

Please note: A larger font version of these terms is available upon written request.

## 1. Definitions

1.1 In the Agreement the following definitions will have the following meanings:

**Agreement** the Order Form and these Terms;

**Charges** the charges specified on the Order Form (plus VAT);

**Chess Privacy Policy** means Chess's policy for handling and processing personal data as made available at [www.chessict.co.uk](http://www.chessict.co.uk);

**Commencement Date** the date specified as such on the Order Form;

**Completion Date** the date specified as such on the Order Form;

**Customer** the customer named as such on the Order Form;

**Customer Material** any material provided by the Customer to Chess for use in connection with the provision of the Goods and/or Services including, without limitation, information, documents, drawings, designs, photographs, images and plans;

**Customer Site** the site specified as such on the Order Form;

**Data Protection Legislation** means all applicable data protection laws including the EU Data Protection Directive 95/46/EC until 25 May 2018, the European Privacy and Electronic Communications Directive 2002/58/EC, the General Data Protection Regulation (EU)2016/679 ("GDPR") on and from 25 May 2018, and any data protection laws substantially amending, replacing or superseding the GDPR and any applicable national, international, regional, municipal or other data privacy and data protection laws, standards or regulations.

**Force Majeure** has the meaning prescribed to in clause 12.1;

**Chess** Chess Cybersecurity Limited (company registration number 02962709) whose registered office address is Bridgford House, Heyes Lane, Alderley Edge, Cheshire, SK9 7JP;

**Goods** the goods specified as such on the Order Form;

**IP Rights** any copyright, patent, registered design, design rights, utility models, trade marks, trade secrets, know how, database rights, confidential information or any other registered or unregistered intellectual property rights of whatever nature subsisting anywhere in the world;

**Order Form** the quotation and/or proposal issued by Chess to the

Customer specifying Chess' offer to supply the Goods and/or Services;

**Services** the services specified as such on the Order Form;

**Terms** the terms set out in this document; and

1.2 In the Agreement:

1.2.1 the singular includes the plural and vice versa;

1.2.2 references to gender include references to all genders;

1.2.3 unless otherwise stated, references to clauses are to clauses of the Agreement;

1.2.4 the clause headings are for reference only and will not affect the construction or interpretation of the Agreement; and

1.2.5 references to statutes, any statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

1.3 In the event of conflict between the Terms and the Order Form, the Order Form will prevail over the Terms.

## 2. Application of Terms

2.1 The Agreement will be on the terms stipulated on the Order Form and in these Terms to the exclusion of all other terms and conditions. No terms or conditions endorsed on, delivered with or contained in the Customer's confirmation of acceptance or other document will form part of the Agreement simply as a result of such document being referred to in the Agreement.

2.2 The Order Form issued by Chess will be deemed to be an offer by Chess to supply the Goods and/or Services to the Customer on the terms set out in the Agreement.

2.3 By providing a purchase order to Chess in respect of the Goods and/or Services stated on the Order Form, the Customer will be deemed to have accepted Chess' offer.

## 3. Supply of Goods

3.1 If specified on the Order Form, Chess will supply the Goods to the Customer.

3.2 The quantity and description of the Goods will be as set out in the Order Form. All samples, drawings, descriptive matter, specifications and advertising

issued by Chess and any descriptions or illustrations contained in Chess' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement and this is not a sale by sample.

## 4. Delivery of Goods

4.1 Unless otherwise specified on the Order Form, delivery of the Goods will take place at Chess' place of business.

4.2 The Customer will take delivery of the Goods within 7 days of Chess giving the Customer notice that the Goods are ready for delivery.

4.3 Any dates specified by Chess for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified by Chess, delivery shall be within a reasonable time.

4.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Chess is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorizations:

4.4.1 risk in the Goods will pass to the Customer (including for loss or damage caused by Chess' negligence);

4.4.2 the Goods will be deemed to have been delivered; and

4.4.3 Chess may store the Goods until delivery, whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5 Chess may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Agreement. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

4.6 Chess will not be liable for any non-delivery of Goods (even if caused by Chess' negligence) unless the Customer gives written notice to Chess of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

4.7 Any liability of Chess for non-delivery of the Goods will be limited to replacing the Goods within a reasonable

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time or issuing a credit note at a pro rata rate against any invoice raised for such Goods.

## **5. Risk and Title**

5.1 The Goods are at the risk of the Customer from the time of delivery.

5.2 Ownership of the Goods will not pass to the Customer until Chess has received in full (in cash or cleared funds) all sums due to it in respect of:

5.2.1 the Goods; and

5.2.2 all other sums which are or which become due to Chess from the Customer on any account.

5.3 Until ownership of the Goods has passed to the Customer, the Customer will:

5.3.1 hold the Goods on a fiduciary basis as Chess' bailee;

5.3.2 store the Goods (at no cost to Chess) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Chess' property;

5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

5.3.4 maintain the Goods in satisfactory condition and keep them insured on Chess' behalf for their full price against all risks to the reasonable satisfaction of Chess. On Chess' request, the Customer will produce the policy of insurance to Chess.

5.4 The Customer grants Chess, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect and/ or recover them.

## **6. Quality of Goods**

6.1 Where Chess is not the manufacturer of Goods, if Chess has received a manufacturer's warranty or guarantee from the manufacturer for the benefit of the end user of the Goods, Chess will use reasonable endeavours to provide the Customer with such manufacturer's warranty or guarantee.

6.2 Chess warrants that (subject to the provisions of this clause 6) upon delivery the Goods will:

6.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

6.2.2 be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to Chess in writing and Chess has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of Chess.

6.3 Chess will not be liable for a breach of the warranties in clause 6.2 unless:

6.3.1 the Customer gives written notice of the defect to Chess, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and

6.3.2 Chess is given a reasonable opportunity (after receiving the notice referred to in clause 6.3.1) of examining such Goods and the Customer (if requested by Chess) returns such Goods to Chess' place of business at the Customer's cost for the examination to take place there.

6.4 Chess will not be liable for a breach of the warranties in clause 6.2 if:

6.4.1 the Customer makes any further use of such Goods after giving the notice referred to in clause 6.3.1; or

6.4.2 the defect arises because the Customer failed to follow Chess' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the of the Goods or (if there are none) good trade practice; and/or

6.4.3 the Customer alters or repairs such Goods without the written consent of Chess.

6.5 Subject to clauses 6.3 and 6.4, if any of the Goods do not conform with the warranties in clause 6.2, Chess will at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at a pro rata rate provided that, if Chess so requests, the Customer will, at the Customer's expense, return the Goods or the part of such Goods which is defective to Chess.

6.6 If Chess complies with clause 6.5 it will have no further liability for a breach of the warranties in clause 6.2 in respect of such Goods.

6.7 Any Goods replaced shall belong to Chess and any repaired or replacement Goods shall be guaranteed on the terms set out in this clause 6 for the unexpired portion of the 12 month period.

## **7. Services**

7.1 If specified on the Order Form, Chess will provide the Services to the Customer at the Customer Site. Chess will not perform the Services outside Working Hours unless confirmed otherwise by Chess in writing.

7.2 Chess will use reasonable endeavours to commence the Services on the Commencement Date and to complete the Services by or on the Completion Date. The parties acknowledge that such dates shall be estimates only and that time for performance shall not be made of the essence by notice.

7.3 Chess will use reasonable skill and care when performing the Services.

7.4 If either party requests a change to the scope or execution of the Services, Chess will, within a reasonable time, provide a written estimate to the Customer of:

7.4.1 the likely time required to implement the change;

7.4.2 any variations to the Charges arising from the change; and

7.4.3 any other impact of the change on the terms of the Agreement.

7.5 If the Customer wishes Chess to proceed with the change, Chess has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Charges and any other relevant terms of the Agreement to take account of the change.

7.6 Chess may charge the Customer for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with Chess' current price list from time to time.

7.7 Chess may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

## **8. Customer Obligations**

8.1 The Customer will (in each case insofar as is reasonably necessary to enable Chess to effectively carry out its obligations under the Agreement):

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8.1.1 make available to Chess, free of charge, such computer and communication facilities, office facilities and services and suitable office space as requested;

8.1.2 ensure that its agents, sub-contractors and employees co-operate reasonably with Chess and its agents, sub-contractors and employees supplying the Goods and/or performing the Services;

8.1.3 promptly furnish Chess with such information, data and documents as it may reasonably request for the proper supply of the Goods and/ or performance of the Services;

8.1.4 promptly undertake its obligations under the Agreement;

8.1.5 ensure that any IP Rights which Chess is required to use or modify in order to supply the Goods and/ or Services are either proprietary to the Customer or properly licensed to the Customer and that Chess is properly authorised to use such IP Rights. The Customer will indemnify and hold harmless Chess in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Chess or Customer;

8.1.6 with regard to the entire production and administration software used by the Customer, make regular backup copies of such software, configuration and data, and maintain an adequate disaster recovery plan in order to avoid data loss and operational disturbances;

8.1.7 if Chess is to install the Goods at the Customer Site, ensure that Chess has free access to the Customer Site at the time specified by Chess for the purpose of such installation];

8.1.8 f Chess is to install the Goods at the Customer Site, ensure that it has taken a complete backup of all data, software, configuration and other information stored on any computer which is likely to be affected by such installation; and

8.1.9 take all reasonable steps to ensure the health and safety of Chess' employees, agents or independent contractors subject to such employees, agents or independent contractors complying with any Customer health and safety policy notified in writing by the Customer.

8.2 If Chess supplies any software to the Customer under the terms of the

Agreement, the Customer agrees to be bound to the end user licence terms which relate to such software.

8.3 If Chess' performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Chess will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

8.4 The Customer hereby agrees to indemnify Chess on demand against any loss, damage, cost and expense suffered or incurred by Chess directly or indirectly as a result of the Customer's (and its employees', agents', sub-contractors') negligence, willful misconduct, failure to perform or delay in the performance of any of the Customer's obligations under the Agreement.

## **9. Charges and Payment**

9.1 In consideration of Chess supplying the Goods and/ or Services, the Customer agrees to pay Chess the Charges which will be invoiced in accordance with the payment terms specified on the Order Form.

9.2 In respect of the supply of Goods, the Charges is exclusive of carriage and insurance to the place of delivery.

9.3 The Customer will pay each invoice submitted to it by Chess within 30 days of the invoice date. All payments made hereunder will be made in pounds sterling.

9.4 The Customer will reimburse Chess with all of its reasonable travelling and other out of pocket expenses incurred by Chess in the course of supplying the Goods and/ or Services.

9.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Chess any sums due on the due date, Chess may charge interest on such sum from the due date for payment at the annual rate of 8% above Bank of England's base rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

9.6 Notwithstanding clause 9.5, if the Customer fails to pay any sum by the due date, Chess may at its option, and without prejudice to any other remedy at any time after payment has become

due, terminate or suspend performance of the Agreement.

9.7 The Customer will make all payments due to Chess in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Chess to the Customer.

## **10. Liability**

10.1 Save as expressly specified in the Agreement, all terms, conditions, warranties, representations, or guarantees whether express or implied relating to the performance, quality or fitness for purpose of any part of the goods and/ or services provided by Chess under the Agreement are, to the fullest extent permitted by law, hereby excluded.

10.2 Neither party excludes or limits liability to the other party for death or personal injury caused by that party's negligence, or liability for fraudulent misrepresentation, or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

10.3 Subject to clauses 4.7, 6.6, 10.2 and 10.4, the entire financial liability of Chess in respect of breaches of the Agreement or of any other duty to the Customer or for negligence in connection with the subject matter of the Agreement will be [limited to the price paid by the Customer to Chess under the Agreement.

10.4 Subject to clause 10.2, in no event will Chess be liable to the Customer for any of the following however and whenever arising:

10.4.1 loss of profits; or

10.4.2 loss of business; or

10.4.3 loss of revenue; or

10.4.4 loss of data; or

10.4.5 loss of goodwill; or

10.4.6 loss of anticipated savings; or

10.4.7 any special, indirect, consequential or pure economic loss, damage, costs or expense.

10.5 Each party agrees that the limitations of liability contained in this clause 10 have been discussed, negotiated and agreed between the parties in the context of the other provisions of the Agreement and satisfy the requirement of reasonableness

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within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977.

## 11. Termination

11.1 Either party may forthwith terminate the Agreement by written notice to the other if the other party:

11.1.1 is in material breach of a provision of the Agreement and fails to remedy such breach (if capable of remedy) within [30] days of having received written notice of breach; or

11.1.2 (being an individual) has a statutory demand or bankruptcy order being made against him or makes an arrangement or composition with creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade.

11.2 In the event that the Agreement is terminated in accordance with the early termination rights provided herein, all outstanding sums will become immediately payable by the Customer.

11.3 Termination or suspension of the Agreement will be without prejudice to any accrued rights or obligations of either party.

## 12. Force Majeure

12.1 Neither party will be liable for any failure or delay in the performance of the Agreement which is caused by circumstances beyond the reasonable control of the party including without limitation acts of God, war or national emergency, acts of terrorism, fire, explosion and Flood ("**Force Majeure**"), provided always that the defaulting party uses all reasonable endeavours (but without an obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.

12.2 If either party is prevented from performance of its obligations by reason of Force Majeure for a continuous period in excess of 6 months, the other party may terminate the Agreement forthwith on service of written notice upon the party so prevented, in which case neither party will have any liability

to the other except that rights and liabilities which accrued prior to such termination will continue to subsist.

## 13. Intellectual Property

13.1 The Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Goods and/ or Services will be and will remain the sole property of Chess or such other party as may be identified therein or thereon and the Customer will not at any time dispute such ownership.

13.2 The Customer acknowledges that any IP Rights generated by or on behalf of Chess in the performance of its obligations under the Agreement will reside with Chess and the Customer will not at any time dispute such ownership.

13.3 The Customer hereby agrees to indemnify Chess forthwith upon demand in respect of any loss, damage, cost and/ or expense suffered or incurred by Chess directly or indirectly as a result of a third party claiming that Chess' use of the Customer Material infringes the rights of such third party.

## 14. Data Protection

14.1 Chess will process personal information ("**Information**") provided by Customer in accordance with applicable Data Protection Legislation, the Chess Privacy Policy (as amended from time to time) and this clause 14. Customer consents to Chess using Information as follows:

14.1.1 Chess will obtain, record, store and use Information as necessary to supply the Goods and/ or perform Services including transfer of Information to employees, agents and third parties as required for this purpose;

14.1.2 Chess may transfer its business assets (which include Information) on re-organisation, sale or merger of the whole or any part of its business;

14.1.3 Chess reserves the right to process Information as required for marketing purposes, to obtain legal advice, comply with legal requirements, enforce or apply any agreements (including the Agreement) and protect the rights, property or safety of Chess, its employees, clients, customers and others; and

14.1.4 Chess may transfer Information outside the European Economic Area for

any of the purposes listed in this clause 14.1.

14.2 If Chess intends to process Information other than as set out above the Customer will receive notice and be given the opportunity to decline the processing.

14.3 In respect of any Information of which the Customer is a "data controller" as defined in the DPA and in respect of which Chess is a "data processor" as defined in the DPA, Chess shall:

14.3.1 take reasonable technical and organisational measures to keep such Information secure and to protect it against accidental loss or unlawful destruction, alteration, disclosure or access; and

14.3.2 act only in accordance with the Customer's instructions, provided they are reasonable and in accordance with the law.

## 15. Confidentiality

15.1 The parties will keep confidential (and ensure that their employees and agents keep confidential) all information received by them relating to any part of the business and affairs of the other party and the terms of the Agreement (which includes, without limitation, Charges and payment terms) provided that these obligations do not apply to information which is:

15.1.1 or becomes publicly known through no wrongful act of the party concerned;

15.1.2 required to be disclosed by an order of law or other binding authority; or

15.1.3 disclosed to any adviser of either party bound by a professional duty of confidentiality.

## 16. IT Security

16.1 Chess has and will use commercially reasonable efforts to maintain ISO27001 accreditation throughout the duration of this Agreement.

16.2 Chess will use commercially reasonable efforts to protect the Customer's data from harm or vulnerability.

## 17. General

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17.1 The Agreement contains the whole agreement between the parties in respect of the subject matter and supersedes any prior written or oral agreement between them relating to it and the parties confirm that they have not entered into the Agreement on the basis of any representations that are not expressly incorporated in the Agreement. Nothing in the Agreement will, however, operate to limit or exclude any liability for fraud.

17.2 No amendment to the Agreement will be binding unless made in writing and signed by an authorised signatory of each party.

17.3 The Customer will not assign, charge or otherwise transfer to a third party any of its rights or obligations hereunder without the prior written consent of Chess. Chess may assign, transfer or sub-contract any of its rights or obligations hereunder without the prior written consent of the Customer.

17.4 No waiver of any breach of any of the parties' obligations hereunder will represent a waiver of the waiving party's rights hereunder or of any subsequent breach.

17.5 The parties respectively will and will procure that any other necessary party will execute all such documents and do all acts and things as may reasonably be required on or subsequent to completion of the Agreement for securing each of the obligations of the parties under the Agreement.

17.6 None of the provisions of the Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Agreement.

16.7 Any notice to effect suspension or termination of the whole or any part of the Agreement:

17.7.1 will be made in writing and either delivered personally or sent by recorded delivery to the party to whom the notice is addressed at its address as set out in the Agreement or such other address as a party may specify by notice in writing to the other parties;

17.7.2 in the absence of evidence of earlier receipt will be deemed to have been duly given:

(i) if delivered personally, when left at the address referred to in clause 16.7.1; or

(ii) if sent by recorded delivery, at the time recorded by the delivery agent.

17.8 For the avoidance of doubt electronic mail will be deemed to be "writing" for the purpose of the Agreement but this will not prejudice the express requirements for delivery of notices under clause 16.7.

17.9 If any provision of the Agreement is held to be void or unenforceable in whole or in part, the Agreement will continue to be valid as to the other provisions thereof and the remainder of the affected provision.

17.10 The Agreement will be binding on and will continue for the benefit of the permitted successors and permitted assigns (as the case may be) of each of the parties.

17.11 All provisions of the Agreement will so far as they are capable of being performed and observed continue in full force and effect notwithstanding any expiry or earlier termination.

## **18. Applicable Law**

The Agreement will be governed by and construed in accordance with the laws of England and Wales and each party to the Agreement submits to the exclusive jurisdiction of the English courts.