



## S4 Terms of Supply Agreement

This Agreement ("Agreement") is by and between the company, entity or individual ("Customer" and/or "You", "Your", "Yours") who is acquiring products and services, and S4 Applications Limited, company registration number 10288524 ("S3", "We", "Our(s)" and/or "Us").

"Customer" and "S4 Applications Limited" may be individually referred to as the "Party" and/or collectively referred to as the "Parties".

### 1 Definitions

"Documentation" shall mean the applicable installation guides, service descriptions, technical specifications, on-line help files, and user manuals for the Software provided to You by Us.

"Quotation" shall mean order forms, issued to You by Us, which incorporates this Agreement by reference evidencing Your obligation to pay associated Fees, as set forth therein, for Software and / or Services and that is signed by duly authorized representatives of the Parties hereto.

"Services" shall mean (i) configuration, installation and/or other services performed by Our personnel, agents and/or subcontractors for the benefit of You as further detailed in an applicable Statement of Work(s) and/or Quotation(s); and/or (ii) training services provided by Our personnel, agents and/or subcontractors for the benefit of You.

"Software" shall mean the computer programs and data provided to You under this sales agreement.

### 2 Orders, Devices, Prices & Payment

#### 2.1 Orders

You, from time to time, may issue Purchase Orders ("P.Os") for Products and/or Services at the applicable Fees and prices set forth in the Quotation. All orders are subject to approval and acceptance by Us and shall be subject to all of the terms and conditions of this Agreement.

#### 2.2 Prices

The prices for the Products are set forth in the applicable Quotation(s). Professional Services prices are set forth in the applicable Statement of Work(s) and/or Quotation(s). The total of the prices from applicable Statement of Work(s) and Quotation(s) are hereinafter collectively referred to as "Fee(s)".

All Fees are exclusive of all taxes and other charges, including but not limited to, shipping, handling, insurance, sales, use, value-added or other excise tax, however designated or levied, and therefore, are subject to an increase in an amount equal to any tax We may be required to collect or pay (excluding taxes on its income). You acknowledge and agree that all prepaid Fees are non-refundable and no credits shall be made.

#### 2.3 Payment

All invoices shall be due and payable within thirty (30) Calendar Days after invoice date. We may impose late charges on overdue payments at a rate equal to the lesser of one and a half (1.5%) percent per month or the highest rate legally permitted by law, calculated from the date payment

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was due until the date payment is made and all expenses incurred in collection, including reasonable legal fees. We may decline to make any shipments or provide services, including but not limited to Maintenance Services and/or Subscription Services, if in Our reasonable opinion, circumstances exist, which raise doubt as to Your ability or willingness to pay as provided herein. Upon default by You, We shall have other rights and remedies as may be provided by law. If You have lapsed in the payment of Maintenance Service and/or Subscription Service Fees due hereunder You shall be responsible for paying all Maintenance Service and/or Subscription Service Fees associated with such lapsed Maintenance Services and/or Subscription Services from the date that such Maintenance Services and/or Subscription Services were stopped through to the then-current date, in full, prior to recommencement of such Maintenance Service and/or Subscription Service.

## 2.4 Taxes

Unless you provide Us with an appropriate exemption certificate we will invoice You for VAT.

## 3 Confidentiality

“Confidential Information” means any proprietary, confidential and/or trade secret information of the disclosing Party hereto (“Discloser”) and/or others possessed by the Discloser relating to, among other things, the Discloser’s products, technology, specifications, manufacturing methods, know-how, business or marketing plans, or business relationships. Confidential Information may be disclosed either in documentary form (including without limitation traditional tangible media such as written documents, photographs and drawings, and intangible media such as diskettes and other magnetic or electronic data), or orally or visually or in other non-documentary form (including without limitation presentations, displays or inspections of writings, designs, drawings, photographs, models, prototypes, samples or facilities).

Confidential Information disclosed in documentary form shall be stamped “Confidential Information” or in some other manner clearly indicating that it is confidential or proprietary. The Discloser must confirm by written notice to the receiving Party hereto (“Receiver”) within thirty (30) Calendar Days of disclosure that Confidential Information disclosed orally, visually or in any other non-documentary form is “Confidential Information”. Notwithstanding the foregoing, the following shall be considered Confidential Information if disclosed orally or in writing by either Party during discussions concerning the business relationship: (i) all inventions, discoveries, know-how, techniques, devices, ideas, research, software implementation methods, practices, processes, systems, formulae, designs, products, projects, computer programs, improvements and developments, which have not been generally available to the public; (ii) all client or customer lists, trade secrets, or other information pertaining to the financial condition, business affairs or prospects of the Parties including, without limitation, information relative to customers, suppliers or other parties with which a Party has a business relationship, samples, sketches, bulletins, correspondence, company forms and records (including financial statements and product specification sheets), information concerning sources of supply, costs of manufacture and sale and applications of equipment, whether or not published or unpublished, confidential or protected or susceptible to protection by patent, trademark, copyright or any other form of legal protection and whether or not any attempt has been made to secure such protection; and/or (iii) all information that a reasonable prudent person would recognize as confidential when provided to Recipient.

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Confidential Information shall not include information that (i) was in the public domain when disclosed; (ii) becomes public domain after disclosure, other than as a result of the Receiver's violation of this Agreement; (iii) was in the Receiver's lawful possession when disclosed and was not acquired directly or indirectly from the Discloser; (iv) is shown by written evidence to have been developed by the Receiver independently after disclosure without benefit of the Confidential Information; and/or (v) was received after disclosure from a Third Party who did not require it to be held in confidence and who did not acquire it directly or indirectly from the Discloser.

The Receiver (i) will not disclose Confidential Information, except to its employees or to its agents, representatives, suppliers and/or subcontractors which are bound by a written confidentiality agreement, with terms and conditions substantially similar to those presented in this the section titled "Confidentiality"; (ii) will not use Confidential Information except for the purposes contemplated by this Agreement; (iii) will use at least the same degree of care to safeguard Confidential Information that it uses to protect its own confidential and proprietary information, and in any event not less than a reasonable degree of care under the circumstances; and (iv) will make copies of Confidential Information only on an "as-needed" basis for such purpose, all of which shall include any existing markings indicating that they are Confidential Information of the Discloser, or shall have markings supplied by the Receiver.

## 4 Applicable law and disputes

Parties specifically agree that the U.N. Convention on the International Sale of Goods, and the Uniform Computer Information Transactions Act ("UCITA"), shall not apply to any and all actions performed by either Party hereunder in furtherance of this Agreement.

This Agreement and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of England, without reference and/or regard to its conflicts of laws principles. Any dispute arising out of or in connection or associated with this Agreement shall be referred to and finally resolved by arbitration in accordance with the Rules of the International Chamber of Commerce ("ICC") then in force; provided, however, that either Party may, at its sole discretion, seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect its proprietary or confidential information. The language used in the arbitral proceedings, and the governing language of the Agreement, shall be English. Unless otherwise mutually agreed upon in writing by the Parties, the site of the Arbitration shall be in London, England. Judgment upon the award of the arbitration may be entered in any court having jurisdiction thereof.

## 5 Warranties

### 5.1 Professional services warranty

We warrant that all Professional Services shall be performed in a professional and workmanlike manner, consistent with then-current industry standards ("Professional Services Warranty"). Your exclusive remedy for a breach of the Professional Services Warranty shall be at Our option, either to (i) re-perform such Professional Services and/or training; or (ii) to provide You a refund for the allegedly defective Professional Services. Such remedy shall only be available if You notify Us in writing within ninety (90) Calendar Days of the completion of such Professional Services.

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## 5.2 Manufacturer's warranty

You agree to look solely to the manufacturer of the Software for all warranties made by manufacturer regarding the Software, provided in furtherance of this agreement. We make no representations or warranties to you with respect to the Software. We shall have no liability to you of any kind or nature whatsoever, arising out of or in connection with (i) any deficiency or defect in the software; and/or (ii) the use or performance of the Software.

## 5.3 Warranty exclusions & exclusive remedy

The warranties stated herein shall not include nor extend to (i) any improper use, operation or neglect of the Software and/or Services; (ii) the unauthorized modification of the Software and/or Services or the merger of the Software (in whole or part) with any other Software or Equipment by You not previously approved by Us; (iii) any material breach by You of Your obligations under this Agreement; and/or (iv) use of the Software or Services for any purpose not set out in the Documentation. All remedies stated in the section titled "Warranties" are Your sole and exclusive remedy and shall be Our entire liability in contract, tort, or otherwise.

## 6 Limitation of Liability; Exclusion of Consequential Damages.

### 6.1 No further warranties

Except as specified in section 5, "Warranties" the Software and the Services are provided on an "as is" basis, We shall have no further liability for the Software or any Services provided in furtherance of this agreement; We make and You receive no warranties, express, implied, statutory, or in any other provision of this agreement or any other communication; and We specifically disclaims any warranty of merchantability, fitness for a particular purpose, title and non-infringement.

### 6.2 Exclusion of consequential damages

In no event shall We be liable to You or any third party for any consequential, indirect, special, punitive and/or incidental damages, whatsoever, including but not limited to lost profits or loss of data, even if We has been advised of the possibility of such potential loss or damage.

### 6.3 Limitation of liability

We shall not be liable for any loss or damage unless such loss or damage is due to Our gross negligence and/or wilful misconduct. If We are found liable, the amount of Our maximum liability for any and all losses and/or damages (in contract, tort, or otherwise) shall not exceed the total amount of all fees actually paid to Us for the relevant Software within the prior six (6) months from the date on which such claim arises.

### 6.4 Essential purpose

The limitation of liability and exclusion of certain damages stated herein shall apply regardless of the failure of essential purpose of any remedy. Both parties hereunder specifically acknowledge that these limitations of liability are reflected in the pricing.