

These Terms and Conditions govern the supply to the Customer of ACT Systems Products and services.

## **OPERATIVE PART**

### **1. INTRODUCTION**

1.1. In these Terms and Conditions the following terms shall, unless the context otherwise requires have the meanings set out below:-"

"Contract" means any agreement between ACT Systems and Customer for the supply of Products, which expressly or by implication incorporate these Terms and Conditions.

"Customer" means the party named in the Invoice.

"Delivery Date" means the delivery date as notified by ACT Systems to the Customer.

"Delivery Address" means the address as the point of delivery as notified by the customer to ACT Systems.

"Hardware" means the hardware components of ACT Systems products including all equipment spares supplies and related documentation.

"Invoice" means the invoice prepared by ACT Systems and issued to the Customer.

"Licence Agreement" means the terms and conditions governing the supply of software, whether ACT Systems own software or third party software which ACT Systems is authorised to supply to the Customer.

"Price" means the total price for the Products as specified in the invoice.

"Products" means ACT Systems products including but not limited to any configuration of Hardware and/or Software.

"ACT Systems" means Advanced Computer Technology Systems Ltd a company whose registered office is at: 36 Ullswater Close, Thatcham, Berkshire, RG19 3UJ.

"Software" means any operating system, utility or applications software delivered by ACT Systems in machine-readable object, printed interpreted or any other form whatsoever and either incorporated with Hardware or separately supplied, including related documentation.

"Consultation" Means All services offered by ACT Systems including maintenance and support, training and education, and consultancy.

1.2 This Contract constitutes the entire agreement between the parties with regard to the supply to Customer of Products. Each party confirms that it has not relied upon any presentation not recorded in this document inducing it to enter into the Contract. No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of the Contract.

1.3 If these Terms and Conditions are incorporated by reference into any other form of agreement between ACT Systems and the Customer and the other agreement is currently in effect at the time the Contract is made, so that the Contract constitutes a contract for the purposes of that agreement, the terms and conditions of the agreement will prevail in the event, but only to the extent, of any conflict of meaning with these Terms and Conditions.

### **2. PRICE & PAYMENT**

2.1 Applicable taxes, import duties and other dues are not included in the Price and will be charged in addition unless agreed otherwise. Value Added Tax will be charged at the rate appropriate at the date of the Invoice.

2.2 Payment of the Price or any part payment thereof and any other charges due under the Contract must be made on or before delivery of the goods (unless otherwise specified in the Invoice). The contents of the Invoice, including inter alia the Price shall, in the absence of a manifest error, be deemed to have been accepted by the Customer unless the Customer has notified ACT Systems in writing within 7 days from the date of the Invoice that such contents are disputed. Unless otherwise agreed, payment shall be made in pounds, sterling, without set-off, deduction or withholding. All payments, which are not received when payable, shall be considered overdue and ACT Systems reserves the right to charge interest on a daily basis at four per cent per annum above the Barclays Bank Plc base rate.

2.3 Without prejudice to any of ACT Systems other rights if the Customer fails to effect any payment due to ACT Systems under the Contract in accordance with Clause 2.2, ACT Systems shall have the right to terminate or suspend the Contract in whole or in part. If ACT Systems elects to exercise its right of suspension under the sub-clause it shall do so by 5 days notice in writing to the Customer and shall be entitled to recover from the Customer all costs which it reasonably incurs as a consequence of such suspension.

### **3. TITLE**

3.1. Title to the Products is vested in ACT Systems, only when the Price, all taxes and other charges due under the Contract have been paid in full, will title to any goods supplied under the Contract pass to the Customer.

3.2 No title or ownership of any Software supplied under the Contract and licensed to the Customer under any Licence Agreement is transferred to the Customer.

3.3 Until such time as title in the Products passes to the Customer, the Customer shall hold the Products as ACT Systems fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as ACT Systems property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business but shall account to ACT Systems for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored, protected and insured.

3.4 Until such time as title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) ACT Systems shall be entitled at any time to require the Customer to deliver up the Products to ACT Systems and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

3.5 The Customer shall not be entitled to pledge or in any way change by way of security or any indebtedness any of the Products which remain the property of ACT Systems but if the Customer does so all monies owing by the Customer to ACT Systems shall (without prejudice to any other right or remedy of ACT Systems) forthwith become due and payable.

#### **4. DELIVERY**

4.1 Delivery will be effected at the Delivery Address.

4.2 If appropriate the Customer will make the Delivery Address available for inspection by appropriate ACT Systems staff at an agreed time during a period of 30 days before the Delivery Date if so required by ACT Systems.

4.3 If appropriate the Customer will furnish the necessary labour (if ACT Systems so requires under ACT Systems direction) for taking any product supplied under the Contract into its designated operation point, unpacking it and placing it in the desired location.

4.4 The Delivery Date is approximate only and not of any contractual effect. While ACT Systems will use all reasonable endeavours to meet the Delivery Date it will not be liable for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the Customer as a result of any failure to deliver on such particular date.

4.5 Each delivery of Products under the Contract will be deemed to constitute a separate enforceable contract to which these Terms and Conditions will apply.

4.6 If the Customer refuses or fails to take delivery of Products ordered in accordance with the Contract, delivery will nevertheless be deemed to have taken place for the purpose of ACT Systems rights to payment and ACT Systems will be entitled to store the Products at the Customer's risk and expense, including all transportation charges.

4.7 The Customer shall inspect the Products on delivery and shall within 48 hours of delivery notify ACT Systems of any alleged shortage in quantity, damage or failure to comply with description or sample. If the Customer fails to notify ACT Systems within such time the Products shall conclusively be presumed to be in accordance with the Contract.

4.8 If the Products are not in accordance with the Contract the sole remedy of the Customer shall be limited to ACT Systems making good any shortage by replacing such Products or if ACT Systems shall elect by refunding a proportionate part of the Price.

#### **5. SUBSTITUTION AND CHANGES**

5.1 ACT Systems reserves the right to make improvements, substitutions or modifications to any part of the Products at any time prior to delivery, provided that such improvements, substitutions or modifications will not materially affect the performance of such Products.

5.2 ACT Systems further reserves the right to change the Delivery Date and increase the price of the Products at any time prior to delivery to reflect any increases in the cost of ACT Systems which is due to any factor beyond ACT Systems control.

5.3 No order which has been accepted by ACT Systems may be cancelled by the Customer except with the prior written consent of ACT Systems and the Customer shall indemnify ACT Systems in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damage, charges and expenses incurred by ACT Systems and as a result of such cancellation.

5.4 In the event that ACT Systems accepts the return of any cancelled orders a 10% re-stocking fee will be charged.

#### **6. HARDWARE**

6.1 Where installation or training is not included in the Price and not ordered by the Customer, the Customer will be solely responsible for this, and ACT Systems disclaims all liability in this connection.

6.2 Where the Hardware includes data communications equipment and data transmission speeds are given in relation to any item of Hardware, these are at all times subject to any conditions of the applicable telecommunications utility company relating to the use of the relevant modem at the speeds indicated and to the capability of any of that company's equipment to which the Hardware is linked.

6.3 Where the Hardware is installed or used in conjunction with other products not supplied by ACT Systems, the Customer will be solely responsible for ensuring that the

Products are compatible with such other products, and ACT Systems disclaims all liability in this connection.

6.4 ACT Systems warrants that it has good title to or the legal right to supply all products supplied to the Customer. Products are warranted for a period of 12 months from the date of purchase. All products must be returned in their original packaging, undamaged and with all manuals, disks and cables.

6.5 Where any Product is to be returned to ACT Systems the expense responsibility and risk of delivering the Product to ACT Systems shall be borne by the Customer (unless agreed otherwise in writing). ACT Systems shall assume the expense and responsibility of redelivering the Product to the Customer. In any case where ACT Systems reasonably determines that the Hardware is not defective, the Customer will pay ACT Systems all costs of handling, transportation and repairs at ACT Systems then prevailing rate.

6.6 The stated warranties apply only to the Customer and not any third party and are contingent upon proper treatment and use of the Products with no unauthorized modifications and maintenance at a safe and suitable premises.

6.7 The supply of Hardware to the Customer does not convey any ownership or license to exploit any of the proprietary rights of ACT Systems in the Hardware. Any such proprietary rights granted to the customer by ACT Systems will be granted only subject to a separate restricted non transferable, non exclusive license supplied by ACT Systems will be granted only subject to a separate restricted non transferable, non exclusive license agreement. All operating instructions, manuals and other documentation referencing the Hardware and supplied by ACT Systems are subject to copyright and shall not be copied or disclosed to any third party without the prior written consent of ACT SYSTEMS .

## **7. SOFTWARE**

7.1 Copyright subsists in all Software whether it is ACT Systems proprietary Software or Software supplied by ACT SYSTEMS under license. All Software is supplied to the Customer only under the Terms and Conditions of the applicable licence agreement (whether this has been signed/or returned to ACT SYSTEMS or not). No part of the Software may be copied, reproduced or utilised in any form by any means without the prior written approval of ACT SYSTEMS .

7.2 It is the sole responsibility of the customer to apply with the terms and Conditions of any License Agreement and the Customer is hereby notified that any failure to comply with such Terms and Conditions may result in the revocation of such License Agreement.

7.3 Software is warranted in accordance with the Terms of any License Agreement governing its supply.

## **8. CONSULTANCY**

8.1 ACT SYSTEMS will indemnify the Customer for direct physical injury or death caused solely either by defects in the services or by the negligence by its employees acting within the course of their employment and the scope of their authority.

8.2 ACT SYSTEMS shall be under no liability in respect of any defect arising from wilful negligence, abnormal working conditions or failure to follow ACT Systems instructions or the manufacturers instructions (whether oral or in writing) or alteration or repair without ACT Systems written approval.

8.3 Except as expressly stated in this clause and elsewhere in these Terms and Conditions any liability of ACT SYSTEMS for breach of the contract will not exceed the price of the services supplied, in the aggregate of damages, costs, fees and expenses capable being awarded to the Customer. ACT SYSTEMS shall be under no liability under this clause if the total price of the goods has not been paid by the due date for payment.

8.3 Except as expressly stated in these Terms and Conditions ACT SYSTEMS disclaims all liability to the Customer in connection with ACT Systems performance of this contract or the customers use of the products and in no event will ACT SYSTEMS be liable to the Customer for special, indirect or consequential damages including but not limited to loss of profit or arising from loss of data or unfitness for use purposes.

## **8. LIMITS OF LIABILITY**

9.1 ACT SYSTEMS will indemnify the Customer for direct physical injury or death caused solely either by defects in the products or by the negligence by its employees acting within the course of their employment and the scope of their authority.

9.2 ACT SYSTEMS shall be under no liability in respect of any defect arising from fair wear and tear, wilful negligence, abnormal working conditions or failure to follow ACT Systems instructions or the manufacturers instructions (whether oral or in writing) or alteration or repair without ACT Systems written approval.

9.3 Except as expressly stated in this clause and elsewhere in these Terms and Conditions any liability of ACT SYSTEMS for breach of the contract will not exceed the price of the goods supplied, in the aggregate of damages, costs, fees and expenses capable being awarded to the Customer. ACT SYSTEMS shall be under no liability under this clause if the total price of the goods has not been paid by the due date for payment.

9.4 Except as expressly stated in these Terms and Conditions ACT SYSTEMS disclaims all liability to the Customer in connection with ACT Systems performance of this contract or the customers use of the products and in no event will ACT SYSTEMS be liable to the Customer for special, indirect or consequential damages including but not limited to loss of profit or arising from loss of data or unfitness for use purposes.

9.5 ACT SYSTEMS do not manufacture goods. ACT SYSTEMS makes no warranty or representation that any of the goods supplied are or will be Year 2000 compliant. ACT SYSTEMS shall have no liability whether in contract or otherwise to its customers for any loss, damage costs, claims or liabilities whatsoever incurred or suffered by any customer, which relate or are attributable either directly or indirectly to any Goods supplied by ACT SYSTEMS not being Year 2000 compliant.

## **10. EXPORT AND RE-EXPORT LIMITATION**

10.1 Notwithstanding any other provision hereunder some or all of the products may be delivered subject to ACT SYSTEMS or its suppliers obtaining the required export license or other authorisation from the United Kingdom Government. Regardless of any disclosure made by the customer to ACT SYSTEMS of any ultimate destination of any products, the Customer hereby agrees not to re-export, transmit, transfer or engage or permit oral exchanges or visual inspections of, whether directly or indirectly, any of the products to any other party without first obtaining the required export license or other authorisation from the United States Department of Commerce or other agency or department of the United States Government or from the United Kingdom Government.

## **11. CONFIDENTIALITY**

11.1 Each party shall treat as confidential all information obtained from the other pursuant to the Contract and shall not divulge such information to any person (except to such parties own employees and then only to those employees that need to know the same) without the other parties prior written consent provided that this clause shall not extend to negotiations leading the Contract, which is already public knowledge or becomes so at a future date (otherwise as a result of a breach of this clause). Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If ACT SYSTEMS shall appoint any sub contractor then it may disclose confidential information to such sub-contractor. Subject to such sub-contractor giving ACT SYSTEMS an undertaking in similar terms to the provisions of this clause. The foregoing obligations to confidentiality shall survive any termination of the contract.

## **12. FORCE MAJEURE**

12.1 ACT SYSTEMS shall not be liable for failure to perform its obligations in the event such performance is prevented or hindered by reasons of force majeure. Force majeure shall be deemed to mean all causes beyond the reasonable control of ACT SYSTEMS (including without prejudice to the generality of the foregoing any delays arising from the act, omission or default of any of ACT Systems suppliers or sub-contractors), fires or industrial disputes.

## **13. TELECOMMUNICATIONS REQUIREMENTS**

13.1 When computer equipment is connected to a public network, ie. a switchboard or telephone network, certain regulations of the telecommunications provider apply. It is the sole responsibility of the customer to ensure compliance with all such regulations.

## **14. LIFE ENDANGERING APPLICATIONS**

14.1 The products are designed for standard commercial use and are not intended to be installed or used in hazardous or life threatening environments or potentially life threatening applications, including but not limited to environments or applications involving safety or critical systems in the nuclear industry or the control of aircraft in the air. The customer undertakes not to use or supply the products for these purposes and agrees to indemnify ACT SYSTEMS harmless from and against all liabilities and related costs arising out of the use of any of the products for any of these purposes.

## **15. ASSIGNMENT**

15.1 The customer shall not assign its rights or obligations under the Contract except with the prior written consent of ACT SYSTEMS .

## **16. WAIVER**

16.1 Failure by either party any time to enforce any of the provisions of the Contract shall not be construed as a waiver by that party of any such provisions nor in any way affect the validity of the Contract.

## **17. SEVERABILITY**

17.1 In the event that any or any part of the Contract shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severable from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

## **18. LAW AND JURISDICTION**

18.1 The Contract shall be subject to and interpreted in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts in all matters arising out of the contract.

## **19. NOTICES**

19.1 Any notice to be served by either party pursuant to the Contract is to be sent by registered mail or fax to that other party's address as specified in the invoice.