

## Terms and Conditions

With effect from April, 2017

### NOTES:

- a. These terms and conditions apply to the purchase and sale of services supplied by Flexiion Limited
- b. Placing an order with Flexiion for Services shall be taken as confirmation from you that you have read, understood and agree to be bound by these terms and conditions.

## 1 USE OF TERMS & CONDITIONS

- 1.1 Unless an Officer or Director of Flexiion has specifically agreed otherwise in writing, all Agreements for Sale shall be subject to the Conditions contained herein, which shall supersede and override any and all terms and conditions previously issued by Flexiion.
- 1.2 Flexiion shall not be considered to have accepted any order until it has begun delivery of the Service in question. In particular and without limitation, the sending of any system or other e-mail messages shall not constitute such acceptance.
- 1.3 Flexiion shall not be obliged to accept any orders placed by Customer and Flexiion shall be under no legal obligation to fulfil any order until such order has been accepted by Flexiion by commencing to deliver the Service in accordance with Clause 1.2).

## 2 DEFINITIONS

The following expressions shall bear the meanings set out below:

“Agreement” means any agreement between Customer and Flexiion for delivery of a Service by Flexiion to Customer, which agreement shall be subject to the Conditions;

“Conditions” means these terms and conditions;

“Customer” means any purchaser or licensee of any Service;

“Service” means the service to be provided by Flexiion to Customer;

“Flexiion” means Flexiion Ltd, which is a company incorporated in England and Wales and whose registered office is situated at 152 Bristol Road, Gloucester, England, GL1 5SR, Company No. 06826289;

“Unacceptable Content” means any material of any nature whatsoever which is or which contains any material which: (i) is or may be defamatory, libellous, obscene, in contempt of court or in contravention of any law, statute, directive or regulation or which infringes the rights of any third party; and/or (ii) promotes violence or discrimination based on race, sex, sexual orientation, religion, national origin, physical disability, mental disability, age or which promotes any illegal activities; and/or (iii) is a Virus;

“Virus” any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap door or any other similar form of code intended, or having that effect, to cause harm, damage or to prevent or restrict the use of any computer system or data; and

“Working Day” means any day on which banks are generally open for the transacting of normal banking business in England and Wales and shall exclude all weekends, public bank holidays and also Flexiion’s shutdown period between Christmas and New Year.

### **3 DURATION**

- 3.1 Agreement shall commence on the date that Customer’s payment for Service has been received by Flexiion and shall continue, unless terminated in accordance with its terms, for such period(s) as specified in the invoice for that Service.
- 3.2 The start date of the delivery of any Service shall not be guaranteed but Flexiion shall use its reasonable endeavours to ensure that the commencement of the delivery of the Service shall be as agreed.
- 3.3 Where Flexiion agrees to perform any work by a particular date, that date shall not be guaranteed and Flexiion shall not be liable for any failure to meet such date or dates.

### **4 SERVICE SPECIFICATION**

- 4.1 Flexiion is not responsible for the availability of the Internet and, accordingly, cannot and does not guarantee uninterrupted availability of any services dependent upon its availability.
- 4.2 The description of each Service that Customer will receive in relation to that Service shall be as described in the FLEXIION website and associated documentation provided by Flexiion, unless otherwise set out in writing.

### **5 MAINTENANCE / CHANGES TO PRODUCT**

- 5.1 Flexiion reserves the right to change descriptions and/or specification of any Service without notice
- 5.2 Flexiion may from time to time suspend the availability of any Service for short periods for maintenance and updates. Flexiion shall not be liable for any unavailability of any Service during any such period.

### **6 CUSTOMER OBLIGATIONS**

- 6.1 Customer shall ensure that it will at no time in performing any of its obligations under any Agreement infringe any rights (including without limitation any Intellectual Property Rights) of Flexiion and any third party.
- 6.2 Customer agrees that it will not introduce any Virus into any computer equipment or system or software of FLEXIION. Unless specifically agreed otherwise, Customer shall be responsible for applying antivirus software to protect its machines and networks.
- 6.3 Customer agrees that it will not use any Service for the purposes of transmitting, receiving or storing any Unacceptable Content.
- 6.4 Customer accepts that where applicable, the Service provides finite bandwidth and storage.

- 6.5 If Customer introduces any Virus, or if Customer's use of the Service is detrimental to the performance of the Service for other customers of Flexiion, according to Clause 6.3 or otherwise, Flexiion shall be entitled to suspend the delivery of the Service to Customer for such period as Flexiion (in its absolute discretion) deems necessary or desirable to deal with the effects of the same.
- 6.6 Customer agrees to act at all times with good faith in its dealings with FLEXIION.
- 6.7 Customer shall provide to Flexiion such reasonable co-operation, information, advice and assistance as Flexiion may reasonably require.
- 6.8 Customer shall be responsible for maintaining the security and confidentiality of any passwords relevant to any Service and Flexiion shall not be liable in any way for any loss or damage caused by an unauthorised user gaining access to a Service by the unauthorised use of Customer's password(s).

## **7 PRICE AND PAYMENT**

- 7.1 Unless otherwise stated, all payments shall be due within thirty (30) days of the date of Flexiion's invoice, and in any event, Flexiion is not obliged to provide service prior to payment being received

## **8 CANCELLATION AND RETURNS**

- 8.1 Once Flexiion has accepted an order from Customer for a Service and issued an invoice to Customer, Customer shall not be entitled to cancel that order at any time.
- 8.2 If Flexiion (in its absolute discretion and on such terms as it may determine) agrees to allow Customer to cancel an order after it has been accepted by Flexiion, this shall not under any circumstances be taken as a precedent which may be applied to other orders, either by Customer or any other customers.

## **9 GENERAL WARRANTIES**

- 9.1 Each party warrants to the other that it full legal right and authority to enter into all and any Agreements which it purports to enter into.
- 9.2 Each party warrants to the other that it will observe and comply with all laws and regulations applicable to any Agreement.
- 9.3 Customer warrants to Flexiion that it is not subject to any other obligation, compliance with which will or is likely to have an adverse effect on its ability to perform its obligations under any Agreement.
- 9.4 Customer warrants to Flexiion there are no material facts or circumstances in relation to its financial position or operational constitution that have not been fully and fairly disclosed to Flexiion and which, if disclosed, might reasonably have been expected to affect the decision of Flexiion to enter into an Agreement.
- 9.5 Save as expressly provided elsewhere in these Conditions:

- 9.5.1 Customer agrees to use the Service (and any equipment associated with it) at Customer's own risk; and
- 9.5.2 to the fullest extent permitted by law Flexiion hereby expressly disclaims all other warranties (whether express or implied) of any kind in relation to the Service and all matters associated with the Service.

## **10 INTELLECTUAL PROPERTY**

- 10.1 Title to any software supplied or used in the provision of Service by Flexiion (hereinafter "Service Software") shall at all times remain vested in Flexiion or its licensors. At no time shall Customer gain any title to any Service Software.
- 10.2 Subject always to the provisions of Clause 10.1. Flexiion hereby grants to Customer a personal, limited, non-exclusive, non-transferable licence to use Service Software provided to Customer (if any) by Flexiion for use with the Service.
- 10.3 Customer undertakes not to:
  - 10.3.1 copy any Service Software or otherwise reproduce the same;
  - 10.3.2 translate, adapt, vary, disassemble, decompile or reverse engineer Service Software;
  - 10.3.3 remove, obscure or alter any notice of patent, copyright, trademark or other proprietary notice on the Service Software;
  - 10.3.4 sub-license, distribute, rent, lease, or otherwise transfer Service Software
  - 10.3.5 enable a third party to do any of the acts set out in this clause 10.3.

## **11 TERMINATION**

- 11.1 Flexiion shall have the right, without prejudice to any other remedies, at any time by giving notice in writing to Customer to terminate forthwith any Agreement, which would automatically terminate any related licence, in any of the following events:
  - 11.1.1 if Customer fails to pay any sums to Flexiion on the due date of payment;
  - 11.1.2 if Customer commits any other breach of any Agreement provided that if the breach in question is one which Customer can effectively remedy then the said notice of termination shall not be effective to terminate such Agreement unless Customer fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of;
  - 11.1.3 if Customer ceases to carry on business.

## **12 LIMITATIONS ON LIABILITY**

- 12.1 Services have developed by Flexiion for delivery to its customers. Customer accepts that Flexiion is acting only as a supplier and that it is Customer's responsibility to verify that Service will be suitable for its requirements. There are no warranties, conditions, guarantees or representations as to description, merchantability or fitness for a particular

purpose or other warranties, conditions, guarantees or representations whether express implied by statute or otherwise oral or in writing except as provided in these Conditions and, except as to statute, implied terms as to title.

- 12.2 Notwithstanding clause 12.1, the remedies set out in these Conditions do not apply to consumer transactions except in so far as they add to Customer's rights as implied by statute. In relation to such transactions, the rights and obligations of Flexiion and Customer in respect of defects in any Services supplied by Flexiion to Customer under an Agreement, the fitness for any particular purpose of such Services and the correspondence of such Services with any description or sample shall be determined by the terms and conditions implied by Statute.
- 12.3 Notwithstanding clauses 12.1 and 12.2, all rights which Customer may have under the Consumer Protection Act 1987 and the Consumer Protection (Distance Selling) Regulations 2000 are in addition to those set out in these Conditions.
- 12.4 If Flexiion is unable, other than through the act or default of Customer, within a reasonable time to replace or repair a defective Service in accordance with the terms of an Agreement and where the Service in question is totally unusable due to the defect or non-conformity, Customer may reject it is entitled to recover a sum equivalent the charges related to any outstanding balance of service remaining under the Agreement.
- 12.5 The maximum aggregate liability of Flexiion under any Agreement or in connection with the supply of any Services under it, whether in respect of contract, tort or otherwise in relation to any successful claim made on Flexiion by Customer shall not exceed the amount received by Flexiion from Customer in respect of Services which the claim relates.
- 12.6 Customer agrees that Flexiion shall not be liable for any loss arising out of the provision of goods or services by any company organisational person other than Flexiion or for any loss caused by Customer's failure to perform its obligations under an Agreement. In particular but without limitation to the foregoing, Flexiion shall not be responsible nor liable for Customer's inability to access any Service or any impairment in using any Service where such inability or impairment results from any incompatibility between any hardware or software used by Customer.
- 12.7 Flexiion shall not in any event be liable for any indirect, special or consequential loss, howsoever arising in connection with or arising out of the supply, functioning or use of any of the Services even if Flexiion shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in these Conditions.
- 12.8 Save as expressly provided in clauses 12.1 to 12.7 or as otherwise required by law, Flexiion shall have no liability whatsoever to Customer in connection with the supply of any Services howsoever arising and whether such liability arises directly or indirectly.

## **13 CUSTOMER INDEMNITY**

- 13.1 Customer agrees to indemnify and keep indemnified Flexiion in respect of any and all actions, claims, demands, costs, losses, financial or non-financial penalties or charges,

other charges and/or expenses (including legal expenses on an indemnity basis) that Flexiion may suffer or incur as a direct or indirect result of, or in consequence of, any breach by Customer of any of its obligations under an Agreement or its negligence in performing any of its obligations under an Agreement.

## 14 CONFIDENTIAL INFORMATION

14.1 “Confidential Information” shall mean and include all information which the disclosing party reasonably regards as confidential, which in the case of Flexiion shall include without limitation all of Flexiion’s technical materials, documentation and pricing, but shall exclude information which:

14.1.1 is already in the public domain or comes into the public domain other than as a result of a breach of an Agreement;

14.1.2 the receiving party can demonstrate was developed independently of information received from the other party;

14.1.3 is required to be disclosed by statute (but not contractual obligation); and

14.1.4 is received from a third party who is entitled to share such information without restriction.

14.2 Customer agrees that it will not disclose any of Flexiion’s Confidential Information to any third party without Flexiion’s prior written consent, and Customer agrees to keep Flexiion’s Confidential Information secure and to implement such security measures on Flexiion’s Confidential Information as it employs on its own Confidential Information

## 15 DATA PROTECTION

15.1 In these Conditions, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and “Data” shall mean the personal data and sensitive personal data provided to Flexiion in connection with the Service. “Data Protection Law” means applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof.

15.2 Where applicable in connection with the provision of Service and the related transmission of data by Customer to Flexiion, Flexiion’s Terms & Conditions for Data Sharing shall form a part of these Terms & Conditions of sale.

## 16 GENERAL PROVISIONS

16.1 FORCE MAJEURE Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control. Such causes shall include but are not limited to terrorism, fire, flooding, lightning, storm, power surges and failures, failure of suppliers or providers, industrial disputes and other similar action, earthquakes and acts of God.

- 16.2 NON-WAIVER Failure by Flexiion to exercise or delay exercising any of these Conditions shall not constitute or be deemed to be a waiver of Flexiion's rights hereunder nor prejudice Flexiion's rights to take subsequent action.
- 16.3 HEADINGS The headings in these Conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of these Conditions.
- 16.4 NON-ENFORCEABILITY The invalidity or unenforceability for any reason of any part of any Agreement shall not prejudice the continuation in force of any other part of that Agreement.
- 16.5 ASSIGNMENT No Agreement may be assigned by the Customer without the prior written consent of Flexiion (which Flexiion shall be entitled to refuse at its absolute discretion). Any such attempt to assign shall be void.
- 16.6 RELATIONSHIP BETWEEN PARTIES Nothing in any Agreement shall make either party the agent or partner of the other or give either party the power to bind the other.
- 16.7 NOTICES
- 16.7.1 Any notice required to be given under any Agreement shall be in writing and shall be sent by first class post to the address of Customer set out in each sales order (for notices to be sent to Customer) or the registered office of Flexiion (for notices to be sent to Flexiion).
- 16.7.2 Notices correctly addressed and served in accordance with Condition 26.1 shall be deemed to be delivered two Working Days after posting.
- 16.8 THIRD PARTY RIGHTS Nothing in any Agreement shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.9 GOVERNING LAW All Agreements shall be governed by English law. The parties hereby submit to the exclusive jurisdiction of the English courts.