

SWIVEL SECURE LIMITED

**STANDARD TERMS & CONDITIONS OF SALE OF PRODUCTS AND SUPPLY OF SERVICES
(OTHER THAN CLOUD SERVICES)**

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following expressions have the following meanings:

"Buyer"	means the person whose order for Products and/or Services is accepted by the Supplier;
"Contract"	means the contract for the purchase and sale of Products and/or supply of Services;
"Intellectual Property Rights"	means all industrial and intellectual property rights of Supplier arising in connection with the Products and/or Services including without limitation, the rights of Supplier in patents, trade and service marks (whether registered or unregistered), domain names, inventions (whether or not capable of protection by registration), know-how, registered designs, unregistered design rights, copyrights, databases, applications for any of the foregoing together with the right to make such applications and copyright in all manufacturing data, drawings, specifications, manuals, instructions, plans, designs, topographies, websites and computer programs together with all information of a confidential nature and all rights under any agreement between Supplier and any third party in relation to the use of any of the above in any jurisdiction;
"Products"	means any products provided to the Buyer under a Contract which may include, without limitation, software and/or an appliance (both of which are "Products");
"Services"	means any services (including all of them or any part of them) provided to the Buyer under a Contract which may include, without limitation, professional services and/or maintenance (both of which are "Services") but excluding cloud services;
"Supplier"	means Swivel Secure Limited, a company registered in England with company number 04068905 whose registered office is at Equinox One, Audby Lane, Wetherby LS22 7RD;

1.2 In interpreting these Conditions:

- 1.2.1 references to the singular include the plural and vice versa and references to a gender include both genders;
- 1.2.2 references to a **"person"** include an individual, firm, unincorporated association or body corporate;

- 1.2.3 the headings shall be ignored;
- 1.2.4 where reference is made to a statutory provision this includes all prior and subsequent enactments, amendments and modifications relating to that provision and any regulations made under it;
- 1.2.5 general words introduced by the word "other" shall not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things; and
- 1.2.6 general words shall not be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words.

2. CREATION OF THE CONTRACT

- 2.1 The Supplier shall sell and/or supply and the Buyer shall purchase the Products and/or Services in accordance with any written order of the Buyer which is accepted by the Supplier, subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless previously agreed in writing between the authorised representatives of each of the Supplier and the Buyer.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.4 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by an authorised representative of the Supplier. The Supplier shall be entitled to refuse to accept any order for any reason at its sole discretion without incurring any liability whatsoever, even if the Supplier has previously accepted an order from the Buyer.
- 2.5 The Buyer shall be solely responsible to the Supplier for ensuring the accuracy of the terms of any order submitted by the Buyer and for providing to the Supplier any necessary information relating to the Product(s) and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 2.6 No order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in writing of the Supplier and on such terms as the Supplier in its absolute discretion requires.

3. PRICE

- 3.1 The price of Products and/or Services to the Buyer under the Contract is the then current applicable standard retail price from Supplier's price list, less such discount percentage (if any) as has been agreed in writing between the Supplier and the Buyer as applicable to the Contract. No discount shall apply unless an authorised representative of the Supplier has agreed the discount with an authorised representative of the Buyer in writing. A discount is only applicable in respect of a single Contract and it is the sole responsibility of the Buyer to check with the Supplier whether a discount applies in respect of any subsequent order and/or Contract.
- 3.2 All prices in Supplier's price list are exclusive of any taxes and duties.

- 3.3 Unless otherwise stated in the written statement of works for the Services or agreed by the Supplier and the Buyer in writing, all fees for the provision of the Services shall be exclusive of all out of pocket expenses incurred by the Supplier in connection with the performance of the Services which shall be payable in addition by the Buyer. The Supplier shall provide receipts or other reasonable evidence to the Buyer of all out of pocket expenses when submitting the invoice relating to such out of pocket expenses.
- 3.4 If a date is confirmed and booked with the Supplier for the performance of Services and is cancelled or changed at short notice, the following rates will apply and be payable to the Supplier:
- 3.4.1 less than 30 calendar days but equal to or more than 14 calendar days' notice, 15% of daily rate for the days moved;
- 3.4.2 less than 14 calendar days but equal to or more than 7 calendar days' notice, 30% of daily rate for the days moved;
- 3.4.3 less than 7 calendar days' notice, 50% of daily rate for the days moved.

4. **TERMS OF PAYMENT**

- 4.1 Subject to any special terms agreed in writing between the Supplier and the Buyer, the Supplier shall be entitled to invoice the Buyer for the price of the Products and/or Services as follows:
- 4.1.1 in respect of software and/or any appliance, on or at any time after delivery of the software or such appliance (as applicable);
- 4.1.2 in respect of professional services, on or at any time after performance of such professional services;
- 4.1.3 in respect of maintenance, on or after the first day of the applicable maintenance period and on or after the first day of each renewal period (if any).
- 4.2 The Buyer shall pay the price of the Product(s) and/or the Services within 30 days of receipt by the Buyer of the Supplier's invoice. The time of payment of the price shall be of the essence of the Contract.
- 4.3 Out of pocket expenses incurred by the Supplier in connection with the performance of Services and which are payable by the Buyer shall be invoiced by the Supplier at such time as the Supplier considers reasonable and shall be payable within 30 days of receipt by the Buyer of the Supplier's invoice.
- 4.4 All payments to be made by the Buyer to the Supplier under or in connection with a Contract shall be made in full and free of any set-off or counterclaim or any other deduction whatsoever.
- 4.5 If the Buyer fails to pay any sum payable by the Buyer to the Supplier under a Contract on its due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of four per cent per annum above HSBC Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5. **DELIVERY**

- 5.1 Delivery of any software or appliance ordered by the Buyer from the Supplier shall be made by the Supplier to either the Buyer or to such other person as the Buyer shall direct (a “**Third Party**”). Delivery by the Supplier of software and/or any appliance to a Third Party shall constitute delivery to the Buyer under the Contract and the Buyer shall have no recourse to the Supplier nor shall the Supplier have any liability to the Buyer in respect of delivery to a Third Party at the direction of the Buyer. Delivery of software shall be made at the discretion of the Supplier either by the Supplier delivering a disk containing the software to the address of the Buyer or the Third Party nominated by the Buyer or by the Supplier providing an electronic version of the software to the Buyer or the Third Party nominated by the Buyer.
- 5.2 Professional services ordered by the Buyer from the Supplier shall be performed by the Supplier for the benefit of either the Buyer or a Third Party (as directed by the Buyer). Performance of professional services by the Supplier for the benefit of a Third Party shall constitute performance under the Contract for the benefit of the Buyer and the Buyer shall have no recourse to the Supplier nor shall the Supplier have any liability to the Buyer in respect of performance for the benefit of a Third Party at the direction of the Buyer.
- 5.3 Maintenance ordered by the Buyer from the Supplier shall be performed by the Supplier for the benefit of either the Buyer or a Third Party (as directed by the Buyer). Performance of maintenance by the Supplier for the benefit of a Third Party shall constitute performance under the Contract for the benefit of the Buyer and the Buyer shall have no recourse to the Supplier nor shall the Supplier have any liability to the Buyer in respect of performance for the benefit of a Third Party at the direction of the Buyer.

6. **RISK AND PROPERTY**

- 6.1 Risk of damage to or loss of any Product shall pass to the Buyer at the time of delivery.
- 6.2 Notwithstanding delivery and the passing of risk in any Product or any other provision of these Conditions, ownership of any Product shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full of the price of the Product and all other Products and Services for which payment is due from the Buyer.
- 6.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Supplier but if the Buyer does so all monies owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

7. **INTELLECTUAL PROPERTY**

- 7.1 The Buyer shall have no right to use any registered or unregistered trade or service mark of the Supplier and used in connection with Product(s) unless authorised to do so by the Supplier in writing.
- 7.2 The Buyer shall not alter or remove any copyright notices or other proprietary notices in or on any Product.
- 7.3 The Buyer acknowledges and agrees that at all times the Supplier shall own the originals and all copies of Products, all improvements, adaptations, updates and other modifications howsoever made to Products and all Intellectual Property Rights relating to Products and the Buyer shall not acquire any rights of any kind in relation thereto.
- 7.4 The Buyer shall not copy, modify, alter, enhance, decompile, disassemble, or reverse engineer any Product.

- 7.5 The Buyer shall not contest the validity of any Intellectual Property Rights of the Supplier nor their applicability to any Product.
- 7.6 With respect to any work product created by the Supplier in connection with the Services (in whatever stage of completion), including, without limitation, concepts, works, inventions, information, drawings, designs, programs, or software (whether developed by the Supplier or any of its employees, representatives, agents, contractors, or subcontractors, either alone or with others, and whether completed or in-progress) (collectively "**Work Product**"), the Supplier shall own, all right, title, and interest (including, without limitation, all Intellectual Property Rights) (collectively, "**Proprietary Rights**") in such Work Product. The Buyer acknowledges and agrees that all Proprietary Rights embodied in the Work Product shall be the exclusive property of the Supplier. To the extent that the Buyer provides any input or otherwise contributes to the Work Product, the Buyer hereby irrevocably assigns to the Supplier all of the Buyer's right, title, and interest in and to the Work Product, including, without limitation, all rights in and to any Proprietary Rights embodied in the Work Product or developed in the course of the Supplier's creation of the Work Product. The Buyer will execute any documents in connection with such assignment that the Supplier may reasonably request.
- 7.7 Any property of the Supplier of any kind used by the Supplier in performing the Services shall remain vested in the Supplier and the Buyer shall not have or acquire any rights whatsoever in relation to such property.
- 7.8 In the event of any infringement of any third party's intellectual property rights the Supplier, at its option, shall be entitled to replace the relevant Product or any infringing part thereof with a compatible, functionally equivalent and non-infringing product, or to modify such Product or take any other action so that it becomes non-infringing.
- 7.9 Supplier shall indemnify the Buyer in respect of any proven claim that the normal use or possession of any Product infringes the intellectual property rights of any third party, provided that:
- 7.9.1 the Buyer notifies the Supplier immediately it becomes aware of any claim or threatened claim that the Product infringes the intellectual property rights of that third party;
 - 7.9.2 the Supplier is given immediate and complete control of such claim;
 - 7.9.3 the Buyer makes no admissions or statements without the Supplier's prior written consent;
 - 7.9.4 the Buyer gives the Supplier all reasonable assistance at the Supplier's expense with such claim; and
 - 7.9.5 the Buyer does not enter into any settlement of any such claim without the prior written consent of the Supplier.

8. **TERMINATION**

- 8.1 The Supplier shall be entitled to cancel the Contract or, at its discretion, suspend any further deliveries under the Contract and/or the performance of further Services under the Contract without liability to the Buyer in the event that:
- 8.1.1 the Buyer makes any voluntary arrangement with its creditors; or
 - 8.1.2 an encumbrancer takes possession of the whole or any part of the assets, rights or revenues of the Buyer; or

8.1.3 the Buyer is adjudicated or found bankrupt or insolvent or any step is taken or bona fide proceedings are commenced for the winding-up, administration or dissolution of the Buyer or for the appointment of a liquidator, administrator, receiver or similar officer in respect of the Buyer or of the whole or any part of its assets, rights or revenues; or

8.1.4 the Buyer ceases, or threatens to cease, to carry on business.

8.2 In the event of a termination of the Contract the amounts payable in respect of any Products and/or Services which have been delivered and/or performed but not paid for shall become immediately due and payable.

8.3 Without prejudice to its rights of termination, the Supplier shall be entitled to suspend the provision of Services (including, without limitation, maintenance for the benefit of the Buyer or a Third Party) during any period when the Supplier's charges for such Services remain unpaid.

9. **WARRANTIES AND LIABILITY**

9.1 The Supplier warrants to the Buyer that the Supplier's software delivered under the Contract will be free from defects in materials and workmanship effective for ninety days, beginning on the date of the Supplier's original shipment of the software to the Buyer and ending on the ninety-first day or upon resale by the Buyer to its own customer, whichever first occurs. Provided that (i) the Buyer has notified the Supplier of a defect in the software during the applicable warranty period and (ii) the Supplier has confirmed such software to be defective after the Buyer has returned it to the Supplier, as the Buyer's exclusive remedy for breach of warranty, the Supplier will replace any such software at no charge to the Buyer.

9.2 The Supplier warrants to the Buyer that Services will be performed (a) with reasonable skill and care in accordance with the standards of a reasonably competent company performing the same or substantially similar services and (b) by appropriately qualified personnel, authorised by the Supplier to perform the Services.

9.3 The Supplier accepts liability for personal injury or death caused by the negligence of the Supplier or its employees (acting within the course of their employment or duties and the scope of their authority) and for any other matter for which it would be illegal to exclude or attempt to limit or exclude its liability.

9.4 In connection with the Contract and/or any Product and/or any Services, the Supplier shall not be responsible or liable to the Buyer for, and shall not pay, any amount of special, incidental, consequential or other indirect damages whatsoever, including, but without limitation, damages based on lost revenue, loss of business profits, loss of business information, business interruption, loss of goodwill, loss of anticipated savings or otherwise, regardless of whether advised of the possibility of such losses in advance and however caused.

9.5 The warranties contained in these Conditions are the only warranties made by the Supplier under the Contract and which apply in connection with the Products and/or Services. The Supplier hereby excludes to the fullest extent permissible by law, all other express or implied warranties, terms and conditions which, but for such exclusion, would or might subsist in favour of the Buyer (including, without limitation, implied warranties or conditions of merchantability, merchantable or satisfactory quality, title or fitness for a particular purpose).

- 9.6 Subject to Condition 9.3, the aggregate liability of the Supplier under or in connection with any Contract shall not exceed the aggregate amount paid by the Buyer to the Supplier under such Contract.
- 9.7 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Supplier's obligations in relation to the Products and/or Services if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Supplier's reasonable control: governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes (including labour disputes involving the work force or any part thereof of the Supplier), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and act of God.
10. **GENERAL**
- 10.1 The Supplier may transfer, assign, hold on trust, licence or sub-contract all or any part of its rights or obligations under any Contract
- 10.2 Each and every Contract is personal to the Buyer and the Buyer may not transfer all or any of its rights and/or obligations under any Contract without the prior written consent of the Supplier.
- 10.3 Neither party intends that any of the terms of any Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it, save that the Supplier shall be entitled to enforce any provision of the Contract.
- 10.4 A failure by the Supplier to exercise, or a delay in exercising, any right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the Supplier may otherwise have and no single or partial exercise of any right or remedy under the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. Any waiver of a breach of any of the terms of the Contract or of any default under the Contract shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of the Contract.
- 10.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.6 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.7 Any dispute arising under or in connection with these Conditions and any Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.