

# Standard Terms and Conditions of Contract (Goods and Non-ISP)

Ver:1.10 Dated 07/2009



## 1. Definitions and Interpretation

1.1 Unless the context otherwise requires, the following definitions shall apply:

**Commencement Date** means the date that the Contract is effected (either by the Customer's acceptance of the terms of the Order or when the Customer starts using the Service, whichever is the earlier event);

**Confidential Information** means any information of a confidential nature obtained under contractual arrangements for or in connection with the Service including, but not limited to, any information regarding the existence of errors or viruses found in the Service and all other information which soVision may define as confidential at the time of its disclosure to the Customer either in writing or orally.

Confidential Information does not include information which the Customer can demonstrate:

- i) is previously rightfully known to it without restriction at the time of disclosure;
- ii) is or becomes, from no act or omission on its own part, generally known in the relevant industry or public domain;
- iii) is disclosed to it by a third party as a matter of right and without restriction at the time of disclosure; or
- iv) is independently developed by it without access to the Confidential Information; or
- v) is required to be disclosed by it in under any applicable Law including disclosure required for compliance with the Freedom of Information Act 2000 or The Regulation of Investigatory Powers (RIP) Act 2000;

**Consumer** means an individual purchasing the Service outside the course of their business;

**Contract** means the agreement between soVision and the Customer incorporating these terms and conditions; the AUP, as applicable; and the Order, all as may be amended from time to time pursuant to condition 4.2;

**Customer** means the person, business or organisation with whom soVision contracts to supply the Service. soVision may accept instructions from another person who it reasonably believes is acting with the Customer's authority or knowledge;

**Equipment** means the switches, routers, servers, computers and other items of hardware necessary to form a connection and interface to the Service;

**Law** means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which soVision or the Customer is from time to time subject;

**Order** means any information supplied by soVision in written or electronic form that constitutes an offer capable of acceptance by the Customer and which has been accepted by the Customer either expressly or implied by confirmatory action. The Order will define the elements of Service to be provided, the charges applicable to that Service and any special terms that will apply;

**Service(s)** means the goods and services provided by soVision in fulfilment of the Order;

**Software** means any executable code supplied to the Customer by soVision in relation to the Service;

**soVision** means soVision Ltd, a private limited company registered in England No. 3925392 and whose registered office is at Avon House, Avon Mill Lane, Keynsham, Bristol BS31 2UG;

**User Documentation** means any documentation relating to the Service and/or any Software, supplied by soVision, either on paper, electronically or on-line.

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- 1.2 The expressions "Customer" and "soVision" shall include their respective successors and permitted assignees and their respective employees and agents.

### 2. Right to cancel [Consumers only]

- 2.1 If the Customer is a Consumer and an Order is placed on-line or via telephone or mail order the right to cancel an order up to 7 working days after receipt of goods or contracting for the supply of services is given under the Consumer Protection (Distance Selling) Regulations 2000 unless, by agreement, services begin before the end of this 'cooling off' period.
- 2.2 soVision must be advised in writing (or electronically to an email address soVision has advised for the purposes) within 7 working days of the Commencement Date if the Customer is a Consumer and wishes to cancel a Contract for services, provided it has not been previously agreed that the Service will have begun during this period.
- 2.3 Any unused goods supplied by soVision under a Contract with a Consumer may be returned to soVision within 7 working days of receipt for a refund of the purchase price or replacement with an alternative product if requested.
- 2.4 Any goods returned under condition 2.3 must be returned in the same condition as they were supplied and in the original packaging. Postage/ courier costs for return of such items to soVision are the responsibility of the Customer. Goods supplied sealed where the seal has been opened cannot be refunded or exchanged unless the Goods are faulty.
- 2.5 No right to cancel will apply if goods or services supplied are made to the Customer's specification or customized in any way.
- 2.6 Nothing in these terms and conditions affects the Customer's statutory rights as a Consumer.

### 3. Duration and Termination

- 3.1 The Service, unless otherwise agreed in the Order, shall commence on the Commencement Date and will continue in force until performance of the contracted Service (which may include delivery of goods) is satisfied or the Contract is terminated by either soVision or the Customer giving not less than 30 days' written notice to the other.
- 3.2 soVision shall be entitled to terminate forthwith if:
- i) soVision is precluded from providing the Service by Law or by the decision of any competent judicial or regulatory authority;
  - ii) the Customer becomes insolvent or bankrupt;
  - iii) the Customer commits a breach of any of the provisions in the Contract (including without limitation, non-payment of any charges hereunder) and in the case of a breach of any provision which is capable of remedy, fails to remedy the same within 7 days after receipt of a notice giving particulars of the breach requiring it to be remedied;
  - v) The Customer fails to take delivery of the Services except in accordance with its contractual rights.
- 3.3 In addition to its statutory rights, if any of the events set out on condition 3.2 occur, soVision will be entitled to a general lien on all goods of the Customer in soVision's possession for the unpaid price of any Services sold and delivered to the Customer by soVision and soVision may suspend the Service (in whole or in part) without prejudice to its right to terminate the Contract. Where the Service is suspended under this condition, the Customer shall pay any charges for the Service until the Contract is terminated.

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- 3.4 The Customer shall be entitled to terminate the Contract by notice in writing of 30 days, effective on receipt by soVision of the notice, if the Customer does not consent to any amended terms of Service as set out in condition 4.7 or to any Software licence terms as referred to in condition 9.1.
- 3.5 If notice is given to terminate the Contract, no refunds will be payable and the Customer shall pay all charges due up to the expiry of the notice. The Customer's notice does not avoid any liability for Services already provided.
- 3.6 Except as provided for in condition 2.1, 2.1 and 2.3, cancellation of Orders, in whole or in part, cannot be accepted without soVision's consent in writing and will be accepted on the basis that the Customer indemnifies soVision in respect of all losses, costs and expenses incurred by soVision up to the date upon which soVision accepts the Customer's notice of cancellation.
- 3.7 The right to terminate the Contract shall not prejudice any other right or remedy of soVision in respect of any breach or any rights, obligations, or liabilities accrued prior to termination.

### **4. Provision of Service**

- 4.1 soVision will use its reasonable endeavours to provide the Customer with the Service in accordance with the terms and conditions of the Contract.
- 4.2 Contracts, quotations and orders are entered into, made or accepted subject to soVision's standard terms and conditions as herein described, together with any special or third party terms which are stated by soVision as applying to the Service. These terms and conditions shall not be deemed to have been altered, modified or varied save as expressly agreed by soVision in writing.
- 4.3 If these terms and conditions together with any special or third party terms which are stated by soVision as applying to the Service differ in any respect from those of any offer made or order placed by the Customer, the Customer's terms will not be binding on soVision until expressly accepted by soVision and no acceptance by soVision of the terms of such counter offer shall be implied.
- 4.4 The giving by the Customer of any delivery instructions for the Service or any part thereof, or any other conduct of the Customer in confirmation of the existence of the Contract shall constitute an unqualified acceptance by the Customer of these terms and conditions.
- 4.5 Subject and without prejudice to condition 4.3 any quotation made by soVision for the provision of Service to the Customer's order, unless otherwise stated, is open for acceptance by the Customer for a period of 30 days from the date of quotation. Thereafter, soVision reserves the right to vary or cancel any quotation without notice.
- 4.6 A general quotation is not an offer and may be withdrawn without notice and an order given in respect of a general quotation is not binding on soVision until accepted by soVision.
- 4.7 soVision reserves the right to amend the terms and conditions herein, and any other special terms connected with provision of the Service, from time to time. soVision will notify the Customer in writing or electronic form of changes it makes to any special terms contained or defined in the Order. Changes to soVision's standard terms and conditions will be posted on the soVision website at <http://www.sovision.com>. The Customer may terminate the Contract as provided in condition 3.4 if it does not wish to be bound by such new terms and conditions. Continued use of the Service or failure to terminate the Contract will be deemed to constitute acceptance of the new terms and conditions.

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### 5. Quality of Goods

- 5.1 soVision shall perform no test, inspection or other examination of the goods other than those customarily carried out by it in respect of the type of goods to be supplied under the Contract. If the goods satisfy such test inspection or examination they shall be deemed to be of the quality specified in the Contract.
- 5.2 Unless excluded in the Order, soVision will be liable for any defects or damage to the goods apparent on delivery provided any claim by the Customer is made in accordance with condition 7.7.
- 5.3 soVision shall have the option of replacing the goods in question and in such case the Customer shall permit soVision to retake possession of the goods originally delivered and soVision shall deliver the replacement goods within a reasonable time. The replacement goods shall be accepted by the Customer in substitution for its right in respect of the goods replaced.
- 5.4 soVision's further liability for defect or deterioration of the goods supplied as part of the Service is hereby expressly excluded and the Customer's sole recourse will be the manufacturer's warranty as applicable. soVision will make every reasonable effort to facilitate the Customer in procuring repair or replacement of any such faulty goods by the manufacturer but it has no responsibility to do so and the Customer undertakes that it will not bring any claim against soVision in respect of any such defects or deterioration. In no circumstances shall soVision have any liability for any incidental or consequential loss or damage whatsoever and the Customer is expected to insure accordingly.
- 5.5 No other warranty as to quality or fitness for a particular purpose, even if such purpose is known to soVision, shall apply to the supply of goods by soVision hereunder.

### 6. Quality of Services

- 6.1 soVision will make every reasonable effort to meet the timescales for delivery proposed in the Order for provision of the Service but such timescales are to be treated as an estimate only and soVision accepts no liability for failure to meet them. Any delays or any material variations to the Service will be notified to the Customer.
- 6.2 soVision reserves the right to make additional charges for any additional work carried out. Such additional work will be notified to the Customer using the Change Control Procedure.
- 6.3 Any preliminary work carried out at the Customer's request and not specifically identified in the Order will be chargeable to the Customer using the Change Control Procedure.
- 6.4 Any errors or omissions of the Customer will be the Customer's responsibility.
- 6.5 The Customer shall not be entitled by reason of any claim against soVision to withhold payment of the price of the Service or to claim any right of set-off against any payment due to soVision under any Contract.

### 7. Delivery of Service

- 7.1 Whilst soVision shall make every effort to comply with any estimated delivery date, all times or dates given for delivery of the Services are indications given in good faith but soVision shall not be liable for any delay in delivery and time of delivery shall not be of the essence of any Contract.

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- 7.2 soVision shall deliver the Services to the place stated in the Order. It is the Customer's responsibility to ensure they are able to accept delivery of the Services within normal business hours or otherwise at a time agreed for delivery. If the Customer is not able to accept delivery of the Services for any reason then any invoices will be rendered as if the Services had been delivered.
- 7.3 Subject to these conditions and unless otherwise specifically agreed in writing all risk of loss or damage to goods shall pass to the Customer upon delivery of the goods.
- 7.4 Without prejudice to any other rights of soVision hereunder, if the Customer shall fail to give, at least 48 hours before the agreed date of delivery, all instructions reasonably required by soVision and all necessary documents for the forwarding of goods or shall otherwise cause or request delay, the Customer shall pay to soVision all storage and other relevant costs.
- 7.5 Unless otherwise specifically agreed all costs and expenses for transportation of goods to the Customer's address shall be payable by the Customer in accordance with soVision's standard delivery charges as in force at the time of delivery.
- 7.6 No defect or default in any part delivery of the Service shall entitle the Customer to treat the Contract as repudiated for the balance of the Service remaining to be delivered under it.
- 7.7 Any claim for damage in transit or defect apparent on delivery or for non-delivery of part of the goods must be made in writing (or electronically to an email address soVision has advised for the purposes) to soVision within 3 days of the date of delivery.
- 7.8 The goods in respect of any such claim must be preserved intact as delivered for a period of 7 days from notification of the claim within which time soVision and the carrier, if used, shall have the right to inspect the goods at the Customer's premises.

## 8. Charges

- 8.1 The Customer will pay all charges for the Service (including but not limited to any usage time, subscription, installation and maintenance charges). Charges will be calculated according to the rates on the Order.
- 8.2 soVision shall be entitled to charge for any additional expenses incurred for travelling, delivery, bulk photocopying, creation of CDs, and any other out of pocket expenses incurred in delivery of the Service.
- 8.3 Unless otherwise stated, payment of all charges is due within 14 days of the date of invoice.
- 8.4 Wherever possible soVision will submit invoice and credit notes electronically in Portable Document Format (pdf) and the Customer will be requested to provide an electronic address for such purpose. If the Customer wishes to receive hard copy documents, or if no electronic address is provided, invoices and credits will be sent to the Customer's last notified postal address.
- 8.5 Charges quoted by soVision are exclusive of VAT which, unless otherwise stated, will be charged at the rate prescribed by law at the time of invoice. All payments must be in UK Pounds Sterling.
- 8.6 Without prejudice to any other of its rights soVision may at its sole discretion exercise its statutory right to claim interest and compensation for debt recovery costs under applicable late payment legislation on any amounts that remain due more than 30 days from the date of invoice and may suspend without notice all Services it provides to the Customer until such overdue amounts are settled in full.

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- 8.7 If any payment is returned by the Customer's bank as unpaid for any reason, the Customer will be liable for an additional charge for administration of **£25 plus VAT**.
- 8.8 soVision shall be entitled to set off any amounts it owes to the Customer against any amounts owed to it by the Customer for provision of any Services.
- 8.9 If at any time the Customer fails to meet the standard of creditworthiness deemed acceptable by soVision from time to time, soVision shall be entitled to withdraw credit facilities to the Customer or terminate the Contract forthwith.

### 9. Software

- 9.1 Intellectual property rights in any Software supplied to the Customer remain the property of soVision or its licensors. The Customer agrees to comply with the terms of any licences of Software reasonably required by the owner of any intellectual property rights in any of the Software for the protection of that Software notified to the Customer or appearing on screen as part of the Service. If the Customer does not consent to any such terms, the Customer may terminate the Contract pursuant to condition 3.4. Continued use of the Service or failure to terminate the Contract will be deemed to constitute acceptance of such Software licence terms and conditions
- 9.2 soVision warrants that any media containing the Software, if provided by soVision, is free from defects in material and workmanship and will so remain for ninety (90) days from the date the Customer acquires the Software. Whilst soVision or its suppliers have used reasonable efforts to minimise defects or errors in the Software and to check the Software for viruses, soVision does not warrant that the Customer's use of the Software will be uninterrupted or that the operation of the Software will be error free, virus free or secure, or that the functions of the Software will meet the Customer's requirements.
- 9.3 soVision's sole liability for any breach of the warranties in condition 9.2 shall be, in soVision's sole discretion:
- i) to replace the Customer's defective media or copy of the Software;
  - ii) to advise the Customer how to achieve substantially the same functionality as described in any User Documentation with the Software through a procedure different from that set forth in the User Documentation; or
  - iii) if the above remedies are impracticable, to refund that part of the fee the Customer paid for the provision of the Software.
- 9.4 Repaired, corrected or replaced Software shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software, or if longer, for thirty (30) days after the date of shipment to the Customer of the replacement media or copy of the Software, or the date soVision advised the Customer how to operate the Software so as to achieve the functionality described in any User Documentation.
- 9.5 Only if the Customer informs soVision of a problem with the Software during the applicable warranty period, returns the Software to soVision at its own expense and provides evidence of the dates when it acquired the Software, will soVision be obligated to honour the warranties contained in condition 9.2.

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- 9.6 The warranties contained in condition 9.2 are the only warranties made by soVision concerning Software. soVision makes no other express or implied warranty relating to the performance, quality or fitness for a particular purpose of the Software. No soVision agent or employee is authorised to make any modifications, extensions, or additions to this warranty. If any modifications are made to the Software by the Customer during the warranty period; if the media is subjected to accident, abuse, or improper use; or if the Customer is in breach of the terms of the Contract then these warranties shall immediately be terminated. These warranties shall not apply if the Software is used on or in conjunction with hardware or programs other than the unmodified version of hardware and programs with which the Software was designed to be used as described in any User Documentation.
- 9.7 The Service may comprise software, services, technical information, training materials or other technical data which are subject to the United States of America Export Control Regulations or the Laws of another country. The Customer may not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all United States' and other applicable Laws.
- 9.8 Other than software, hardware and installation services that soVision provides in connection with the Service, it is the Customer's sole responsibility to ensure that it has the necessary and appropriate software (including any necessary licences and / or permissions, operating systems, equipment and facilities) to use the Service.

### 10. Limitation of Liability

- 10.1 Except as otherwise provided herein, soVision shall not have any liability under the Contract other than in respect of:
- i) death or personal injury arising from its own negligence or that of its employees, agents or contractors while acting in the course of their employment by soVision; or
  - ii) direct physical damage to the Customer's property or premises to an amount not exceeding £100,000.00 in respect of any one event or series of connected events where such damage arises from the negligence of soVision, its employees, agents or contractors while acting in the course of their employment by soVision; or
  - iii) any liability of soVision which cannot by Law be excluded or restricted.
- 10.2 In performing any obligation under the Contract, soVision's duty is only to exercise the reasonable care and skill of a competent provider of such services.
- 10.3 soVision does not warrant and excludes all liability in respect of the accuracy, completeness, fitness for purpose or legality of any information accessed using the Service and soVision excludes all liability of any kind for the transmission or the reception of or the failure to transmit or to receive any material of whatever nature.
- 10.4 The Customer may enter into or seek to enter into transactions with third parties in relation to the sale, rental or provision of goods and services via the Service. soVision will not be a party to such transactions and will not be liable whether in contract, tort (including liability for negligence), or otherwise for any loss, cost or damage incurred by the Customer arising out of or in relation to the transaction or attempt to enter into a transaction (including but not limited to failure to transmit or distortion of any messages sent via the Service).
- 10.5 soVision accepts no liability whatsoever whether in contract, tort (including liability for negligence), or otherwise for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus.
- 10.6 soVision provides no warranty of any kind with respect to the security and integrity of the Customer's equipment or network systems and any liability whatsoever arising from or out of:

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- i) connection to the Internet or;
  - ii) any person's act of interference (whether malicious, wilful or accidental)
- is hereby expressly excluded.

10.7 soVision will not be liable in contract, tort (including liability for negligence), or otherwise for loss, whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

10.8 Equipment owned by the Customer and sited at soVision's premises is left at the Customer's risk and soVision shall not be liable for any loss or damage, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of soVision, its agents or subcontractors. In any such case liability will be limited to repair or replacement with equivalent or superior equipment at soVision's discretion.

### 11. Confidentiality

11.1 The Customer must at all times, both during the term of the Contract and for a period of two (2) years after its termination, keep in confidence all Confidential Information using at least the same standard of care the Customer uses with their own confidential information, but in any event no less than reasonable care.

11.2 The Customer may not use or disclose any Confidential Information other than for purposes and activities specifically permitted by the Contract. The Customer may only disclose Confidential Information to an employee or contractor under binding obligations of confidentiality substantially similar to those set forth herein on a "need to know" basis.

11.3 If the Customer is legally compelled to disclose any Confidential Information, then, prior to such disclosure, the Customer must:

- i) immediately notify soVision to allow soVision the opportunity to contest the requirement for disclosure;
- ii) affirm the privileged and confidential nature of the Confidential Information; and
- iii) co-operate fully with soVision in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection is not obtained the Customer may disclose the Confidential Information only to the extent necessary to comply with applicable legal requirements.

### 12. Passing of Property

12.1 Legal title to and the beneficial interest in the Services shall not pass to the Customer until the price due under the Order (and any other Order made prior to the date of the Order between the Customer and soVision) has been paid.

12.2 The Customer shall bear the risk of any loss of, or damage to, or deterioration of the goods from whatever cause arising after the date of delivery.

12.3 Services will be due for payment when tendered or when the customer is notified that the services have been completed.

12.4 The intellectual property rights of any software developed for the Customer remain with soVision.

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### 13. Indemnity

- 13.1 The Customer shall indemnify soVision against each loss, liability or cost incurred by soVision arising out of :
- i) any claims or legal proceedings arising from the Customer's use of the Service or use of the Service through the Customer's computer servers or passwords which are brought or threatened against soVision by any other person; or
  - ii) any breach of this Agreement by the Customer.
- 13.2 The Customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgements awarded against soVision arising from the above claims and shall provide soVision with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer's sole expense.

### 14. Assignment

- 14.1 The Customer shall not assign or delegate or otherwise deal with all or any of its rights or obligations under the Contract. soVision shall have the right to assign or otherwise delegate all or any of its rights or obligations under the Contract to any person or entity.

### 15. Force Majeure

- 15.1 soVision shall not be liable for any breach of its obligations under the Contract where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including without limitation, by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, terrorism, riot, civil commotion, malicious damage, failure of any telecommunications or computer system or other service provider, compliance with any law, accident (or by any damage caused by any of such events).

### 16. Entire Agreement and no Waiver

- 16.1 These terms and conditions together with any documents expressly referred to in them, contain the entire agreement between soVision and the Customer relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters.
- 16.2 No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, the Customer has not relied on any representation other than those expressly stated in these terms and conditions and agrees that it shall have no remedy in respect of any misrepresentation which has not been made expressly herein.
- 16.3 No waiver by soVision of any default of the Customer under the Contract shall operate or be construed as a waiver by soVision of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by soVision to the Customer shall in any way release, discharge or otherwise affect the liability of the Customer under the Contract.
- 16.4 If any one or more of the terms and conditions herein is found to be unenforceable or invalid, the validity of the remaining terms will not be affected.

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### 17. Notices

17.1 Any notice to be given by either party to the other, unless as otherwise provided in these terms, may be sent by email, fax or postal service to the address of the other party as it appears in the Order or such other address as such party may from time to time have communicated to the other in writing or, if either party is a limited company, to its registered address. A notice if sent by email shall, unless the contrary is proved, be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post shall be deemed to be served two days following the date of posting.

### 18. Data Protection

18.1 soVision may use any information supplied by the Customer for its own administrative and customer service purposes or for any purpose required by Law.

18.2 Unless the Customer notifies soVision in writing, soVision may;

- i) use information supplied by the Customer for market research purposes or to supply the Customer with information about other products or services available from soVision and its associated companies;
- ii) provide information supplied by the Customer to third parties for market research purposes or to enable them to supply the Customer with information about their products or services;
- iii) communicate information that describes the habits, usage patterns and/or demographics of the whole or a part of soVision's customer base (including the Customer) but does not describe or reveal the identity of any particular customer, to third parties; or
- iv) make the Customer's name, domain names and Internet addresses available as part of a public directory enquiry service.

### 19. Governing Law

19.1 The Contract shall be governed by and construed in accordance with English law and soVision and the Customer agree to submit to the exclusive jurisdiction of the English Courts.