

ITM COMPUTER SERVICES
TERMS & CONDITIONS OF BUSINESS (“CONDITIONS”)

1 Interpretation

In the Conditions:

- 1.1** “Client” means the person to whom ITM Computer Services has agreed to provide the Service in accordance with the Conditions.
- 1.2** “Contract” means the contract for the provision of the Service and/or goods by ITM Computer Services to the Client subject to the Conditions.
- 1.3** “Input Material” means any documents or other materials and any data or other information provided by the Client relating to the service.
- 1.4** “Output Material” means any documents or other materials and any data or other information provided by ITM Computer Services relating to the Service.
- 1.5** “Premises” means the premises, land, container, warehouse, building or other real property of the Client or nominated third party where the Services are to be provided.
- 1.6** “Price” means the charges and prices referred to in the Specification relating to the Service.
- 1.7** “Service” means the service described in the Specification including all goods relating thereto or the provision of goods provided by ITM Computer Services to the Client under the Contract.
- 1.8** “Specification” means the specification set out in the annexed order or schedule together with any letters or documents provided by ITM Computer Services to the Client relating to the Contract.

2 Quotations and Orders

Any quotation given by ITM Computer Services shall remain valid for 28 days. No Contract shall come into existence until a firm order placed by the Client has been accepted in writing by ITM Computer Services or, if earlier, ITM Computer Services supplies the Service or delivers the goods.

3 Supply of the Service

- 3.1** ITM Computer Services shall provide the Service to the Client subject to the Conditions.
- 3.2** The Client shall ensure the accuracy of all Input Material which must be supplied to ITM Computer Services within sufficient time to enable ITM Computer Services to provide the Service.
- 3.3** The Service shall be provided in accordance with the Specification.
- 3.4** ITM Computer Services may at any time without notifying the Client make any changes to the Service which are necessary to comply with any applicable health, safety, environmental or other statutory requirements which do not materially affect the nature or quality of the Service.
- 3.5** **Where a date has been given for the provision of the Service or the delivery of any goods forming part of that service, it is an estimate only. Whilst ITM Computer Services will endeavour to provide the Service or deliver any goods by the requested date, it shall accept no responsibility for late delivery and time shall not be of the essence of the Contract.**

4 Goods

- 4.1** Where the Service includes the supply of goods the following provisions will apply;

- 4.1.1 **Goods are at the risk of the Client from the time of delivery.** Where requested ITM Computer Services will arrange for the transportation and delivery of the goods to the Premises at the Client's risk and the Client will pay all costs and expenses of such transportation and delivery as required or specified.
- 4.1.2 Ownership of the goods shall not pass until the whole Price owed by the Client in respect of them has been paid. Until then the Client will store the goods separately, ensure that the goods are clearly marked as belonging to ITM Computer Services and grant ITM Computer Services, its agents and employees an irrevocable licence to enter any premises where the goods are or may be stored in order to inspect them or to recover them.

5 Charges

- 5.1 The Client shall pay to ITM Computer Services the Price.
- 5.2 When there is an increase in the cost to ITM Computer Services of labour, materials or overheads required for the provision of the Service or any increase in the cost to ITM Computer Services of any goods forming part of the Service, ITM Computer Services shall be entitled to vary the Price upon giving written notice to the Client. Where such variation purports to relate to an agreed Contract and less than one months notice of the variation has been given the Client shall be entitled to withdraw from the Contract without liability for breach upon giving ITM Computer Services written notice to that effect.
- 5.3 All Prices quoted to the Client for the provision of the Service are exclusive of any Value Added Tax for which the Client shall be additionally liable at the applicable rate.
- 5.4 ITM Computer Services shall invoice the Client immediately after the Service is provided except where otherwise provided in the Specification.
- 5.5 The Price shall be paid by the Client (together with any applicable Value Added Tax and without any set-off or other deduction) in accordance with the Specification provided that in the absence of any such provision in the Specification, payment shall be made within 28 days of the date of ITM Computer Services invoice.
- 5.6 **If payment of the Price is not made on the due date ITM Computer Services shall be entitled, without limiting any other rights it may have, to charge the Client interest on the outstanding amount (both before and after any judgement) at the annual rate of 5% above the base rate from time to time of the Bank of Scotland from the due date until the outstanding amount is paid in full.**

6 Rights in the Output Material

All rights in the Output Material shall unless otherwise agreed in writing between the Client and ITM Computer Services belong to ITM Computer Services subject only to the right of the Client to use the Output Material in relation to the Service. Following termination of a Contract for whatever reason ITM Computer Services may require the Client to destroy or deliver up to ITM Computer Services any items forming part of the Output Material which the Client is not required to keep by statutory or other governmental authority. The Client further undertakes to maintain the confidentiality of any Output Material and not use the same in connection with the provision by a third party of any service.

7 Preparation

- 7.1 In some cases the Client will be requested to clear furniture, floor coverings, decorations and other possessions items, goods or fittings ("the Chattels") from the Premises or to prepare the Premises in a manner set out in the Specification. **It is the Client's responsibility to do this in advance of ITM Computer Services arriving to provide the Services. Should the Client fail to clear the Premises, ITM Computer Services reserves the right to charge the Client £60.00 for each man hour taken to clear the Premises satisfactorily.**
- 7.2 Where Chattels are to be left in the Premises or the Chattels are to be treated, the client must ensure ITM Computer Services has access to all sides of them.

7.3 The Chattels will be at the Client's risk at all times and ITM Computer Services does not accept any liability for any damage howsoever caused to them.

8 Access

The Client is to ensure ITM Computer Services have access to the entire Premises for the duration of the provision of the Services. The Client is to confirm the arrangements to ITM Computer Services 48 hours before the Services are to be provided or commenced. ITM Computer Services shall endeavour to inform the Client of any change to the times and/or dates the Services are to be provided so that access arrangements can be changed accordingly. **However, ITM Computer Services does not accept any liability whatsoever for failure to inform the Client of changes to the date and/or time of the provision of the Services.**

9 Warranties Guarantees & Liability

9.1 ITM Computer Services warrants to the Client that the Service will be provided using reasonable care and skill and as far as reasonably possible in accordance with the Specification.

9.2 ITM Computer Services gives the Client in relation to the Service no guarantees save for those expressly referred to in the Specification.

9.3 Where ITM Computer Services is bound to give a guarantee under the terms of the Specification, ITM Computer Services shall release the written guarantee to the Client within 28 days after the Client has made payment in full in accordance with these Conditions.

9.4 Where the Service includes any goods provided by a third party, ITM Computer Services does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise but shall where possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the third party supplying the goods to ITM Computer Services.

9.5 ITM Computer Services shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Client.

9.6 Except in respect of death or personal injury caused by ITM Computer Services negligence or as expressly provided in the Conditions or in the Specification, ITM Computer Services shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law or under the express terms of the Contract for any loss of profit or any indirect, special or consequential loss, damage (including damage to neighbouring property), costs, expenses or other claims (whether caused by the negligence of ITM Computer Services, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service.

9.7 ITM Computer Services shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of ITM Computer Services obligations in relation to the Service if the delay or failure was due to any cause beyond ITM Computer Services reasonable control.

9.8 ITM Computer Services entire liability (whether in contract tort or otherwise) in respect of any claim under the Contract will not exceed damages of an amount equal to the upper limit of ITM Computer Services insurance cover for the claim in question.

9.9 ITM Computer Services shall not be liable to the Client or to any third party for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with any consultancy services including reports prepared by ITM Computer Services provided under this Contract except to the extent that such liability may not be lawfully excluded.

- 9.9 Where the Services consist of, or include, the undertaking of tests on behalf of a Client, the Client acknowledges that in most cases the tests will be carried out on a sample and the correlation between the results of such tests and the whole of the site or batch from which the sample is taken will depend upon the sample size and there is, therefore, no guarantee as to the accuracy of such results when applied to the site or batch as a whole. **ITM Computer Services accepts no liability for any interpretation placed on the results by the Client.**
- 9.10 Where the Services consist of a treatment which incorporates the use of heat, **ITM Computer Services accept no liability for damage caused to commodities, equipment or the fabric of a building as a consequence of heat being used on or adjacent to such items and it is the responsibility of the Client to ensure that any items which may be susceptible to heat damage are removed or protected prior to commencement of the treatment.**

10 Complaints

- 10.1 All complaints about the Service reported promptly by the Client will be investigated thoroughly and promptly by ITM Computer Services.
- 10.2 The Client shall give to ITM Computer Services its agents and employees the opportunity to remedy any complaint, including but not limited to entry to the Premises for the purposes of carrying out any remedial works. ITM Computer Services may also choose to issue a credit note equal to the value of the work.
- 10.3 **ITM Computer Services shall not be liable for work undertaken by any third party unless the same has been approved by Igrox in writing.**

11 Health & Safety

- 11.1 The Client undertakes to be responsible for any preparatory work stipulated in the Specification and in particular to observe and promptly implement all statutory requirements necessary to provide a safe working environment for ITM Computer Services personnel when attending the Premises to supply the Service. It may be necessary for ITM Computer Services to enter a Premises' roof space. **The Client undertakes to ensure that the ceiling of the Premises is strong enough for this and shall indemnify ITM Computer Services accordingly. ITM Computer Services does not accept liability for any damage caused by the ceiling or roof space being in a weakened condition.**
- 11.2 The Client will ensure that the Client's personnel adhere strictly to instructions given by ITM Computer Services relating to the Service and in particular to any requests to vacate the Premises during the supply of the Service and not to return until ITM Computer Services issues the appropriate clearance certificate. **ITM Computer Services may delay the provision of the Services where, in ITM Computer Services opinion, the Premises are unsafe. Any extra costs associated with making the Premises safe will be paid by the Client.**
- 11.3 ITM Computer Services will supply the Service in a safe and efficient manner and undertakes to comply with all relevant safety legislation.

12 Termination

- 12.1 Where the Contract is renewable on an annual basis either party shall be entitled to terminate the Contract at any time by giving not less than 3 months written notice to ITM Computer Services to be given at any time after the end of the first year and to take effect from any subsequent quarterly billing date. In other cases either party will be entitled to terminate the Contract at any time by giving not less than 1 month's written notice.
- 12.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of the Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors, or has a Receiver or Administrator appointed.

12.3 Upon termination of a Contract for whatever reason all amounts owing to ITM Computer Services shall become immediately due and payable.

13 Force Majeure

ITM Computer Services shall have no liability to the Client 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 strikes, lock-outs or other industrial disputes (whether involving the workforce of ITM Computer Services 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.

14 General

14.1 The Conditions (together with the Specification) constitute the entire agreement between the parties, supersede any previous agreement or understanding and in common with the Service may not be varied except by agreement in writing between the parties. All other terms and conditions express or implied by the Client or statute or otherwise are excluded to the fullest extent permitted by law.

14.2 Any notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to the other party at its registered office or principal place of business and shall be deemed delivered 2 full working days after posting.

14.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4 If any provision of the Conditions is held by any competent authority to be invalid or enforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.5 The Client is not entitled to assign the Contract without the prior written consent of ITM Computer Services.

14.6 The parties to the Contract do not intend any term of the Contract to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.7 English law shall apply to the Contract and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.