

ITOM TECH LTD TERMS AND CONDITIONS

1. These terms and conditions shall apply to the agreement between us in respect of the goods and services we supply to you [described overleaf] and in the absence of contrary agreement in respect of any other goods or services supplied by us to you. Except to the extent that these terms and conditions are varied by us in writing they shall constitute the entire agreement between us and shall prevail over your own terms and conditions and any previous terms and conditions, agreement or understanding between us.
2. You agree that in entering into the agreement between us you shall not rely on any statement contained in any brochure, price list or sales literature or any other representation or understanding (whether oral or in writing) which is not included or referred to in these terms and conditions. No order submitted by you shall be accepted or deemed to have been accepted by us unless we have acknowledged it in writing.
3. Unless otherwise confirmed by us in writing, the quality, quantity and description of the goods and/or services shall be as set out overleaf. Any specifications or samples supplied by us are approximates only [and given in order to provide you with a general idea as to the final product graphically or otherwise].
4. Where we are to supply goods and/or services to a design supplied by you, you shall deliver to us all the necessary information (including details of any design or plan) in sufficient time to enable us to supply the goods and/or provide the services by any dates estimated for delivery of the goods or performance of the services and you shall indemnify us against all losses, expenses, damages and costs incurred by us as a result of our use of any design or plan supplied by you including (but not limited to) those incurred by us in respect of any claim by a third party for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right or for negligence, whether in respect of personal injury or death or otherwise. Risk of damage to or loss of any documentation or other items relating to any specification, design or plan supplied by you shall be yours even if in our possession.
5. The price payable by you for the goods and/or services shall be the Price set out overleaf. [Quoted Prices are valid for 30 days unless otherwise specifically agreed in writing], but we may withdraw any quote at any time before it is accepted by you, in which case we shall inform you in writing.
6. We may at anytime before delivery of the goods to you and/or before we start work on your behalf, increase the Price of the goods and/or services to reflect any reasonable increase in our costs which is beyond our control (such as the cost of material or their manufacture) or which is caused by any change to estimated delivery dates, quantities or specifications requested by you or any delay caused by you or charge you for our out of pocket expenses which we reasonably incur and we shall on your request supply you with evidence of payment of such expenses.
7. Unless otherwise confirmed by us in writing, all Prices given are exclusive of taxes.
8. Prices given only include delivery when specified with our quotation or current published price list and delivery conditions. In all other cases you shall pay our reasonable charges for delivery to the delivery address.
9. We shall invoice you for the Price of the goods on or at anytime after delivery and shall invoice you for the Price of the services at any time after the work to be done is completed. Where we supply you with both goods and services we may invoice you separately for each.
10. [You shall pay the Price in full and in cleared funds within 30 days of the invoice date, subject to a suitable credit limit being available. If a suitable credit limit is not available, you must make payment in cleared funds on or prior to the date of delivery. Receipts for payment will be issued only on request.]
11. You shall not be entitled to deduct any amount from the Price by way of set off or counterclaim or for any other reason unless we have agreed the amount of any such deduction in writing.
12. If you do not pay the Price set out in our invoice in full and in cleared funds within 30 days of its date then, in addition to our other rights, we shall be entitled to bring an action against you for the Price (even if property in the goods has not passed to you) and/or cancel the agreement between us and/or suspend any further deliveries to you and/or charge you interest on the outstanding amount at the rate of 2% per annum above the base rate of National Westminster calculated on a daily basis and this rate shall apply both before and after the issue of any legal proceedings we may take against you to recover any unpaid amount.
13. Any dates given for delivery of the goods and/or the commencement or completion of the services are estimates only and we shall not be liable to you for any reasonable delay in delivery of the goods howsoever that delay is caused.
14. Where we are to supply goods and/or services to you in instalments, each delivery or performance shall constitute a separate contract and our failure to deliver or perform any one or more of the instalments in accordance with these terms and conditions or any claim by you in respect of any one or more instalments shall not entitle you to terminate the contract as a whole.
15. If we fail to deliver the goods or if we fail to perform the services, or any instalment of the goods or services, as a result of which we are deemed by any competent authority to be liable to you, our liability shall be limited to the excess (if any) of the cost to you in the cheapest available market of replacement goods or services.
16. Risk of damage to or loss of the goods shall pass to you at the time of delivery or when we have tendered delivery.
17. [The goods shall remain our property until you have paid in cleared funds all sums owing to us in full both in respect of the goods themselves and in respect of any other account or debt. Until all sums owing to us have been paid you shall hold the goods as bailee and store them separately (to the extent that you are able) from your property or the property of anyone else and in such a way that they can be identified as our property.]
18. Until such time as all sums owing to us have been paid in full and in cleared funds you shall only be entitled to sell the goods as our agent in the ordinary course of your business and provided that they comply with any relevant terms implied by statute. You shall not have any authority to bind us to any contractual relationship with any third party and you shall hold all the proceeds of sale in a separate bank account and shall on request provide us with details of the account. You shall at our request assign to us any claim you have in respect of the goods against any third party to whom you sell the goods under the provisions of this clause
19. Until all sums owing to us have been paid in full and in cleared funds you shall properly store, protect and insure the goods against loss or damage and in the event of a relevant claim shall hold the proceeds of such insurance on our behalf as our trustees.
20. If you have not paid in cleared funds any invoice within 30 days of the date of that invoice, or if a receiver, administrator or liquidator is appointed in respect of your business, your right to possession of the goods shall end and we shall be entitled to terminate the agreement and you shall at your expense make the goods available to us and allow us to repossess them and in such circumstances you hereby grant us, our agents and employees an irrevocable licence to enter at any time any premises where the goods are stored to enable us to repossess or inspect them.
21. Where in the course of your business you sell to and/or install the goods for any third party you shall indemnify us against any damages, losses, costs or expenses we incur in respect of any claim brought against us by a third party for any loss, injury or damage caused by the goods or their use or in any way connected with the performance of the agreement between us where such loss, injury or damage does not arise as a result of our negligence.
22. We shall at all times retain copyright and all other intellectual property in respect of any and all documents we provide on your (or any other party's) behalf. You shall not reproduce or use these documents or drawings without our written consent, for which we may require a reasonable fee. All drawings and documents must be kept confidential by you and on termination of the agreement between us (by whatever reason) you shall at our request return them and all copies to us immediately
23. In the event that you are subject to any claim that the goods or services infringe any third party's intellectual property rights we agree to indemnify you against all loss, damages, cost and expenses awarded against or incurred by you connection with the claim, or paid or agreed to be paid by you in settlement of the claims, provided that:-
 - 23.1.1 we are given full control of any proceedings or negotiations in connection with any such claim;
 - 23.1.2 you give us all reasonable assistance for the purpose of any such proceedings or negotiations;
 - 23.1.3 except pursuant to a final award, you shall not pay or accept any such claim, or compromise any such proceedings without the prior written consent of us (consent not to be unreasonably withheld);
 - 23.1.4 you shall do nothing which would or might vitiate any policy of insurance or insurance cover which you may have in relation to such infringement, and this indemnity shall not apply to the extent that you recover any sums under any such policy or cover (which you shall use your best endeavours to do);
 - 23.1.5 we shall be entitled to the benefit of, and you shall accordingly account to the us for, all damages and costs (if any awarded) in your favour which are payable by or agreed with the consent of you (consent not to be unreasonably withheld) to be paid by any other party in respect of any such claim; and
 - 23.1.6 without prejudice to any of your duties at common law, we shall be entitled to require you to take such steps as we may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which we are liable to indemnify you under this clause.
24. Provided that the total Price for the goods and/or services has been paid in full and in cleared funds on or before the due date for payment, we guarantee the goods against defects in materials and workmanship to the extent only that the goods or any component in them are the subject of a guarantee or warranty from their manufacturer and to the extent we can enforce such guarantee or warranty against that manufacturer and we guarantee that our services will be provided with reasonable skill and care and to the best of our ability. No other warranty, guarantee or other term relating to the supply and manufacture of the goods or the supply of services is given and if implied by statute, common law or otherwise is excluded to the fullest extent permitted by law.
25. Any claim made by you in respect of any guarantee given under clause 25 must be notified to us within 7 days of the date of delivery or the completion of the work done by us or if any relevant defect or failure would not have been apparent on reasonable inspection of the goods or work done, within 7 days after discovery of that defect or failure. If you fail to comply with the provisions of this clause we shall have no liability to you in respect of the relevant defect or failure under the terms of any guarantee.
26. Except in respect of death or personal injury caused by our negligence we shall not be liable to you by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under these terms and conditions for any liquidated damages or penalty you incur whether as a result of any agreement with a third party for the supply and/or installation of goods supplied by us to you or for any loss of profit or any indirect or consequential loss, damage, costs or expenses suffered by you or a third party which arise out of or in connection with the supply of goods and/or services by us to you.
27. Except in respect of death or personal injury our entire liability in respect of the agreement between us shall not exceed the amount of the Price payable by you in respect of the goods.
28. We shall be under no liability in respect of any defect or failure in the goods or services we provide which arises from any drawing, design, specification or materials which have been supplied to us by you.
29. Where we are to undertake work on your behalf you must let us know of any matter which you believe may present a hazard or danger to any person earning out work before such work is started. You must also provide us with all the necessary details in respect of any relevant requirement specified by any relevant regulatory authorities. You shall ensure that you have adequate public liability insurance before our employees, agents or sub-contractors enter the site. You must also make sure that we have clear access to the work site and you must provide us adequate facilities. If we incur any additional work or expense as a result of your failure to observe your obligations set out in this clause we may charge you a sum in addition to the Price set out overleaf in respect of such additional work and/or expense.
30. Unless otherwise confirmed by us in writing you will be responsible for removing from the site deposits and refuse extracted by us in the course of our work. You also agree to provide at your expense such additional labour and equipment as we may reasonably require in order to enable us to carry out the work.
31. We shall not be liable to you or deemed to be in breach of the agreement between us for any delay in performing, or failure to perform any of our obligations in respect of the goods, if the delay or failure is due to any cause beyond our reasonable control.
32. Any notice required to be given by either of us to the other shall be in writing addressed and posted first class to the relevant party's registered office or principal place of business and shall be effective on the third day of posting.
33. No waiver by us of a breach of any provision in these terms and conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provisions.
34. If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provision in question shall not be affected.
35. We may terminate the Agreement without penalty or compensation between us immediately if you become unable to pay your debts or enter into compulsory or voluntary liquidation (other than for the purpose of affecting a reconstruction or amalgamation) in such manner that the company resulting from such reconstruction or amalgamation if a different entity shall agree be bound by and assume your obligations under these terms and conditions) or if you compound with or convene a meeting of your creditors or have a receiver or manager or an administrator appointed of your assets or cease for any reason to carry on business or take or suffer similar action which in our opinion means that you may be unable to pay your debts.
36. The parties to this agreement do not intend that any term will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
37. The formation, existence, construction, performance, validity and all aspects of the agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.