

TCN Terms and Conditions for Purchase of Services (From Suppliers)

1 INTERPRETATION

1.1 Definitions.

In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday in England) when banks in London are open for business.

Charges: the charges payable by Total Computer Networks Ltd (Customer) for the Services purchased from suppliers in accordance with Clause 6 (Charges and Payment).

Commencement Date: has the meaning set out in Clause 2.2.

Conditions: means these terms and conditions as amended from time to time in accordance with Clause 13.5.

Confidential Information: means all confidential or proprietary information (however recorded or preserved) that is disclosed or made available whether before or after the date of these Conditions (in any form or medium), directly or indirectly, by the Disclosing Party to the Receiving Party including all business, affairs, customers, suppliers, operations, processes, product information, technical or commercial know-how, specifications, inventions and initiatives which are of a confidential nature and any information, findings, data or analysis derived from Confidential Information excluding information that:

- (a) is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Receiving Party; or
- (b) was lawfully in the possession of the Receiving Party before the information was disclosed by the Disclosing Party.

Contract: the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions and the Order.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: Total Computer Networks Limited registered in England and Wales with company number 04958126 and whose registered office address is Newspaper House, Rothwell Road, Kettering, England NN16 8GA.

Customer Materials: has the meaning set out in Clause 3.4(j).

Data Breach: means any unauthorised or unlawful processing of, disclosure of, use of, access to, theft of and/or any accidental or unlawful damage to, destruction of, loss of, alteration to or corruption of Personal Data.

Data Protection Legislation: means all legislation and regulatory requirements in force from time to time relating to the use of personal data, including without limitation, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK) (ii) the Regulation and (iii) any other directly applicable European Union regulation relating to privacy.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Services, as set out in the Customer's purchase order form.

Personal Data: means any personal data which is supplied, or in respect of which access is granted, to the Supplier by the Customer in connection with the performance of Services by the Supplier under a Contract.

Regulation: means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as and any legislation which amends, re-enacts or replaces it in England and Wales.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Service Specification.

Service Specification: the description or specification for the Services agreed in writing by the Customer and the Supplier as detailed in the Order.

Supplier: the company or entity from whom the Customer purchases the Services.

1.2 In these Conditions, the following rules apply:

- (a) a person includes a natural person, (a) corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular; and
- (f) a reference to writing or written includes emails and faxes.

2 BASIS OF ENTERING INTO A CONTRACT

- 2.1 The provision of an Order constitutes an offer by the Customer to purchase the Services set out therein in accordance with the provisions of these Conditions. To the extent that an Order contains any goods, the Supplier's terms and conditions for the supply of goods shall apply in respect of those goods instead of these Conditions.
- 2.2 An Order shall only be considered accepted when the Supplier issues the sales order confirmation at which point, and on which date a Contract shall come into existence (the Commencement Date). In the event that a sales order confirmation is not issued by the Supplier, an Order shall be deemed to be accepted, and a binding Contract to have come into existence, on the date on which the Supplier commences the provision of the Services.
- 2.3 Each Contract constitutes the entire agreement between the parties for the supply of the Services outlined in that Order (as applicable).
- 2.4 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 If there is any conflict between these Conditions and the terms of an Order (being an Order accepted or deemed accepted in accordance with Clause 2.2), the terms of the relevant Order (as applicable) shall prevail.

3 SUPPLY OF SERVICES

- 3.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.4 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the Specification.

4 CUSTOMER REMEDIES

4.1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

4.2 If the Supplier has supplied Services that do not comply with the requirements of Clause 3.4(d) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with Clause 3.4(d).

4.3 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.4 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

Approved Classification – Restricted

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5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

6 CHARGES AND PAYMENT

6.1 The Charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.

6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and shall allow the Customer to inspect such records at all reasonable times on request.

6.6 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

7.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7.4 All Customer Materials are the exclusive property of the Customer.

8 DATA PROTECTION

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.2 The parties agree that for the purposes of these Conditions and the Supplier's processing of the Personal Data in connection with the provision of the Services, the Supplier (and each permitted sub-processor) shall be a data processor (where Data Controller and Data Processor have the meanings as defined in the Regulation). The table below sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Regulation).

Subject matter of processing	Provision of the Services as more specifically set out in each Order.
Duration of processing	Duration of each Contract as stipulated in the Order.
Nature and purpose of processing	Supply of Services to the Customer in particular installation of Services at the Customer's business address or the Customer's employee's home working locations.
Type of personal data	Customer name Employee name
Categories of Data Subjects	Customer Customer's employees.

8.3 Without prejudice to the generality of Clause 8.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of these Conditions.

8.4 The Supplier shall, to the extent it is acting as Data Processor:

- (a) only process the Personal Data on the written instructions of Customer, including with regard to transfers of personal data to a third country or international organisation, and otherwise as necessary to perform its obligations under these Conditions or as required by any EU or member state law of which, before processing any Personal Data, the Supplier notifies the Customer (unless prohibited by that law from doing so on important grounds of public interest);
- (b) ensure that all staff or contractors who may have access to, or are authorised to process Personal Data are bound by appropriate obligations of confidentiality at least as protective as those set out in these Conditions or are under appropriate statutory obligations of confidentiality;
- (c) have in place and maintain all appropriate technical and organisational measures aimed at ensuring an appropriate level of security and preventing a Data Breach, which shall be compliant with all appropriate Data Protection Legislation regarding the security of the Personal Data;

- (d) assist Customer by appropriate technical and organisational measures for the fulfilment of Customer's obligation to respond to requests for exercising of data subject rights (including access requests) set out in Chapter III of the Regulation;
- (e) not transfer any Personal Data outside the EEA without appropriate safeguards in place as required by Data Protection Legislation;
- (f) subject to reasonable access arrangements and save for disclosure of information which is confidential, commercially sensitive or privileged the Supplier shall on reasonable request, provide to Customer, and / or its authorised representatives or auditors, all information required by Customer and / or allow for and contribute to audits and inspections to assess the Supplier's compliance with this Clause 8 and the Data Protection Legislation;
- (g) notify Customer in writing without undue delay after becoming aware of any Data Breach and shall provide Customer with reasonable assistance in investigating and responding to such Data Breach;
- (h) within 30 days of termination or expiry of these Conditions (or the relevant part of them) at the option of Customer either destroy or delete all Personal Data or transfer all Personal Data to Customer or a nominated third party other than to the extent that such Personal Data's ongoing retention is required by EU or member state law and only for such period as required by EU or member state law;
- (i) notify Customer in writing, as soon as reasonably practicable, if it receives from a Data Subject a communication, request or complaint which relates to the processing of the Personal Data by the Supplier on behalf of Customer or to either party's compliance with the Data Protection Legislation (save to the extent that such notification is prohibited by the relevant applicable laws) and, in each case, provide a copy of any such communication, request or complaint; and
- (j) participate in, and provide reasonable assistance with, a data protection impact assessment or prior consultation under Article 35 (Data protection impact assessment) and Article 36 (Prior consultation) of the Regulation in respect of the new type of processing proposed by the Supplier.

8.5 Excluding any actions required by the Supplier for compliance with the Supplier's direct obligations under Data Protection Legislation, to the extent that any assistance provided by the Supplier under Clause 8.4 requires a significant effort or time commitment then the Supplier shall be entitled to charge, and the Customer shall pay, the Supplier's reasonable costs of providing such assistance.

8.6 The Customer hereby provides its general written authorisation for the Supplier to appoint sub-processors. The Supplier shall notify the Customer in writing of any intended changes concerning the addition or replacement of sub-processors. If the Customer reasonably objects to any changes concerning sub-processors the Customer must notify the Supplier at least 2 weeks prior to the proposed engagement and the Supplier shall not engage, or shall cease to engage that sub-processor. If the Customer fails to notify the Supplier of any objections at least 2 weeks prior to the proposed engagement then the Customer shall be deemed to have consented to the change in sub-processor and shall have no further right to object. The Supplier confirms that it has entered or (as the case may be) will enter with each of the sub-processors a written agreement incorporating terms which are substantially similar to those set out in this Clause 8.6. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any sub-processor appointed by the Supplier pursuant to this Clause 8.6.

9 INDEMNITY

9.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding the Customer Materials); and
- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services.

9.2 This Clause 9 shall survive termination of the Contract.

10 INSURANCE

10.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 TERMINATION

11.1 Without limiting or affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of Clause 3.4(h).
- (b) for convenience by giving the Supplier 1 months' written notice.

11.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 2 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

12 CONSEQUENCES OF TERMINATION

- 12.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13 GENERAL

13.1 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for a period of 1 week the party not affected may terminate the Contract by giving 5 days' written notice to the affected party.

13.2 Assignment and other dealings

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

13.3 Confidentiality

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any Confidential Information except as permitted by Clause 13.3(b).
- (b) Each party may disclose the other party's Confidential Information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this Clause 13.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

13.4 Entire agreement

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.5 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

13.6 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 13.7 shall not affect the validity and enforceability of the rest of the Contract.

13.8 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to DocumentManagement@totalcomputers.co.uk
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 13.8(b), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This Clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.9 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.10 Governing Law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

13.11 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.