and notify Elysium of any mistake in writing immediately or the details stated in the Order Confirmation will apply to this Agreement.

4. PRICE & PAYMENT TERMS. Quotations are only valid in writing and during the period that they state. If unstated, the period is 30 days (10 days for 3rd Party Products). Elysium reserves the right to change Products (incl. 3rd Party Products) at any time but in the event of any change Elysium guarantees you at least equivalent functionality and performance.

Price excludes tax, shipment, insurance and installation which will be charged in addition. Exchange rates, duties, insurance, freight and purchase costs (incl. for components & services) may cause Elysium to adjust prices. Payment will be made before supply or service or, if agreed, within 30 days of the invoice date. Elysium may suspend deliveries or service until full payment. If payment is overdue, interest at 2% per annum above the base lending rate of HSBC Bank plc as well after as before judgment on the overdue amount and the costs of recovery shall be payable by you. [Cheques may only be accepted conditionally.]

5. DELIVERY/TITLE/RISK. The delivery period in the Order Confirmation is approximate. Delivery by instalments may be made. The place of delivery is stated in the Order Confirmation. Elysium may sue for the Price before title passes. If you refuse delivery without Elysium’s agreement, you must pay Elysium’s expenses or loss resulting from that refusal, including storage costs, until you accept delivery.

Risk of damage to or loss of Products shall pass to you at the time of delivery or if you unjustifiably fail to take delivery of Products the time when Elysium has tendered delivery of the Products.

Notwithstanding delivery and the passing of risk of the Products or any other provisions of this Agreement, title to the Products shall not pass to you until Elysium has received in cleared funds payment in full of:-

- (a) the Products; and
- (b) all other sums which are or which become due to Elysium from you on any account;

Until such time as title to the Products passes to you you shall:-

- (a) hold the Products as Elysium’s fiduciary agent and bailee; and
- (b) keep the Products separate to yours and those of 3rd parties; and



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- (c) keep the Products properly stored protected and insured, and identified as Elysium's property; and
- (d) accept that Products may be labelled as being Elysium's property until Elysium is paid.

Until such time as the title in the Products passes to you (and provided the Products are still in existence and have not been resold) Elysium shall be entitled at any time to require you to deliver up the Products to Elysium and if you fail to do so forthwith to enter upon any of your premises or those of any 3rd party where the Products are stored and repossess the Products.

Your right to possession of the Products shall terminate immediately if:-

- (a) you are an individual and have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take the benefit of any Act for the time being in force for the relief of insolvent debtors, or if you are a body corporate and convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or a resolution is passed or a petition presented to any court for your winding or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or
- (b) you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe or perform any of your obligations under this Agreement or any other contract between Elysium and you or you are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986 or you cease to trade; or
- (c) you encumber or in any way charge any of the Products.

You are entitled to resell the Products in the ordinary course of business. You are not able or entitled to offer the Products as collateral or otherwise grant a charge in respect of the Products until title has passed to you in accordance with this Agreement. You shall inform your customers that title to the Products is retained by Elysium until you have paid Elysium, and shall ensure that your customer has agreed with you that any unpaid Products shall be returned to Elysium in the event of your failure to pay Elysium's invoices when they fall due.

You shall upon Elysium's request provide Elysium with all details and information necessary for Elysium to collect the Products.

Notwithstanding the above as regards title to any Software included within Products the provisions of Clauses 11 and 12 below apply.

6. ACCEPTANCE. When you receive Product you must inspect it promptly and within any statutory reasonable period for inspection or rejection, if any. After this period, you will have accepted Product. If Elysium agrees to the return of Product at its choosing, it must be in its original condition with packaging, a return note and proof of purchase; the return costs may also be payable by you.

7. WARRANTY. Elysium guarantees to you that Product (excluding 3rd Party Products) will be free from defects for 12 months from delivery and spare parts for 90 days from installation. Should Product be defective within this period, Elysium will repair or replace Product within a reasonable time. You must allow Elysium to examine Product at your or Elysium's premises (at our choosing). Elysium owns any replaced Product or parts. All reasonable care and endeavour shall be used to resolve problems within a reasonable period in the circumstances. Elysium manufactures and repairs using components, which are new or equivalent to new in accordance with industry standards and practice.

Elysium does not give a warranty or guarantee protection for:

- i. damage caused by incorrect installation, use, modifications or repair by any unauthorised 3rd party or yourself;
- ii. damage caused by any party or other external force;
- iii. fitness for any particular purpose;
- iv. 3rd Party Products, Software and IM specified by you. You will receive the warranty for these products directly from their manufacturer or licensor;
- v. any instruction given by you and correctly performed by Elysium.

8. SERVICES. will be provided by Elysium or Service Provider. Response times are estimates and may vary according to the remoteness or accessibility of Product location. Service may be provided via telephone or internet where appropriate. If agreed and stated in Order Confirmation, Service Offering may include advice, asset tagging, installation, integration, disposal, training and/or consultancy.

Unless stated in Order Confirmation, the following are excluded from Service: items excluded from Warranty, changes to configuration, relocation, preventative maintenance, consumables, diskettes, unnecessary work in Elysium's assessment, electrical environment, transfer of data or Software, viruses. 3rd Party Products will be repaired according to manufacturer or licensor warranty. Parts not critical to Product function (eg: hinges, doors, cosmetic features, frames) may not be serviced within Service Offering time period.

9. ELYSIUM INTEGRATION. You will specify and provide IM or Elysium may obtain IM at your instruction. Elysium will indicate acceptance and/or validation of IM, then will integrate IM into Product, producing a EI Product. Elysium may install EI Product under your instruction or under Elysium technical advice, if agreed. Elysium will not carry out EI work if it is not technically feasible in our view.

10. LIABILITY. Elysium accepts liability for any private property loss or damage, death or personal injury caused by the negligence or deliberate misconduct of Elysium, Service Provider or our employees, agents, subcontractors. Except for death/personal injury, this liability is limited to the lesser of £250,000 or Price.

Elysium does not accept liability for 1) indirect or consequential loss, 2) loss of business profits, salary, revenue, savings, 3) damage remedied by Elysium within reasonable time, 4) loss avoidable by you through reasonable conduct, including backing up all data and following Elysium's reasonable advice generally, 5) all items excluded from the Warranty or by Force Majeure.



- 11. INTELLECTUAL PROPERTY (“IP”).** Elysium retains all Elysium-owned IP in Product. Elysium indemnifies you from all costs and liabilities from any claim that use of Product infringes any 3rd party IP. Elysium may recall and exchange or modify Product or refund you, minus depreciation in this event. You indemnify Elysium for any of Integration Material or IP specified or owned by you and integrated into Product. Elysium is allowed to litigate, negotiate and settle claims and you must assist us at our expense (except where Integration Material/IP specified or owned by you is allegedly infringing) when litigation is directly related to your Product which Elysium supplied to you. You must notify Elysium immediately of any infringing or unauthorised use of Product or IP in it.
- 12. SOFTWARE** not owned by Elysium is supplied subject to licence and warranty of the Software licensor. Software owned by Elysium is supplied subject to licence. Elysium encloses the Software licence that you require with the Product where necessary; you must comply with that licence. For Open Source software, the source code may be supplied on written request on CDROM, providing any such request is received within 90 days of initial acceptance of the product. This source code is restricted to that defined under the relevant Open Source licence, and unless otherwise required by licence or written agreement does not include any Elysium modules that integrate with the software.
- 13. EXPORT CONTROL.** You acknowledge that Product may include technology and Software which is subject to US and EU export control laws and laws of the country where it is delivered or used: you must abide by all these laws. Product may not be sold, leased or transferred to restricted end users or countries or for a user involved in weapons of mass destruction or genocide. You acknowledge that US and EU restrictions vary regularly and depending on Product and therefore you must refer to the current US and EU regulations.
- 14. FORCE MAJEURE.** Elysium is not liable for delays in performance (incl. delivery or service) caused by circumstances beyond its reasonable control and will be entitled to a time extension for performance; examples include strikes, supplier / transport / production problems, exchange fluctuations, governmental or regulatory action and natural disasters. If this lasts more than 2 months, this Agreement may be terminated by either party without compensation.
- 15. CONFIDENTIALITY.** Each party must treat all information received from the other marked “confidential” or reasonably obvious to be confidential as it would treat its own confidential information and without prejudice to the generality thereof must not disclose it or allow it to be disclosed to any 3rd party except as may be required by law.
- 16. TERMINATION.** Elysium may terminate this Agreement with written notice if you: 1) fail to pay on time and within 14 days of written notice, 2) breach or Elysium suspects you have breached export control laws. Either party may terminate if the other: 1) commits a material or persistent breach of this Agreement and fails to remedy this within 30 days of written notice from the other; or 2) becomes insolvent or is unable to pay debts as they fall due.
- 17. YOUR OBLIGATIONS AS A CUSTOMER**
- You are responsible for:
- i. your own choice of Product and its suitability for purpose;
 - ii. your telephone & postal charges in contacting Elysium, if any;
 - iii. any EI specifications & instructions given by you;
 - iv. all IM, its performance, licences, authorisations and any unused IM.
- You must provide Elysium with all reasonable courtesy, information, cooperation, facilities and access to enable Elysium to perform duties, failing which Elysium shall not be obliged to perform any service or assistance. You are responsible for the removal of non Elysium-supplied products during service, the back up and confidentiality of all data in Product and all of your legal and regulatory requirements.
- 18. DATA PROTECTION.** Your data will be held and/or transferred in strict accordance with the applicable data protection laws and Elysium’s data protection registration and you consent to this. You may instruct Elysium not to use your data for direct marketing purposes.
- 19. CONSUMER RIGHTS.** If you are a Consumer you may cancel your purchase at any time within 7 days of receipt and receive a refund of the Price paid. To do this you must inform Elysium in writing and return the products immediately, in the same condition you received them and at your own cost and risk. Any statutory Consumer rights are unaffected by this Agreement.
- 20. JURISDICTION.** English law and the exclusive court jurisdiction of the English courts will apply to this Agreement. The Vienna Convention on Contracts for the International Sale of Goods is excluded.
- 21. MISCELLANEOUS.** If any part of the Agreement is found to be invalid or unenforceable by a court, the rest is unaffected. Elysium may subcontract its obligations to a competent third party. Otherwise, neither party may assign or transfer any obligations or rights. All notices must be in writing (by hand, email, fax or 1st class post deemed delivered 48 hours after posting) and sent to a director of either party (in the case of a body corporate).
- 22. You can find all Elysium policies and notices via www.elysium.ltd.uk and you should refer to this site for any further updates. Thank you for buying from Elysium.**