



SNELL: STANDARD TERMS OF SALE

The following terms and conditions ("**Terms**") apply to and govern all orders under which you ("**Customer**") may license the software and purchase the hardware specified on the Order Acknowledgement from Snell Limited a company incorporated in England and Wales with company registration number 1160119 and registered address of Hartman House, Danehill, Lower Earley, Reading, Berkshire, RG6 4PB or its local affiliate ("**Company**").

DEFINITIONS

"**Appliance(s)**" means the product(s) listed on the Order Acknowledgement comprising of the Hardware and (if relevant) the Software installed on the Hardware.

"**Contract**" means any contract between Company and Customer as set out in the Order Acknowledgement for the sale or supply of Hardware or the licensing of Software, which incorporate these Terms.

"**Documentation**" means the user manuals provided or made available to Customer with the Software or an Appliance in either electronic, online help files or hard copy format.

"**Hardware**" means the hardware component of an Appliance.

"**Order Acknowledgment**" means the written order acknowledgement issued by Company upon acceptance of a valid purchase order from Customer.

"**Software**" means Company's software programs identified in the Order Acknowledgement, all Documentation for the Software, and any modified, updated or enhanced versions which may be licensed at a later stage for further charges or as part of any support offered as agreed between the parties, details of which are as set out in any Support Agreement.

"**Support Agreement**" means any separate agreement (which shall incur additional charges) for the provision of support and maintenance in relation to the Appliances and/or Software as may be set out in the Order Acknowledgement or otherwise entered into between Company and Customer at a later date.

1. APPLICATION OF TERMS

Unless varied in accordance with this clause, the Contract shall be on these Terms to the exclusion of all others (including any which Customer purports to apply under any purchase order or other document, regardless of whether such document is referred to in the Contract). These Terms apply to all sales of Hardware or licensing of Software by Company. Each purchase order or acceptance of a quotation for Appliances and/or Software by Customer shall be deemed to be an offer by Customer to purchase Hardware or license Software subject to these Terms. Until Company issues the Order Acknowledgement or Company delivers the Appliances and/or Software to Customer (whichever occurs earlier); (a) no purchase order or acceptance of a quotation for Appliances or Software placed or sent by Customer shall be deemed to be accepted by Company, and (b) no Contract shall come into existence. Customer shall ensure that the terms of its purchase order and any applicable specification, instructions or acceptance are complete and accurate. Any quotation is valid for a period of 30 days only from its date unless otherwise agreed in writing by Company, provided that Company has not previously withdrawn it.

2. DESCRIPTION

The quantity, description and price of the Appliances and/or Software shall be as set out in Company's quotation or, if different, the Order Acknowledgement. All samples, drawings, descriptive matter, specifications and advertising issued by Company or contained in its advertising materials are issued or published for guidance purposes only as to the Appliances and/or Software described in them and they shall not form part of the Contract.

3. DELIVERY

3.1 Delivery of Appliances

Unless otherwise agreed in writing Appliances are delivered within the USA DDP (...named place of destination - Delivered Duty Paid) and within Canada DDU (...named place of destination - Delivered Duty Unpaid) both terms as defined in the ICC Incoterms 2000. Customer shall make all arrangements necessary to take delivery of the Appliances whenever tendered for delivery, if such arrangements are not made Company may arrange storage for the Appliances at Customer's sole expense. If Company delivers to Customer fewer Appliances than the quantity stated in the Order Acknowledgement, Customer shall not be entitled to reject any of the Appliances by reason of any shortfall and shall pay for such Appliances at the *pro rata* Contract rate. Where the Appliances are delivered by installment, each installment shall be deemed to be the subject of a separate order for the purposes of delivery. Company shall, in good faith, endeavor to effect delivery in accordance with any pre-arranged dates, however, such dates are approximate only and time for delivery shall not be of the essence. The Appliances may be delivered by Company in advance of any quoted delivery date(s) upon giving reasonable notice to Customer.

3.2 Non-Delivery and Damage in Transit of Appliances

The quantity of any consignment of Appliances as recorded by Company upon delivery shall be conclusive evidence of the quantity received by Customer unless Customer can provide conclusive

evidence proving the contrary. Company shall not be liable for any non-delivery or damage in transit of Appliances (even if caused by Company's negligence) unless Customer gives written notice to Company of the non-delivery or gives written notice to Company and the relevant carrier of the damage in transit within 3 days of the date when the Appliances were, or would, in the ordinary course of events, have been, delivered and Customer acknowledges that it is its responsibility to thoroughly inspect the Appliances upon delivery to ascertain whether the entire consignment has been delivered and that there has been no damage in transit. Any liability of Company for non-delivery or damage in transit of the Appliances shall be limited to replacing the relevant Appliances within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such non-delivered or damaged Appliances. Subject to the foregoing, Company shall not be liable for any direct, indirect or consequential loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Appliances (even if caused by Company's negligence).

3.3 License of Software Only

If Customer is licensing Software only which is not part of an Appliance, then this clause will govern the delivery of the Software. Company shall either (and at its option) provide Customer with the Software on CD ROM (or such other media as Company deems appropriate) or otherwise allow Customer to download the Software in accordance with Company's reasonable instructions. Unless otherwise agreed in writing, Customer is responsible for installing the Software in accordance with the Documentation.

4. PREPARATION OF SITE

Where relevant, Company shall forward, in advance, to Customer details of the minimum requirements needed at the site where the Appliances and/or Software are going to be commissioned. If Customer fails to prepare the site in accordance with these minimum requirements prior to the estimated delivery date then Company shall be entitled to charge such additional fees (which include daily rates of Company's commissioning staff, travel time, subsistence and incidental expenses) as are reasonable, in Company's sole opinion, to compensate Company for any losses.

5. COMMISSION

Company shall not be responsible for any liability suffered in respect of commission work which is carried out otherwise than under the direct supervision of Company or its authorized agent. Where Company is supervising such work, Customer shall provide free of charge to Company (or its authorized agent): (a) full and safe access to the site, and (b) use of Customer's equipment which would reasonably assist Company in such commissioning work.

6. RISK/TITLE

The Appliances are at the risk of Customer from the time of delivery. Ownership of the Hardware (but not any Software incorporated or embedded therein, which is licensed hereunder and not sold) shall not pass to Customer until Company has received in full all sums due to it in respect of the relevant Appliances. Until ownership of the Hardware has passed to Customer or the Appliances have been sold in accordance with this clause, Customer shall: (i) hold the Appliances on a fiduciary basis as Company's bailee; (ii) store the Appliances (at no cost to Company) separately from all other products of Customer or any third party in such a way that they remain readily identifiable as Company's property; (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Appliances; and (iv) maintain the Appliances in satisfactory condition and keep them insured on Company's behalf for their full price against all risks to the reasonable satisfaction of Company. On request Customer shall promptly produce the policy of insurance to Company. Customer may resell the Appliances before ownership in the Hardware has passed to it solely on the following conditions: (i) any such sale shall be effected in the ordinary course of Customer's business at full market value; (ii) any such sale shall be a sale of Company's property on Customer's own behalf; (iii) where the Appliance contains Software, Customer shall ensure that the purchaser is bound by the license provisions in these Terms, and (iv) Customer shall deal as principal when making such a sale. Company shall be entitled to recover payment for the Appliances notwithstanding that ownership of any of the Appliances has not passed from Company. Customer grants Company, its agents and employees an irrevocable license at any time before ownership passes to Customer to enter any premises where the Appliances may be stored in order to inspect them, or, where Customer's right to possession has terminated, to recover them. On any termination of the Contract, Company's (but not Customer's) rights contained in this clause shall remain in effect.

7. PRICE

Customer shall pay Company the applicable Appliance price (the "**Appliance Fee**") or Software license fee ("**License Fees**" and collectively "**Fees**") as set forth in the applicable Order Acknowledgement or, in the absence of a quoted price, Company's current price list published on the date of delivery. The Fees shall be paid in the currency as set out in the Order Acknowledgement and shall be exclusive of delivery, packaging, packing, shipping, carriage, insurance, any federal, state, local, excise, sales, use, value-added tax or other taxes, charges and duties unless otherwise agreed in writing, which Customer shall pay.



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8. CANCELLATION

8.1 From the date on which Company issues the Order Acknowledgement, Customer shall not be entitled to cancel or amend an order for Appliances and/or Software, unless the Appliance and/or the Software has been provided in violation of warranty as set out in clause 12.

8.2 Notwithstanding the above, Company may (in its sole discretion) allow cancellation or part cancellation of any order, in which case Customer shall pay to Company a re-stocking charge of 15% of the total current list price for the relevant order.

8.3 Any cancellation (whether for violation of warranty or otherwise at the sole discretion of Company) must be processed in accordance with the procedure set out in clause 9.

8.4 Company reserves the right to amend or cancel orders after acceptance by Company in circumstances where for any reason it becomes unable to fulfill such order, in which case notice of such inability will promptly be given to Customer.

9. RETURNS AUTHORIZATION PROCESS

9.1 If Customer wishes to reject an order for the reasons set out in clause 8.1 Customer must notify Company in writing of such rejection within 7 days of discovery of the defect or from the time when Customer ought to have discovered the defect, giving details of the defect and requesting an authorization reference number.

9.2 If Customer wishes to cancel an order for the reasons set out in clause 8.2 Customer shall notify Company in writing of such cancellation within 7 days of delivery or deemed delivery, explaining why Customer wishes to cancel the order and requesting an authorization reference number.

9.3 Company shall, in relation to rejection under 8.1 and may (at its sole discretion) in relation to cancellation under 8.2, within a reasonable amount of time from the request, provide Customer with an authorization reference number. Within ten (10) days of receipt of the authorization reference number, Customer shall return the relevant Appliance and/or Software to Company, insured and with transportation prepaid, in the same or equivalent shipping container, with all applicable import, export or other charges (if any) paid and with a written explanation as to the reason for the rejection or cancellation, together with the authorization reference number assigned by Company.

9.4 If, in the event of a rejection under 8.1, Company shall examine the Appliance and/or Software to determine whether the claim was within the scope of the warranty, if it is decided the claim is within the scope of the relevant warranty Company shall comply with its obligations under clause 12. If Company determines after examination of the Appliance and/or Software that the claim was outside of the scope of the warranty then Customer shall reimburse Company for the costs of such examination of the allegedly defective Appliance and/or Software.

10. PAYMENT

10.1 Unless otherwise stated in the Order Acknowledgement, payment in full of the Fees is due prior to delivery of the Appliances and/or Software.

10.2 Time for payment shall be of the essence. No payment shall be deemed to have been received until Company has received cleared funds in full including payment of applicable VAT (or equivalent). All payments payable to Company under the Contract shall become due immediately on its termination despite any other provision. Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. Company shall be entitled but not obliged at any time without notice to Customer to set off any liability of Customer to Company against any liability of Company to Customer howsoever arising. If Customer fails to pay Company any sum due pursuant to the Contract Company shall be entitled to suspend or cancel any further deliveries to Customer. In addition, Customer shall be liable to pay interest to Company on such sum at the rate of 1.5% per month (or the maximum permissible legal rate), calculated from the date such amount was due until paid. Any exercise by Company of its rights under this clause shall be without prejudice to any other rights or remedies available to Company under the Contract or otherwise. Customer will reimburse Company for the reasonable costs of collection of any past due amounts, including fees and expenses of attorneys.

10.3 Any discount agreed by Company in computing the Fees is conditional on full payment for the Appliances and/or Software being made by the due date. If full payment is not made on or before the due date Company reserves the right by notice to Customer to waive the whole or part of the discount and Customer shall thereupon become obliged to pay the price for the Appliances and/or Software without the benefit of the discount or such part as Company has waived.

11. GRANT OF SOFTWARE LICENCE RIGHTS

The following provisions shall apply with respect to Software supplied by Company to Customer and any subsequent purchasers (including any third party acquiring possession of the Software from Customer) of such Software from Customer. Customer shall procure that any such purchasers are bound by these license provisions.

11.1 Software License Grant

Company hereby grants to and Customer accepts a non-exclusive, non-transferable license to use the Software subject to (a) these Terms, (b) the Order Acknowledgement, (c) any terms contained in the applicable end user license agreement ("EULA") or Documentation, in the event of a conflict between any terms contained in these documents, they shall take precedence in the order they appear in this clause. A license grants the right only to use the version of Software current at the time of the grant. If Customer has purchased an Appliance, then the Software may only be used on the Hardware on which the Software has been installed unless otherwise agreed by Company in writing.

11.2 License Restrictions

A license is granted only at the time of payment of (a) the License Fees; or (b) the Appliance Fees (to the extent the Appliance contains Software), no license is granted by the delivery of the Software. Customer may only copy the Software to the extent necessary for contingency or archival purposes and use Software on an alternative processor or server to which the applicable license is designated, however this shall not extend to copying for the purpose of error correction. Except as permitted under license or to the extent Company cannot prohibit such acts by law, Customer shall not use, copy or modify, reverse compile, reverse assemble or otherwise reverse engineer the Software. Customer may not disclose or make available the Software to any other party or permit others to use it except for Customer's employees and agents who may use it on Customer's behalf within the limits of the applicable license and who have agreed to such terms.

The license set out in this clause 11 shall be terminable by either party upon 28 days' written notice, provided that Company terminates only if the continued use or possession of the Software by Customer infringes the developer's or a third party's rights, or Company is compelled to do so by law, or if Customer has failed to comply with any of these Terms. Further, on or before the expiry of this license, Customer shall return to Company all copies of the Software in its possession.

11.3 Intellectual Property Rights

Customer shall include on each full or partial copy of the Software and any Documentation all copyright and other proprietary notices which appear on or are in the Software or Documentation. Third party software is supplied subject to any third party standard software license terms and conditions.

11.4 Audit Rights

Upon reasonable notice from Company to Customer, Customer will provide Company or its agents access to, from time to time, Customer's facilities and records in order for Company to determine whether Customer is in compliance with the provisions of these Terms, provided, however, such audit or inspection shall be exercised so as not to unreasonably interfere with Customer's business. If such inspection discovers a material violation of these Terms by Customer, then Customer shall pay the reasonable cost of the audit and inspection and notwithstanding Company's other rights and remedies, Company may terminate the Contract in accordance with clause 14.

12. WARRANTY

12.1 Hardware Warranty

Company warrants that (subject to the other provisions of these Terms) the Hardware will for a period of 12 months from the date of invoice: (a) conform in all material respects to the Documentation, and (b) be free from material defects in design, material and workmanship.

12.2 Software Warranty

Company warrants that (subject to the other provisions of these Terms) the Software, when used as permitted by Company, in accordance with the Documentation and where it is loaded onto suitably configured equipment, will for a period of 90 days from invoice operate as described in the Documentation in all material respects. Company does not warrant that the operation of the Software will be uninterrupted, bug, virus or error free.

12.3 Warranty Generally

Subject to the above, if any of the Hardware or Software does not conform with any applicable warranty, Customer shall return the same in accordance with clause 9. Company, on receiving the Hardware and/or Software shall at its option, repair or replace such Hardware and/or Software (or the defective part) or refund the price of the same at the *pro rata* Contract rate. In the event Company repairs or replaces the Appliance and/or Software, Company shall, for the avoidance of doubt, be responsible for delivering such repaired or replacement Appliances and/or Software to Customer with the exception of any import, export or other duties (if any) applicable which shall be payable by Customer. Except as set out in this clause, Company shall have no further liability for a violation of any warranty in respect of Hardware and/or Software. Any Appliances replaced shall belong to Company and any repaired or replacement Hardware and/or Software shall be guaranteed on these Terms for the unexpired portion of the relevant warranty period. Company's warranty for the Hardware and/or Software is solely for the benefit of Customer who has no



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authority to extend these warranties to any other person or entity, the authorization of any such warranty extension to third parties rests solely with Company at their sole discretion. Where Company has itself obtained the Hardware or Software from a third party, then the warranties given hereunder shall only apply to the extent of any warranty given by that third party to Company in respect of the same.

12.4 Limitation of Warranties

Company shall not be liable for a violation of any warranty unless the returns authorization procedure has been followed by Customer as set out in clause 9. Company shall not be liable for a violation of any warranty if the fault is attributable to: (i) Customer's (or Customer's agent's) incorporation, attachment or otherwise use or incorporation of any attachment, feature, program, device or product to the Appliances and/or Software, or any part thereof, (ii) fair wear and tear, accident, transportation, neglect or misuse, willful damage, alteration, modification or enhancement of the Appliances and/or Software by Customer (or Customer's agent), (iii) failure to provide a suitable environment for the Appliances and/or Software (whether installation or otherwise), (iv) use of supplies or materials not meeting Company's specifications, (v) use of the Appliances and/or Software other than for the specific purpose for which they were designed, (vi) use of the Software on any system other than any hardware platform specified by Company for such Software, (vii) failure to follow Company's instructions (whether oral or in writing), (viii) repair of the Appliances and/or Software without Company's approval, or (ix) errors attributable to third party products or software.

13. LIMITATION OF LIABILITY

13.1 Company and its licensors shall not be liable to Customer for (in each case whether direct, indirect or consequential): (a) any pure economic loss, (b) loss of profit, (c) loss of business, (d) depletion of goodwill or otherwise, or (e) any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

13.2 Company shall not be liable to Customer for any damage or loss if Company is unable to carry out any provision of the Contract for any reason beyond its control, 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 labor 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 90 days, Company may terminate this Contract on 30 days written notice.

13.3 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. THE WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES IN DECIDING TO PLACE AN ORDER WITH COMPANY.

13.4 Subject to 13.7, Company's total liability in contract, tort (including negligence or violation of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.

13.5 Subject to these Terms, any action against Company must be brought within twelve months of (a) the cause of action arising; or (b) (in the case of defects not identifiable upon inspection) discovery, or from the time Customer ought to have made discovery.

13.6 Customer accepts that it is solely responsible for ensuring that the functions and facilities of the Appliances and/or Software meet Customer's requirements. Customer shall ensure that it installs and maintains adequate backup and recovery measures to minimize any inconvenience that may occur in the event the Appliances and/or Software fail to operate in accordance with the Documentation.

13.7 Nothing in these Terms excludes or limits the liability of Company: (i) for death or personal injury caused by Company's negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any other liability which cannot be limited or excluded at law.

14. TERMINATION

Company shall be entitled to terminate this Contract with immediate effect by written notice if: (a) subject to Title 11 of the United States Code, Customer becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of any creditor, ceases to conduct business, convenes a meeting or suffers a petition to be presented to any court with competent jurisdiction with a view to any such eventuality, or becomes unable to pay its debts as they fall due, or Customer suffers any similar consequence or situation under any jurisdiction of debt; or (b) Customer is in violation of any of its obligations under the Contract and

fails to remedy such violation within 30 days of Company's written notice of it; or (c) any other contract between the parties hereto is terminated by either party for whatever reason. Upon termination of the Contract, all licensed rights granted to Customer shall cease, Customer shall promptly discontinue all use of the Software and shall return or destroy all copies of any Software or take such other action as directed by Company. Termination of the Contract shall not prejudice the rights of the parties which may have arisen on or before the date of termination. Any provision in these Terms that expressly or by implication is intended to survive termination shall continue in full force.

15. EXPORT CONTROL

The Appliances and/or Software may be subject to the export control regulations of certain jurisdictions. Customer shall comply with all applicable governmental regulations in exporting such Appliances.

16. INTELLECTUAL PROPERTY RIGHTS

All patent rights, copyright, trademarks and other forms of intellectual property rights in the Appliances and/or Software shall be and remain the property of Company and/or its licensors and shall not be used by Customer other than in accordance with Company's written instructions as to the installation, use and maintenance of the Appliances and/or Software. No ownership rights are transferred to Customer (even where such Appliances and/or Software has been specifically developed for Customer). Customer shall indemnify Company fully against all liabilities, costs and expenses which Company may incur as a result of work done in accordance with Customer's instructions or specification involving infringement of any copyright, patent or other proprietary right.

17. ENTIRE AGREEMENT

This Contract constitutes the entire understanding between the parties hereto with respect to the subject matter of this Contract and supersedes all prior agreements, quotations, negotiations and discussions between the parties relating thereto.

18. NOTICES

Notices authorized or required to be given by either party under this Contract shall be in writing and addressed to the other party as set out on the relevant Order Acknowledgement (or to such other address as may be notified by the other party in accordance with the terms of this clause). Delivery shall be deemed within 14 days of dispatch if delivered personally or sent by first class pre-paid post or within 14 days from transmission if sent by facsimile transmission (provided that the sender shall have a transmission report confirming the notice was sent to the correct number and that all the pages were transmitted).

19. ASSIGNMENT

Company may assign, transfer, novate or sub-contract the rights and obligations under the Contract or any part of it to any person, firm or company. Customer shall not be entitled to assign, transfer, novate or sub-contract any part of the Contract (including any licenses granted hereunder) without the prior written consent of Company.

20. WAIVER, SEVERANCE

Each right or remedy of Company under the Contract is without prejudice to any other right or remedy of Company whether under the Contract or not. Failure or delay by Company in enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. If any provision of the Contract is found by any court of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force and the invalid, unenforceable or illegal provision shall apply with whatever modification is necessary to give lawful effect to the commercial intention of the parties.

21. THIRD PARTY RIGHTS

Except as set out in this clause, this Contract is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Contract may enforce it. Notwithstanding the above, the parties agree that copyright owners of any third party software licensed under the Contract have a right to enforce the Contract (or terms of that third party) directly as agent of Company against Customer to the extent such terms relate to a license of their proprietary software.

22. GOVERNING LAW AND JURISDICTION

The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of State of California without regard to conflict of law rules or principles which might refer to the law of another jurisdiction. Customer agrees to exercise any right or remedy in connection with the Contract exclusively in the State of California and hereby submits to the jurisdiction of the State of California, superior courts of Los Angeles, California, or the United States Central District Court at Los Angeles, California. The state and federal courts situated in Los Angeles, California will have non-exclusive jurisdiction and venue over any dispute or claim that arises out of or in connection with the Contract.