



General Terms of Business Realcom Applications

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1. GENERAL

1.1 These Terms of Business:

- supersede any previous arrangements between the parties and constitute the entire understanding between them. No addition, amendment or modification of these Terms shall be effective unless in writing and signed by Realcom
- shall apply to all orders (including telephone and email orders) placed with Realcom by the Client. Acceptance by Realcom of any order is conditional upon acceptance by the Client of these Terms of Business
- shall override all other inconsistent terms (whether express, implied or otherwise), including (but not limited to) any terms, conditions or stipulations contained in a purchase order or other writing or otherwise stipulated by the Client and which are at variance with or additional to these Terms of Business, unless such additional or varied terms are specifically accepted in writing and signed by Realcom.

1.2 Realcom shall not be bound by the placing of an order unless and until Realcom has issued its Order Confirmation, or until delivery of any hardware or software, or performance of any services has commenced (whichever happens first).

1.3 The acceptance of any Goods or of the commencement of services (as the case may be) supplied under an Order Confirmation issued by Realcom shall be a sufficient act of acceptance of all these Terms.

1.4 Realcom and the Client mutually acknowledge that, in entering into any contract under these Terms, they do not do so on the basis of or relying on any representation, warranty or other provision except as expressly provided in these Terms or in any Order Confirmation, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law. Any liability or remedy for innocent or negligent misrepresentation is expressly excluded.

2. GOODS

2.1 'Goods' includes both hardware and (so far as the context permits) software, whether supplied by way of sale, hire, or on licence. This term applies to any Goods to be supplied by Realcom.

Prices

2.2 The price of Goods is based on the cost prevailing at the date of Realcom's Order Confirmation; Realcom reserves the right to adjust the price by such amount as may be necessary to cover any increase affecting Realcom after that date attributable to market conditions prevailing at the date of delivery to the Client. 'Market conditions' include (but are not limited to) any direct or indirect increase in any foreign exchange rates relating to the Goods or in the cost of labour, materials, handling, manufacture, supply or transport, or such costs as may be incurred by Realcom in complying with obligations imposed by law.

2.3 Where a price for more than one item of Goods is quoted, the price may be based on the quantity specified, and Realcom reserves the right to adjust the price if orders are placed for a different quantity, or if the quantity actually delivered to the Client differs (for any reason) from that specified in any quotation.

2.4 The price of the Goods is based on delivery to the address specified, and on any relevant specifications; it is subject to adjustment in the event of delivery to a different address or in the event of any modification (either at the request or with the consent or knowledge of the Client).

Drawings, etc.

2.5 All drawings, weights, dimensions and the descriptions and illustrations contained in any sales literature and price lists are approximate only, and shall not form part of any contract under these Terms. Drawings or technical documents are for the use or information of the Client alone, and shall not be copied, reproduced or communicated to any third party without Realcom's prior written consent.

Delivery and Installation

2.6 Delivery dates are estimates only, and unless Realcom expressly agrees in writing to be bound by a delivery date as being of the essence of any contract under these Terms, it shall not be liable for direct, indirect or consequential loss arising from part, late or non-delivery.

2.7 Where Realcom expressly agrees in writing to be bound by a delivery date, Realcom's liability (subject to any other of these Terms) in respect of any loss or damage suffered by the Client which is directly attributable to such part, late or non-delivery shall be limited to the value of any Goods not delivered.

2.8 Realcom shall inform the Client when any part or all of the Goods is ready for delivery, and the Client shall inform Realcom of the location for delivery if the same does not appear on or differs from the address stated in any Order Confirmation. If the Client fails to give to Realcom instructions for delivery within twenty-one (21) days of such notification by Realcom, Realcom may without further reference to the Client arrange for storage of the Goods. Charges for storage shall be paid by the Client and the Goods shall be subject to a lien for such storage charges. Realcom may also invoice for the Goods, and payment shall be due as if delivery had been made.

2.9 Delivery shall be made during normal working hours (excluding local and national holidays). If the Client requires delivery to be made outside such times, an additional charge shall be payable. Realcom reserves the right to deliver in more than one delivery.

2.10 Where necessary the Client shall prepare the area of delivery and installation for the Goods and provide free access to the location and to any services or facilities that may be required to deliver and install the Goods. Where these have not been prepared or provided and as a result Realcom is prevented from carrying out delivery or installation at the pre-arranged day and time, Realcom shall be entitled to charge.

Damage, Shortage or Loss in Transit

2.11 Realcom accepts responsibility for damage, shortage or loss in transit if:

- notified to Realcom and the carrier (if not delivered by Realcom) within three days of receipt or proposed date of receipt of the Goods by the Client; and (where applicable)

- the Goods have been handled by the Client in accordance with Realcom's or the carrier's conditions of carriage or handling stipulations.
- 2.12 Where Realcom accepts responsibility under this Clause, it shall, at its sole option, replace or repair (as the case may be) any such Goods proved to Realcom's satisfaction to have been lost or damaged in transit.

Title to the Goods and the Passing of Risk

- 2.13 Risk in Goods shall pass to the Client upon delivery by Realcom or its carriers to the Client or his agent and Realcom shall not be liable for any loss or damage to the Goods from the time that the Goods are so delivered.
- 2.14 Notwithstanding delivery, installation, acceptance and passing of risk, title to any Goods to be sold to the Client shall not pass to the Client and shall be retained by Realcom until full payment of all monies due on any account has been received by Realcom from the Client.
- 2.15 Until such time as title in Goods has passed to the Client:
- 2.16 The Client shall, subject to Realcom's rights hereunder
- hold the Goods as Realcom's fiduciary agent and be entitled to use the same in the ordinary course of the Client's business; but shall not sell or part with possession thereof;
 - store the Goods separately from any goods belonging to the buyer or any third party, and keep the Goods clearly marked and identifiable as being the property of Realcom;
 - cause to be added to its audited accounts for each year a note that Goods supplied by Realcom are subject to retention of title and shall be the property of Realcom until full payment of has been made ; and
 - insure such Goods to their replacement value naming Realcom as the loss payee until all payments to Realcom have been made; the Client shall forthwith upon request provide Realcom with a certificate of such insurance.
- 2.17 Realcom:
- shall be entitled to enter the Client's premises upon reasonable notice to verify the Client's compliance with the preceding clause;
 - shall be entitled to repossess at any time any Goods in which title remains vested in Realcom and for this purpose at any time and without notice Realcom may enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed so to be;
 - shall be entitled to seek a court injunction or equivalent judicial order under the applicable law of this Agreement to prevent the Client from selling, transferring or otherwise disposing of the Goods.

Warranty

- 2.18 Realcom warrants to the Client that the Goods sold by Realcom are believed to be free from defects of workmanship and materials and Realcom undertakes, subject to the following terms, to replace or, at its option, to repair any Goods purchased hereunder (other than rubber parts and/or printing heads and/or consumable items) found to be defective within 90 days (or such other period as may be specified) of the date of original delivery and installation, where such defects are a result of faulty materials or workmanship.
- 2.19 Each claim of the Client under this warranty shall be sent in writing to Realcom specifying the type of Goods and nature of the defect. Upon receipt of such written notice, Realcom or its agent or representative shall have the option of testing or inspecting the Goods at their location or of having the Goods returned to Realcom or such other address as may be notified to the Client, freight pre-paid by the Client. Replacement parts, items or Goods shall be sent by Realcom to the Client ordinary freight pre-paid.
- 2.20 In the event of any claim presented under warranty being found on investigation by Realcom either to be outside the scope or duration of this warranty or the fault being unconfirmed, then the costs of such investigation and repair shall be borne by the Client.
- 2.21 Realcom shall not be liable at any time for damage or defects in the Goods or parts caused by improper use, abuse, mismanagement or by using the Goods outside any specifications detailed in the manuals and documentation relating to the Goods or outside the specific application of the Goods.
- 2.22 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED, REALCOM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES AND EXPRESSLY EXCLUDES THE SAME WHETHER IMPLIED, STATUTORY OR OTHERWISE, ESPECIALLY AS TO QUALITY OR FITNESS OF THE GOODS FOR ANY PARTICULAR PURPOSE.
- 2.23 This warranty shall not be assigned without the prior written consent of Realcom.

Copyright, Patents, & Trade Marks in the Goods

- 2.24 The Client acknowledges that any and all of the trade marks, copyright, patents and other intellectual property rights used or subsisting in or in connection with the Goods including software, hardware and other parts thereof in which Realcom or the respective manufacturer, developer or third party has an interest are and shall remain the sole property of Realcom or such manufacturer, developer or third party. The Client shall not during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute the ownership thereof.

3. SOFTWARE

Where any software is to be supplied:

- 3.1 Where the Client has been furnished with a developer's software licence, the same must be signed and returned to Realcom within 7 days or as otherwise specified in the said licence unless the said licence is a "shrink wrap" licence. If the Client fails so to sign and return the said licence, Realcom reserves the right to withhold release of the Software; or, if the same has been delivered, to collect the Software from the Client.
- 3.2 In absence of the developer's software licence being furnished, the Client, on issue of Realcom's Order Confirmation or upon delivery of the Software, hereby accepts a non-exclusive, non-transferable licence to use the Software upon the following terms:
- the Client undertakes not to copy (other than for normal operation and except to the extent permitted by the applicable law), reproduce, translate, adapt, vary or modify the Software nor to communicate the same to any third party without Realcom's prior written consent;
 - The Client undertakes to use the Software only on such equipment as may be specified and not to remove, add to, change or otherwise tamper with any copyright notice, legend or logo appearing in or on the Software or the medium upon which it resides;
 - The licence hereby granted shall continue until or unless either party gives to the other party one month prior written notice of termination, before the expiry of which the Client undertakes to return or destroy the Software as Realcom shall direct PROVIDED that Realcom shall only exercise its right to terminate in the event that the continued use or possession of the Software by the Client infringes the developer's or third party rights or where Realcom is enforced so to do by law.
 - Realcom may terminate the Licence forthwith if the Client fails or has failed to comply with any of these Terms.

- 3.3 Where any software is developed by Realcom for the Client, all copyright and other rights in the nature of Intellectual Property Rights therein shall become and remain the sole property of Realcom; subject to payment of Realcom's charges in connection with the development of the software, the Client shall have perpetual licence to use the agreed number of copies of the software for the purposes of the Client's business, but not to modify it, or to sell sublicense or distribute it, either separately or as part of or together with any other product.

4. HIRE

Where any Goods are to be hired to the Client:

- 4.1 The Goods remain the property of Realcom at all times. The Client will keep all such Goods clearly marked as the property of Realcom, and will not allow any such notice to be removed or defaced.
- 4.2 The Goods are at the risk of the Client; the Client shall keep the Goods continuously and comprehensively insured at their full replacement value against all risks, shall notify the insurer of the interest of Realcom in the Goods, and shall provide that all monies receivable against any claims shall be payable to Realcom. Loss or damage to the Goods shall not affect the continuance of the hiring, and the Client shall not be entitled to any rebate in respect of any period during which the Goods are not usable.
- 4.3 The Client shall take proper care of the Goods and at all times maintain them in good working order, and shall be responsible for any loss or damage to the Goods howsoever caused. The Client will:
- operate and maintain the Goods according to any instructions given by the supplier or manufacturer and shall modify such operations and maintenance from time to time in accordance with the manufacturers or suppliers further instructions, and shall not allow any person, unless properly trained by and to a standard set from time to time by the manufacturer or his accredited agent, to operate the Goods
 - other than for the purposes of repair, alteration, additions or other modifications, not allow the Goods to be removed from the location address
 - from time to time, allow Realcom or its appointed agent reasonable access to inspect and test the equipment, fix plates for recognition purposes and to conduct an inventory.
- 4.4 The hiring will continue until the expiry of any Notice to Terminate given by either party to the other as stated in the Order Confirmation, or (if no period of notice is otherwise specified) on the expiration of one month's notice; provided that Realcom may forthwith terminate the hiring if the Client
- is more than 7 days in arrears with any payment due to Realcom on any account, or
 - is in breach of any other terms of the contract relating to the hiring, or
 - shall cease to trade, or if any distress or execution is levied against the Client, or if the Client makes any composition or arrangement with its creditors, or if any preliminary step is taken by or in respect of the Client towards its liquidation winding up or administration.
- 4.5 Termination, howsoever or whenever occasioned shall be subject to any rights and remedies either party may have under this Agreement or in Law.
- 4.6 At the termination of the hiring:
- the Client shall return the Goods to Realcom at the Client's expense in good condition (fair wear and tear excepted)
 - the Client will no longer be in possession of the equipment with Realcom's consent, and Realcom shall be entitled to repossess the Goods, and for this purpose shall be entitled at any time and without notice to enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed so to be.

5. SERVICES

Where any services are to be provided to the Client, Realcom shall perform the services with all due care and skill, and in accordance with the standards prevailing in the computer industry.

6. CONFIDENTIALITY

Realcom and the Client each recognise that information disclosed to the other in the course of the negotiation of and the performance of this Agreement will contain and incorporate confidential information in which the other has an interest. Each agrees with each other that they will maintain as confidential and will not use any part or the whole of such information directly or indirectly disclosed by the other (or information gained from such disclosure) until or unless such information becomes public knowledge through no fault of the party using such information.

7. PAYMENT

- 7.1 So far as payment of Realcom's invoices is concerned, time is of the essence, and if the Client does not make payments on the due date then, without prejudice to any other remedy:-
- Realcom may withhold or suspend further services in respect of any contract between Realcom and the Client.
 - All sums owing by the Client to Realcom on any account shall become due and payable immediately.
 - The Client will pay interest on all sums due from date of invoice to date of payment both before and after any judgment at the rate of 2% per calendar month compounded with monthly rests.
 - The Client will indemnify Realcom from and against any and all loss damage costs or expenses (including legal expenses on the indemnity basis) which Realcom may incur as a result of the Client's failure to pay on time.
 - Realcom may terminate any contract between the Client and Realcom; if Realcom does so, the respective rights and liabilities under such other contracts shall be as if each such contract had been lawfully terminated by Realcom for breach thereof by the Client.
- 7.2 All accounts are payable in accordance with the terms contained in Realcom's invoices. Where credit terms are agreed, Realcom reserves the right to withdraw the same and substitute cash with order. Any discounts must be agreed in writing by Realcom.

8. REALCOM'S LIABILITY

- 8.1 REALCOM EXPRESSLY EXCLUDES LIABILITY FOR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE TO DATA OR TO OTHER EQUIPMENT OR PROPERTY, (WHETHER OR NOT THE SAME MAY BE IN REALCOM'S CARE, CUSTODY OR CONTROL) OR FOR LOSS OF PROFIT, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.

- 8.2 SUBJECT THERETO, REALCOM ACCEPTS LIABILITY IN RESPECT OF ANY DIRECT LOSS OR DAMAGE ARISING AS A RESULT OF NEGLIGENCE, OR IN RESPECT OF DIRECT LOSS OF OR DAMAGE TO PROPERTY BELONGING TO OR HELD BY THE CLIENT DIRECTLY ATTRIBUTABLE TO THE DISHONESTY OR MALICIOUS ACT OR DEFAULT OF REALCOM'S STAFF; IN EITHER CASE, SUCH LIABILITY IS LIMITED TO THE LESSER OF £10,000 AND, WHERE THE LOSS RELATED TO SPECIFIC GOODS AND/OR SERVICES SUPPLIED, THE AMOUNT OF REALCOM'S CHARGE FOR THOSE GOODS AND/OR SERVICES.
- 8.3 SUBJECT THERETO, EXCEPT TO THE EXTENT THAT BY THE LAW RELATING TO THIS AGREEMENT IT IS NOT LAWFUL TO EXCLUDE SUCH LIABILITY, REALCOM SHALL NOT BE LIABLE TO THE CLIENT FOR ANY LOSS OR DAMAGE WHATSOEVER OR HOWSOEVER CAUSED ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH ANY CONTRACT UNDER THESE TERMS, ANY GOODS OR SERVICES SUPPLIED UNDER SUCH A CONTRACT OR THE USE OF SUCH GOODS, OR OTHERWISE.
- 8.4 IN THE EVENT THAT ANY EXCLUSION OF LIABILITY CONTAINED IN THESE TERMS OF BUSINESS SHALL BE HELD TO BE INVALID FOR ANY REASON AND REALCOM BECOMES LIABLE FOR LOSS OR DAMAGE THAT MAY BE LIMITED OR CAPABLE OF BEING LIMITED IN LAW, SUCH LIABILITY SHALL BE LIMITED TO £10,000.
- 8.5 REALCOM SHALL NOT IN ANY EVENT BE LIABLE FOR ANY CLAIMS UNLESS THEY ARE NOTIFIED TO REALCOM WITHIN TWELVE MONTHS OF THE CAUSE OF ACTION ACCRUING.
- 8.6 REALCOM DOES NOT EXCLUDE OR LIMIT LIABILITY FOR DEATH OR PERSONAL INJURY, TO THE EXTENT THAT THE SAME ARISES DIRECTLY FROM THE NEGLIGENCE OF REALCOM OR ITS EMPLOYEES.

9. TERMINATION

- 9.1 Either party may terminate any contract under these Terms if
- the other shall cease to trade, or
 - any distress or execution is levied against the other, or
 - the other makes any composition or arrangement with its creditors, or
 - any preliminary step is taken by the other or by another towards its liquidation winding up or administration, or
 - the other is in breach and fails to remedy the breach within 7 days notice requiring the breach to be remedied, or
 - the other is in breach and the breach is incapable of remedy
- 9.2 Termination shall be subject to any rights and remedies either party may have under this Agreement or in Law.
- 9.3 On termination any obligation of a continuing nature shall survive.

10. MISCELLANEOUS

10.1 Notices

All notices shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by recorded delivery post or sent by fax to the intended recipient at the address and/or fax number stated in this Agreement or to such other address or fax number as that party may specify to the other in writing. Notices sent by fax shall be deemed received the first working day following such delivery or sending, and notices which have been posted as above shall be deemed received on the second working day following posting.

10.2 Force Majeure

If either party is prevented or delayed in the performance of any of its obligations by force majeure, then such party shall be excused the performance for so long as such cause of prevention or delay shall continue; 'force majeure' shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party, and inter alia including the following:

- strikes, lockouts or other industrial action
- civil commotion, riot, invasion, war threat or preparation for war
- fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster
- impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport
- political interference with the normal operations of any party
- illness of or accidental injury to personnel (whether or not caused or contributed to by such person's own negligence)
- mechanical or computer breakdown.

10.3 Obligations

Realcom's obligation to perform any contract under these Terms shall be suspended where the presence of such hazards as defective structure, defective or dangerous means of access, noxious, toxic, combustible, explosive or radioactive substances or any other cause renders any premises where the contract is to be performed dangerous (in Realcom's opinion) to any of Realcom's staff.

10.4 Waiver.

Failure or neglect by either party to enforce at any time any of the provisions hereof shall:

- not be construed nor shall be deemed to be a waiver of its rights hereunder
- not in any way affect the validity of the whole or any part of this Agreement
- not prejudice its rights to take subsequent action;

10.5 Headings.

Headings in these Terms of Business are inserted for convenience only, and are not intended to be part of or to affect the meaning or interpretation of any of these Terms of Business.

10.6 Assignment.

No agreement under these terms shall be assigned by either party without the prior written consent of the other.

10.7 Law.

This Agreement shall be construed in accordance with English Law