



Motive Technology UK Limited

CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Contract: the Customer's purchase order and the Supplier's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Project Manager: the Customer's manager for the Project appointed in accordance with condition 5.1(a).

Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

Group: in relation to a company (wherever incorporated) that company, any company of which it is a subsidiary (its holding company) and any other subsidiaries of any such holding company; and each company is a member of the group. Unless the context otherwise requires, the application of the definition of Group to any company will apply to the company as it is at that time.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Project Plan.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.

Services: the services to be provided by the Supplier under the Contract.



Supplier: MOTIVE TECHNOLOGY UK LIMITED registered in England and Wales with number 06813205, the registered address of which is at Unit 9, Middlegate, White Lund Industrial Estate, Morecambe, Lancashire, LA3 3BN

Supplier's Project Manager: the Supplier's manager for the Project, appointed in accordance with condition 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings do not affect the interpretation of these conditions.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.

4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

4.4 When dealing with the Customer's agent then Supplier will ensure that they request all additional service from Agent via Customer such that Customer is fully aware of any additional costs for which it maybe liable in advance of any liability being caused.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager,;
- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.
- (e) create a list of acceptance criteria to be applied to the deliverables the application of which may affect any final payment to Supplier. The list of acceptance criteria must be supplied during the system design and specification stage and be signed off by the Supplier at the same time as the Customer signs off the Design and Specification documents.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.2.1 Where the Customer engages an Agent Supplier will at all times keep Customer informed of any delays affecting its expected performance in the delivery of the solution which is caused by the Agents lack of performance in its delivery of services, failure to notify Customer in sufficient time to allow Customer to manage the Agents delivery of support services will limit Customer's liability for any losses so incurred. (NOTE: there is a cost implication on the contract if we are also having to manage and monitor the Customers agent)

5.3 The Customer shall not, and shall procure that each other company in the Customer's Group shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 18 months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 50% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 50% of the annual remuneration to be paid by the Customer or other member of the Customer's Group to such employee or sub-contractor.

6. CHANGE CONTROL

6.1 The Customer's Project Manager and the Supplier's Project Manager shall meet at appropriate intervals to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it, except where the change in scope is quantitative rather than functional.
- 6.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7. **CHARGES AND PAYMENT**

- 7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 7.3 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case. Unless explicitly stated to the contrary all work is undertaken on a fixed price basis.
- 7.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
 - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis. In any respect all overtime will be agreed in advance with Customer;
 - (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and
 - (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7. Where appropriate, the invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Supplier (without deduction or set-off except where the criteria detailed in 5.1.e are not met) in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice

the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.

7.4 Any fixed price contained in the Project Plan excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier [at cost]; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- (c) All expenses will be pre-agreed with the Customer in advance.

7.5 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

7.6 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on a due date the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank, South Lakes Commercial Office, PO Box 81, 10 Elephant Yard, Kendal, LA9 4GS, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All agreed payments for completed and delivered service(s) (subject to acceptance criteria defined in Section 5.1 (e)) payable to the Supplier under the Contract shall become due immediately on termination of the Contract. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. **INTELLECTUAL PROPERTY RIGHTS**

8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier.

8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. **CONFIDENTIALITY AND SUPPLIER'S PROPERTY**

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's

business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data purchased from the Supplier for the Customer shall at all times be and remain the exclusive property of the Customer, and shall be held by the Customer in safe custody at its own risk. Customer shall acquire proper title and rights to operate any software required to create the environment needed to support the deliverables.

9.3 This condition 9 shall survive termination of the Contract, however arising.

10. **LIMITATION OF LIABILITY**

10.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Supplier shall not be liable, whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or

- (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 100% of the un-signed work in progress. Milestones in the service which have previously been signed-off by the customer will not be subject to clause 10.4(b).

11. **TERMINATION**

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

12. **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a



utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. **WAIVER**

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14. **SEVERANCE**

14.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. **STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

16. **ASSIGNMENT**

16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17. **NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. **THIRD PARTY RIGHTS**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.



19. **NOTICES**

Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20. **GOVERNING LAW AND JURISDICTION**

- 20.1 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 20.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.