

Terms and Conditions – Supply and Distribution

1. Interpretation

In these conditions:

OryxAlign means OryxAlign Limited (company registered no. 5752912) whose trading address is at The Shepherds Building, Charecroft Way, London, W14 0DA

The Equipment means the items of hardware and integral components or any of them described in the quote;

The Software means the computer programs described in the quote which require installation on the equipment and require a licence for use

The Services means the installation, maintenance or other service described in the quote;

The Customer means the person, firm or company with whom the contract is made by OryxAlign;

The Contract means any contract between OryxAlign and Customer for the sale or supply of Equipment and/or Software and/or Services (as the case may be);

Working Days means Monday to Friday excluding Bank and other Public Holidays in England;

2. General

2.1 These conditions shall be deemed to be incorporated in the Contract subject to any variations agreed under Condition 2.3.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all OryxAlign's sales and any variation to these conditions and any representation about any of the Equipment, Software and Services shall have no effect unless expressly agreed in writing and signed by a director of Oryx Align. Nothing in this condition will exclude or limit OryxAlign's liability for fraudulent misrepresentation.

2.4 Each order by the Customer shall be deemed to be an offer by the Customer to purchase subject to these conditions.

2.5 The Customer should ensure that the terms of any order and any specifications it has supplied are complete and accurate.

3. Orders

3.1 No contract placed by the Customer shall be deemed to be accepted by OryxAlign until a written acknowledgement of the order is issued to the Customer or (if earlier) OryxAlign's supplies the Equipment, Software and Services.

3.2 All quotations are given on the basis that no contract will come into existence until Oryx Align dispatches an acknowledgement of order to the Customer. Each quotation is only valid for a period of 30 days from the date shown on it (provided Oryx Align has not previously withdrawn it).

4. Prices

4.1 Unless otherwise agreed by OryxAlign in writing (including a valid quote under condition 3.2): (a) the prices payable for the Equipment shall be those contained in OryxAlign's current price list at the time of despatch; (b) the licence fees payable in respect of the Software shall be those contained in OryxAlign's price list at the date when payment for the Software is due; and (c) the prices for the Services shall be based on OryxAlign's current normal working rates as specified at the time of delivery.

4.2 OryxAlign shall be entitled by notice served upon the Customer at any time up to the 10 Working Days before delivery to revise prices to take into account increases in costs including (without limitation) costs of any goods, material, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates. Upon receipt of a notice under this condition the Customer may on not less than 9 Working Days notice prior to delivery be entitled to terminate the contract to which OryxAlign's notice relates.

4.3 Unless otherwise agreed all prices are exclusive of any Value Added Tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Customer shall be liable to pay to Oryx Align when it is due to pay for the Equipment, Software and Services.

5. Terms of payment

5.1 Unless otherwise agreed by the Company, the terms of payment shall be 50% of total order value payable on order acceptance and the remaining 50% on 30 days from the date of invoice. If default is made in the payment of any one invoice the Customer will become immediately liable for all sums outstanding. Payment shall become due from the Customer forthwith upon the occurrence of any of the events referred to in Condition 8.4.

5.2 Any credit account facility or extension of credit allowed to the Customer may be changed or withdrawn at any time by notice from OryxAlign.

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5.3 The time of payment shall be of the essence of the Contract.

5.4 The Company reserves the right to claim interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 after as well as before judgement.

5.5 No payment shall be deemed to have been received until Oryx Align has received cleared funds.

6. Delivery and performance

6.1 The Customer accepts that OryxAlign is dependent upon the manufacture and supply of Equipment and Software by third parties and therefore all times or dates given for delivery of the Equipment and/or Software and for performance of the Services are intended to be estimates and shall not be made of the essence of any contract. If no dates are specified then delivery shall be within a reasonable time.

6.2 Delivery of the Equipment and Software and performance of the Services shall be at the Customer's premises unless otherwise agreed by OryxAlign.

6.3 Oryx Align may make and Customer shall accept partial deliveries of Equipment and/or Software. Each delivery shall be considered to be the subject of a separate contract and failure by OryxAlign to make any one or more deliveries shall not entitle the Customer to treat the contract as whole as repudiated.

6.4 The Customer shall prepare the area of delivery and installation for the Equipment and provide OryxAlign (including its employees, agents and subcontractors) with free access to the place of installation and to any information required for the performance of its obligations or service of facilities that it may be required to deliver. Where the same has not been provided OryxAlign shall be entitled to charge the Customer for the same.

6.5 Where any of OryxAlign's employees enter onto the premises of the Customer or any end user of the Equipment supplied under the Contract ("the Premises") for any purpose the Customer shall procure that the owner of the Premises shall take all such measures as are necessary to ensure that, as far as reasonably practicable, the Premises and any plant equipment articles or substances in such Premises are safe and without risks to the health and safety of OryxAlign's employees or agents and that they are in compliance with all relevant health and safety legislation. The Customer shall indemnify OryxAlign against all losses, claims and demands suffered by OryxAlign as a result of its employees or agents attending the Premises.

6.6 The Customer will take delivery of the Equipment and/or Software within 5 Working Days of OryxAlign giving it notice that the same are ready for delivery.

6.7 If for any reason the Customer will not accept delivery of any of the Equipment or Software when they are ready for delivery, or OryxAlign is unable to deliver the Equipment or Software on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- a) risk in the Equipment and Software will pass to the Customer (including for loss or damage caused by OryxAlign's negligence);
- b) the Equipment and Software will be deemed to have been delivered; and
- c) Oryx Align may store the Equipment and Software until delivery is made whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.8 The quantity of any consignment of Equipment and Software as recorded by OryxAlign upon despatch from OryxAlign's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

6.9 Oryx Align shall not be liable for any non-delivery of Equipment and Software (even if caused by Oryx Align's negligence) unless written notice is given to Oryx Align within 30 days of the date when the Equipment and Software would in the ordinary course of events have been received.

7. Risk

Risk passes to the customer when the goods are transferred to the forwarding company or leave our warehouse for the purpose of shipment. If such shipment is delayed due to circumstances within the customer's scope of responsibility, the risk passes to the customer at the time notification of the readiness for shipment is made. In such case, we are, however, obligated to take out such insurance at the customer's wish and expense as the customer desires. We are also entitled to invoice the incurred warehouse costs or a flat-rate sum of 0.5% of the invoiced value of goods per month.

8. Title in the equipment

8.1 Ownership of the Equipment shall not pass to the Customer until OryxAlign has received in full (in cash or cleared funds) all sums due to it in respect of:

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- a) the Equipment; and
- b) all other sums which are or which become due to OryxAlign from the Customer on any account.

8.2 Until ownership of the Equipment has passed to the Customer, the Customer must:

- a) hold the Equipment on a fiduciary basis as OryxAlign's bailee;
- b) store the Equipment (at no cost to OryxAlign) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as OryxAlign's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- d) maintain the Equipment in satisfactory condition and keep it insured on OryxAlign's behalf for its full price against all risks to the reasonable satisfaction of OryxAlign. On request the Customer shall produce the policy of insurance to OryxAlign; and
- e) hold any proceeds of the insurance referred to in condition (d) on trust for OryxAlign and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.3 The Customer may resell the Equipment before ownership has passed to it solely on the following conditions:

- a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- b) any such sale shall be a sale of OryxAlign's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.4 The Customer's right to possession of the Equipment prior to ownership passing shall terminate immediately if:

- a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his 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) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performs any of his/its obligations under the Contract or any other contract between OryxAlign and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- b) the Customer encumbers or in any way charges any of the Equipment.

8.5 Oryx Align shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from OryxAlign.

8.6 The Customer grants OryxAlign, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

9. Software license

Where Software is supplied or incorporated as part of the Equipment it will be supplied subject to a third party's Software Licence from the owner of the Software. The Customer shall sign and return such licence and/or registration card relating thereto (as maybe appropriate) to the Software producer of OryxAlign by return or as otherwise specified. If the Customer fails either to communicate its acceptance of the terms of the Software Licence in accordance with this sub-clause or to pay any relevant licence fee for the Software the Customer's right to use the Software shall immediately cease and it shall remove the Software from its computer systems and return all physical copies thereof to OryxAlign and will (upon request) provide a signed declaration from a director of the Customer that this clause has been complied with.

10. Specifications and information

10.1 Unless expressly agreed in writing by OryxAlign all descriptions, drawings, designs, specifications and particulars of weight and dimensions submitted by OryxAlign are approximate only and OryxAlign shall have no liability in respect of any designs or specifications not prepared by OryxAlign and OryxAlign shall be indemnified by the Customer against any and all liabilities and expenses incurred by OryxAlign arising there from.

10.2 All drawings, designs, specifications, manuals, software, listings, object code or source code and information imparted by OryxAlign are to be treated as confidential and shall not be disclosed to any third party without OryxAlign's prior written consent unless they are public knowledge at the time they are provided or from such future time when it becomes public knowledge (provided that it does not come into public knowledge through any fault of the Customer).

11. Warranty

11.1 The Customer acknowledges that OryxAlign is not the manufacturer of the Equipment or the Software and that each item of Equipment and Software is subject to its own warranty with its manufacturer. OryxAlign will either:

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- a) obtain for the Customer the benefit of any standard end-user warranties in respect of the Equipment and the Software (whether by assignment from OryxAlign or directly from the manufacturer) ; or
- b) grant the Customer the same warranties that OryxAlign receives from the manufacturer in respect of the Equipment and the Software subject to the conditions and limitations relating to those warranties contained in contractual documents between the manufacturer and OryxAlign.

11.2 Any sums recoverable under Condition 11.1 (b) above shall be limited to the sums recovered by OryxAlign from the relevant manufacturer in respect of the relevant claim. Details of these warranties and the conditions and limitations applicable to them shall be made available to the Customer upon reasonable written request.

11.3 OryxAlign warrants that:

- a) it is entitled to enter into this Contract; and
- b) the Services will be carried out with reasonable care and skill.

11.4 OryxAlign shall not be liable for a breach of any of the warranties in conditions 11.1 and 11.3 unless:

- a) the Customer gives written notice of the defect, and (if the defect is as a result of damage in transit) to the carrier, within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
- b) OryxAlign is given a reasonable opportunity after receiving the notice of examining such Equipment, Software or Services and the Customer (if asked to do so by OryxAlign) returns such Equipment or Software in the packaging in which it was supplied in resaleable condition to OryxAlign's place of business at OryxAlign's cost for the examination to take place there.

11.5 OryxAlign shall not be liable for a breach of any of the warranties in conditions 11.1 and 11.3 if:

- a) the Customer makes any use of such Equipment and Software after giving notice under condition 11.4(a); or
- b) the defect arises because the Customer has failed to follow the oral or written instructions of OryxAlign and/or the manufacturer/supplier of the Equipment and/or Software as to the storage, installation, commissioning, use or maintenance of the Equipment and/or Software or (if there are none) good trade practice; or
- c) the Customer alters or repairs such Equipment or Software without the written consent of OryxAlign; or
- d) the defect arises out of fair wear and tear; or
- e) OryxAlign is unable to recover against the relevant manufacturer under its warranty due to an act or omission of the Customer or any person to whom it has supplied the Equipment and/or Software (including a failure by the Customer to return the Equipment and/or Software in the relevant packaging in resaleable condition).

11.6 Subject to conditions 11.4 and 11.5, if any of the Equipment or Software does not conform with the warranties in condition 11.1 OryxAlign shall at its option repair or replace such Equipment or Software or the defective part (or re-perform any Services which have been defectively performed) or refund the price of such Equipment, Software or Services at the pro rata Contract rate provided that, if OryxAlign so requests, the Customer shall, (at OryxAlign's expense), return the Equipment and/or Software (or the part of them which is defective) to OryxAlign in the packaging in which it was supplied in resaleable condition. If OryxAlign complies with condition 11.6 it shall have no further liability for a breach of any of the warranties in condition 11.1 in respect of such breach and any Equipment replaced will belong to OryxAlign.

12. Liability

12.1 Subject to condition 11, the following provisions set out the entire financial liability of OryxAlign (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- a) any breach of these conditions; and
- b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and the warranties set out in condition 11) are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes or limits the liability of OryxAlign for death or personal injury caused by OryxAlign's negligence or fraudulent misrepresentation.

12.4 Subject to conditions 12.2 and 12.3:

a) OryxAlign's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the supply of Equipment, Software and Services under this Contract shall be limited to:

- i) the Contract price paid or payable in respect of the Equipment and Software; or
- ii) £1,000,000 in respect of any damage to the property of the Customer resulting from the negligence of OryxAlign or its employees agents and subcontractors or any breach of the warranty at condition 11.1(b); and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

b) OryxAlign shall not be liable to the Customer for any loss of profits, opportunity, business or contracts, or any indirect or consequential loss or damage (whether for depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract even if such loss was reasonably foreseeable or if the Customer had advised OryxAlign of the possibility of such loss.

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13. PACKAGING AND RETURNS

13.1 Oryx Align shall be entitled to invoice the Customer for the cost of all pallets and other returnable packaging materials unless the same are returned to OryxAlign in good condition carriage paid within 30 days of the date of delivery.

13.2 Equipment and/or Software which is supplied in accordance with the Contract can only be returned to OryxAlign if the Customer obtains a returns authorisation number from OryxAlign. Where agreed, returns shall be sent to OryxAlign's premises at the Customer's risk and expense. OryxAlign reserves the right to refuse to accept any such returns if they are not returned in the packaging in which they were supplied in resaleable condition (as this is a requirement for OryxAlign to be able to pass the returns onto the relevant manufacturer).

14. GENERAL

14.1 Save as provided in conditions 8.4 and 14 hereof no Contract may be cancelled except by agreement in writing of OryxAlign and upon payment of such amount as may be necessary to indemnify OryxAlign against all loss resulting from the cancellation.

14.2 All notices hereunder shall be in writing and shall be given by hand or sent by prepaid first-class post, or fax to the party concerned at its last known address. Notices sent by first class post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered forty-eight hours after despatch and notices sent by fax shall be deemed to have been delivered on the first customary working day in the addressee's country following the day of its despatch.

14.3 The Customer shall not assign or transfer the whole or any part of its rights or obligations under the Contract to any person, firm or company.

14.4 The Customer is advised that the Equipment and/or Software may be subject to US Government export regulations. Accordingly the Customer warrants that any Equipment and Software will not be exported from the United Kingdom unless prior approval in writing has been obtained from all regulatory authorities at the Customer's own expense and any export of the Equipment or Software outside of the United Kingdom shall be further subject to the Export Terms.

14.5 Each right or remedy of OryxAlign under the Contract is without prejudice to any other right or remedy of OryxAlign whether under the Contract or not.

14.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.7 Failure or delay by OryxAlign in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.8 Any waiver by OryxAlign of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.9 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15. FORCE MAJEURE

OryxAlign reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Equipment, Software and Services ordered by the Customer (without liability to OryxAlign) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of OryxAlign including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to OryxAlign to terminate the Contract.

The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.