



## Terms and Conditions

### 1 DEFINITIONS

- 1.1 “the Customer” means the party to whom Xynomix Ltd agrees to supply products in accordance with these terms and conditions.
- 1.2 “the Company” means Xynomix Ltd a company incorporated under the Companies Acts with registered number 4375429 and having its registered office at Electron House, Bridge Street, Sandiacre, Nottingham, NG10 5BA (“the Company”)
- 1.3 “Product(s)” means goods including but not limited to computer hardware and software items to be provided by the Company to the Customer in accordance with these terms and conditions.
- 1.4 “Third Party Software” means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by the Company) and which comprises part of the Products.
- 1.5 “Service(s)” means the service described on the accompanying service information form or support contract pursuant to clause 3.3 and 3.4, as requested by the Customer to be delivered by the Company.

### 2 PRICE AND PAYMENT

- 2.1 The price (exclusive of VAT, if applicable, carriage, freight, postage or insurance costs) for the Product(s) (“the Price”) shall be the price as stated on the list maintained by the Company or if agreed by the parties the price stated on the quotation detailing prices of Product(s) or Services, or such other price as the parties may agree in writing.
- 2.2 Invoices will be raised and dated by the Company on the date of dispatch of the Products or the delivery of the Service or otherwise specially agreed date between the two parties.
- 2.3 Invoices will be raised and dated by the Company on the date of receipt of a valid purchase order for remote or support Services.
- 2.4 Unless otherwise specifically negotiated and agreed, invoices will be payable by the customer 30 days from the date of invoice. Payments which are not received when payable will be considered overdue and remain payable by the customer together with interest for late payment from the date payable at the rate of 3% per annum above the base rate for the time being of Lloyds TSB plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgment.
- 2.5 The Customer shall retain the right to cancel the Company Support Contracts by giving, in writing, one full months notice. The customer shall be entitled to a pro-rata rebate on the remaining whole months.
- 2.6 When all relevant invoices due in respect of products have been paid in full, title to Hardware ONLY shall pass to the Customer. (see clause 9 and 10 )
- 2.7 The Customers power of right to use such products shall immediately cease if an Administrative Receiver is appointed over all or any part of its assets or if it is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986

### 3 SERVICES PROVIDED

1. 3.1 The Customer appoints the Company to provide the Services subject to these terms and conditions.
2. 3.2 The Services shall be provided on the specified products on the dates agreed between the parties.
3. 3.3 Any installation, configuration, migration, upgrade or consultancy work shall be preceded by a pre-consultancy form or by verbal communication and agreement between the Company and the Customer.
4. 3.4 A support or managed service agreement must have the relevant contract, complete with specified Products before the commencement date.

## **4 ACCESS**

1. 4.1 The Customer accepts to guarantee that the Company Representative will have the appropriate access to systems and personnel to complete the provision of Service(s). The Customer also agrees to inform the Company prior to the installation if any form of agreement including but not limited to a non-disclosure agreement is required to be signed prior to such access being granted. The Company personnel are not authorised to sign such agreements and will refer the request to the Company management. The Customer also accepts to guarantee to provide a safe environment to work in as defined by the appropriate Health and Safety At Work legislation.

## **5 CONFIDENTIALITY**

1. 5.1 Both parties agree to keep any confidential information belonging to the other and all other matters arising or coming to their attention in connection with the provision of the Service secret and confidential and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted by law or to enable the Company to carry out the Service.

## **6 INSURANCE AND BACK UP PROVISIONS**

1. 6.1 The Customer acknowledges and accepts that the performance by the Company on certain elements of the Service(s) may carry a risk to the Customer of loss of data. The Customer warrants that it will insure against loss that may be suffered as a result of the performance of the Service and undertake all appropriate data and application back-up procedures prior to work commencing.

## **7 PRODUCTS**

1. 7.1 All Product(s) shall be required to conform to the specification in the order for Products by the Customer as accepted by the Company ("the Purchase Order") or as otherwise expressly agreed in writing.
2. 7.2 Any order for Product sent by the Customer to the Company shall be deemed to be accepted subject to the terms and conditions contained herein.
3. 7.3 Each order for Product(s) accepted by the Company shall be deemed to be an individual legally binding contract between the parties.

## **8 DELIVERY**

1. 8.1 The Company shall deliver the Product(s) to the Customer at the address specified by the Company as the delivery address in the Purchase Order.
2. 8.2 Time shall not be of the essence for delivery.
3. 8.3 The Customer shall be deemed to have accepted the Product(s) upon their delivery.
4. 8.4 All risk in the Product(s) shall pass to the Customer upon delivery.

5. 8.5 If the Company is unable to deliver the Product(s) for reasons outside its control, the Company shall be entitled, at the Buyer's expense, to place the Product(s) in storage until such time as the Product(s) may be delivered.

## **9 TITLE TO PRODUCTS**

1. 9.1 The Company warrants that it has good title to the Product(s) and that it will transfer title in the Product(s) to the Customer pursuant to Clause 8.4.
2. 9.2 Notwithstanding delivery, title in the Product(s) shall not pass to the Customer until the Company has been paid in full for the Product(s). Nothing in this Clause shall prevent the Company from raising an action against the Customer for payment of the Product(s).

## **10 PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS**

1. 10.1 The Customer hereby acknowledges that any proprietary rights in any Third Party Software supplied hereunder including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third Party Software owner.
2. 10.2 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of license attaching to Third Party Software supplied and delivered by the Company (including if so required the execution and return of a Third Party Software license). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software license or having the same revoked by the proprietary owner. The Customer further agrees to indemnify the Company in respect of any costs, charges or expenses incurred by The Company following action by a Third Party Software owner as a result of any breach by the Customer of such conditions.
3. 10.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE LICENSED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES

## **11 DAMAGE IN TRANSIT**

1. 11.1 Upon serving notice within 24 hours of delivery to the Company, the Customer shall be entitled to replacement Product(s) if the Company is reasonably satisfied that the Product(s) have been damaged during transportation.

## **12 GUARANTEE**

1. 12.1 Where the Product(s) have been manufactured by the Company and are found to be defective, the Company shall repair or in its sole discretion, replace defective Product(s) free of charge upon the following conditions:
  1. 12.1.1 the Customer giving notice of the defect within 5 days of the defect coming to the Customer's attention;
  2. 12.1.2 such notice being served within 90 days of delivery;
  3. 12.1.3 the defect being due to the Company's faulty design, workmanship or materials; and
  4. 12.1.4 the defect not having arisen from the Customer's failure to comply with the Company's oral or written instructions as to storage, installation, use or maintenance of the Product(s) or in accordance with good trade practice.
2. 12.2 Any Product(s) to be repaired or replaced under Clause 12 shall be delivered to the Company at the Buyer's expense.

3. 12.3 Where the Product(s) have been manufactured and supplied to the Customer by a third party the Company shall where possible pass on to the Customer the benefit of any warranty in respect of the Product(s) granted to the Company by such third party.

### **13 LIMITATION OF LIABILITY**

1. 13.1 The Company warrants that the Service will be provided with reasonable skill and care.
2. 13.2 The Company shall not be liable to the Customer under Clause 6 for any loss (including loss of profit), costs, damages, charges or expenses incurred by the Customer or for any loss or damage to or caused by the Products or Services.
3. 13.3 Subject to this Clause 13 and Specifications supplied by the Company to the Customer all other conditions, warranties or other stipulations concerning the Product(s) whether express or implied by common law or under statute are excluded to the fullest extent permitted by law, and, in particular, but without limiting the foregoing generality, the Company grants no warranties regarding fitness for purpose, use, quality or nature of the Product(s) whether express or implied by statute or common law.
4. 13.4 Subject to Clause 11 and or Clause 12 the liability of the Company under this Agreement howsoever arising shall not exceed the Price.
5. 13.5 The Company will not be liable for any of the following losses which may arise by reason of any breach of the terms and conditions or any implied warranty, condition or other term, any representation or any duty of any kind imposed on the Company by operation of law
  1. 13.5.1 any loss of anticipated profits or expected future business;
  2. 13.5.2 damage to reputation or goodwill;
  3. 13.5.3 costs of any third party;
  4. 13.5.4 loss of any order or contract;
  5. 13.5.5 consequential loss;
  6. 13.5.6 loss of data or reconstruction and reconstruction of data;
  7. 13.5.7 business interruption;
  8. 13.5.8 without prejudice to the generality of Clause 7 any damages or costs payable by the Customer to any third party with which it has a contractual relationship in connection with the Customer's IT systems (including but not limited to the Customer's Internet service providers, hardware suppliers and maintenance providers, applications suppliers and support providers and network maintenance and support providers).

### **14 GENERAL**

1. 14.1 Nothing contained in these Conditions shall be construed so as to limit or exclude the liability of the Company for death or personal injury as a result of the Companies fraudulent misrepresentation, negligent actions or those of its employees or agents.
2. 14.2 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.

### **15 GOVERNING LAW AND JURISDICTION**

1. 15.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.