

**GDK Network Systems Limited**  
**TERMS AND CONDITIONS OF BUSINESS**

**SECTION A - GENERAL PROVISIONS**

**1. Definitions**

1.1 In the Contract, unless the context requires

“**Consultancy Services**” means the services specified as Consultancy Services in the Quotation;

“**Contract**” means the contract between GDK and the Customer comprising these Terms and the Quotation;

“**Customer Support Representative**” means a member of the Customer’s staff at each site, appointed by the Customer to act as contact between the parties;

“**Customers Network**” means all computer equipment, communications equipment and software located in the Customer’s locations.

“**Equipment**” means the items identified as Equipment in the Quotation;

“**Goods**” means the goods or other physical materials and items listed in the Quotation to be supplied under the Contract;

“**Notice**” means a notice served in writing;

“**Quotation**” means the quotation for the supply of Consultancy Services, Goods, Equipment, Software or services issued by GDK and accepted by the Customer;

“**Software**” means the Third Party Software as specified in the Quotation;

“**Support Services**” means the services as specified in the Quotation;

“**Terms**” means these Terms and Conditions of Business;

**2. Introduction**

2.1 These Terms apply to all Consultancy Services, Equipment, Goods, Software and Support Services provided by GDK to the Customer. Both parties must agree any changes in writing.

2.2 If any conflict arises between the provisions of the Quotation and these Terms, the provisions of the Quotation shall prevail.

2.3 The Contract shall exclusively govern the supply of Consultancy Services, Equipment, Goods, Software and Support Services by GDK to the Customer and shall constitute the entire agreement between GDK and the Customer. All prior agreements, or communications, whether oral or written, between the parties and any terms and conditions of the Customer are expressly excluded. An authorised representative of each party must agree any addition or modification of any provisions of the Contract in writing.

2.4 The Customer’s acceptance the Quotation shall incorporate these Terms into the Contract.

2.5 If any of these Terms is held to be invalid or unenforceable under any applicable law then it shall be severed from the remainder of these Terms, which will continue to be valid and enforceable to the fullest extent permitted by law.

2.6 GDK reserves the right at any time to modify or add to these Terms upon Notice to the Customer. Any such modification and addition shall only apply to Contracts entered into after such notice is served.

**3. Price, Price Changes and Payment**

3.1 Prices are exclusive of Sales and Value Added Taxes as well as delivery and transport charges.

3.2 All periodical charges may be varied by GDK.

3.3 If the Customer declines to accept a variation of the periodical charges, the Customer may give Notice of termination of the applicable services to GDK, not less than one month before the coming into effect of the new charges.

3.4 GDK will invoice the Customer in accordance with the prices in the Quotation and any taxes due thereon. All invoices shall be paid by the Customer either in accordance with the Quotation or in the absence of any payment provision therein within 30 days of the date of the invoice.

3.5 If the Customer fails to pay any amounts payable under the Contract by the due date interest will be payable on the outstanding amount at a rate equal to 2% over EURIBOR accruing on a daily basis and calculated on a 365 day year.

3.6 Notwithstanding the provisions of Clause 8.1, in the event of late payment by the Customer, GDK may serve Notice to suspend performance of all or any of all of its obligations under the Contract. Such suspension may remain in force until overdue payments, including interest are received in full.

**4. Confidentiality**

4.1 Each party shall identify in writing all information that it considers to be confidential. GDK identifies all correspondence, quotations, agreements, help data and all of its documentation as confidential.

4.2 Each party agrees not to divulge such confidential information to any person, except to its employees or contractors with a need to know, without the other party’s prior written consent. Each party will ensure that such employees and contractors are aware of and comply with the provisions of this Clause.

**5. Retention of Title and Risk**

5.1 Title shall remain with GDK until amounts payable by the Customer in respect of the Goods or Equipment, as well as the amounts referred to in Clause 3.5 have been paid with value received by GDK in full. Until such time as Title to the Goods or Equipment passes to the customer GDK will be absolutely entitled to repossess sell or otherwise deal with or dispose of them and for this purpose GDK, its agents or authorised representatives shall be entitled at any time without prior notice to enter upon any premises in which the goods are installed, stored or kept for that purpose.

5.2 Notwithstanding the provisions of Clause 5.1, the risk of loss or damage to the Goods or Equipment shall pass to the Customer upon delivery or when collected.

## 6. Intellectual Property Rights

- 6.1 All intellectual property rights in any Equipment, Goods or Software belongs to the manufacturer or its licensors as the case may be. The Customer shall only acquire such licence to use and rights as are granted by the Contract or by any licence to use provided with the Software.
- 6.2 The Customer shall not remove or change any notice concerning intellectual property rights, including any statements concerning the confidential nature of the Equipment, Goods or the Software.
- 6.3 GDK shall have no liability to the Customer in respect of an Intellectual Property Infringement of any Software supplied pursuant to the Contract.
- 6.4 The provisions of Clause 9 below shall apply to this Clause 6.

## 7. Telecommunications

- 7.1 If the Equipment is to be connected to any voice or data communications service or if the Software involves the use of any voice or data communications service, unless stated in the Quotation to be the responsibility of GDK, the Customer shall be responsible for selecting and procuring an appropriate service in a timely manner. The Customer shall obtain all necessary consents and shall comply with all conditions relating thereto.

## 8. Termination

- 8.1 Either party may terminate the Contract by Notice if the other commits a material breach which is either incapable of remedy or, if capable of remedy, the party in default fails to remedy the breach within 60 days of receiving Notice to do so from the other.
- 8.2 Either party may terminate the Contract forthwith if the other shall convene a meeting of its creditors or propose any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts or if a trustee liquidator receiver administrative receiver examiner or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 8.3 Either party may terminate the Contract by serving Notice, if the other fails to pay any sum due under the terms of the Contract. Notice must contain a statement that termination is intended under this clause and the debt must remain outstanding for 30 days after the Notice is served. Genuine disputes, provided they are fully detailed in writing by one party to the other, will not be considered as "sums due".
- 8.4 Any termination under Clause 8 shall be without prejudice to the existing rights of each party, in particular to any claim either party may have against the other for breach or non-performance of the Contract. Neither party shall have any obligation for further performance under the Contract. Either party may enter the other's premises, during normal business hours, and recover Equipment, Goods or Software to which it has good title.

## 9. Limits of Liability

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 9 AND THE CUSTOMER ACKNOWLEDGES THAT THE LIMITS CONTAINED IN THIS CLAUSE ARE REASONABLE HAVING REGARD TO THE SUBJECT MATTER, PROVISIONS AND VALUE OF THE CONTRACT.**

- 9.1 The following sets out the entire financial liability of GDK (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of this Contract and any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance ("Event of Default").
- 9.2 The warranties, obligations and liabilities of GDK and the rights, claims and remedies of the Customer specifically set forth in this Contract are exclusive and exhaustive. No other representations, warranties, or obligations are given or may be implied by law or otherwise with respect to the Consultancy Services, Training, Integration with the Customer's Network, Equipment, Goods, Software and Support Services including any of merchantability, suitability, or fitness for any particular purpose and any which may arise from course of performance, course of dealing or usage or trade and without prejudice to the generality of the foregoing all warranties and all conditions implied by the Sale of Goods and Supply of Services Act, 1980 are hereby expressly excluded.
- 9.3 The Customer acknowledges that the Consultancy Services, Training, Integration with the Customer's Network, Equipment, Goods, Software or Support Services are being purchased by the Customer for its business or trade and the Customer hereby represents to GDK that it is not dealing with GDK as "a Consumer" within the meaning of that term in the Sale of Goods and Supply of Services Act, 1980 or the European Community (Unfair Terms and Consumer Contracts) Regulations 1995 (SI Number 27/1995).
- 9.4 Notwithstanding anything else contained in this Contract, GDK shall not be liable to the Customer for;
- 9.4.1 Any indirect, incidental, special or consequential loss or damage of any nature whatsoever (including but not limited to loss of profits or contracts, loss of use, revenue profit or business opportunity or other indirect or consequential loss) whether arising from negligence, breach of contract and / or breach of warranty, indemnity or contribution or otherwise howsoever.
- 9.4.2 Any loss or damage arising out of any failure by the Customer to follow the operational instruction for the Equipment, Goods or Software.
- 9.4.3 Any non-compliance with the warranties contained in this Contract resulting from the use with or incorporation into any other piece of equipment provided or recommended by any third party of the Equipment, Goods or Software.

- 9.4.4 Unless GDK shall have modified the Equipment or the Goods GDK shall not be deemed to be the manufacturer of the Equipment or the Goods and GDK shall not be liable for any death or personal injury due to any of the Equipment or the Goods being on sale within the meaning of the Defective Products Act, 1991.
- 9.5 Subject to Clauses 9.2 and 9.4 GDK's total aggregate liability in contract, tort (including negligence or breach of statutory duty), strict liability in tort or by Statute or otherwise, for any and all claims (except in cases of death or personal injury) shall be limited to the Contract price as specified in the Quotation.
- 9.6 If a number of Events of Default occur which together result in or contribute to substantially the same loss or damage, then they shall be regarded as giving rise to only one claim under the Contract.
- 9.7 The Customer hereby agrees to afford to GDK not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default that arises.
- 9.8 Except in the case of an Event of Default arising under Clause 9.4.4 GDK shall not be liable to the Customer in respect of any Event of Default unless the Customer shall have served Notice of the same upon GDK within two years of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 9.9 GDK shall have no liability for an Event of Default arising out of or connected with the Customer's failure to keep full and up to date emergency repair disk (or equivalent), Software library, security copies of the programmes and data and up to date and current tape back-ups (or equivalent).
- 10. Force Majeure**
- 10.1 Neither party shall be responsible for failure to fulfil its obligations hereunder to the extent that it results from any cause beyond its reasonable control, provided that the other party is notified as soon as practicable.
- 10.2 If such delay continues for more than 90 days, either party may terminate the Contract forthwith by Notice to the other without any liability as a result of such termination.
- 11. General Provisions**
- 11.1 No forbearance, delay or indulgence by either party in enforcing any of its rights hereunder shall prejudice its ability to enforce such rights.
- 11.2 The headings to the Clauses and Sections are for ease of reference only and will not affect the interpretation or construction of the Contract.
- 11.3 The reference to any statute, statutory instrument, order or regulation shall include any amendment thereto.
- 11.4 Clauses 3, 4, 6, and 9 shall survive any termination of the Contract.

- 11.5 All Notices shall be in writing and sent to the address set out in the Quotation or to such other address as a party may designate by Notice. Any such Notice may be delivered personally, by post or by fax transmission or by e-mail and will be deemed to have been served if by hand when delivered, if by post seventy two hours after posting and if by fax when despatched provided acknowledgement is received and if by e-mail when received by the communications network of the addressee.
- 11.6 If either party is required to give consent to the other, such consent shall not be unreasonably withheld or delayed.
- 11.7 Each party warrants to the other that it has not been induced to enter into the Contract by any representations whether oral or written, except as contained in the Contract.
- 11.8 Either party may assign or otherwise transfer all or part of the Contract providing it has received the prior written consent of the other and any consideration in respect thereof has been paid from one party to the other.
- 11.9 The Contract shall be governed and construed in accordance with the laws of Ireland
- 11.10 In the event of a dispute between the parties, the Managing Directors or Chief Executives of the Customer and GDK shall meet with the objective of achieving a resolution before implementing the dispute procedure set out in Clauses 11.11 and 11.12.
- 11.11 Disputes of a technical nature shall be referred to an expert jointly nominated by both parties or, failing agreement on such nomination within 14 days, either party may request the President for the time being of the Law Society of Ireland to appoint a suitable person. Such person will be deemed to act as an expert and not an arbitrator. Such decision will be binding on the parties unless it can be shown to contain clerical or proven manifest error. The fees of the expert will be borne by the parties in equal shares unless determined otherwise by the expert.
- 11.12 All other disputes will be determined exclusively by the Courts of Ireland and the parties hereto submit to the exclusive jurisdiction of those courts for such purposes.

**SECTION B - LICENCE TO USE THE SOFTWARE**

The provisions in this Section B, together with the General Provisions in Section A, apply to the Software provided by GDK on foot of the Quotation.

**12. Software Licences**

- 12.1 The Software supplied by GDK to the Customer shall be strictly subject to the applicable third party licence terms or conditions of use. The Customer expressly agrees to be bound by such terms and conditions and agrees to enter into any necessary agreement with the third party directly or to appoint GDK as its agent to do so on its behalf prior to using the Software

**SECTION C - PROVISION OF CONSULTANCY SERVICES AND TRAINING COURSES**

The provisions in this Section C, together with the General Provisions in Section A, apply to Consultancy Services and Training.

### 13. Performance

- 13.1 GDK shall perform the Consultancy Services with due skill and care.
- 13.2 The scope and extent of the Consultancy Services shall be as set out in the Quotation.
- 13.3 If the Consultancy Services are to be provided in stages, GDK may postpone the start of a subsequent stage until the Customer has approved the results of the preceding stage in writing.
- 13.4 If the Consultancy Services consist of the provision of personnel by GDK and if the Customer cancels or causes a delay, GDK reserves the right to charge for the time allocated, in accordance with the agreed rates of charge or, in the absence of agreed rates, GDK's then applicable current rates, unless the Customer has served a minimum of 7 days prior Notice.
- 13.5 If the provision of Consultancy Services includes the provision of a named person, GDK may replace such person by one or more other persons with equivalent qualifications and experience.
- 13.6 The parties acknowledge that the planned time of completion of the Consultancy Services is dependent on the Customer fulfilling its obligations in a timely manner and any delay by the Customer may lead to need for additional work referred to in Clause 14.1.

### 14. Alterations and Additional Work

- 14.1 If GDK, at the Customer's request or, with the Customer's prior consent, does additional work or produces any results beyond those to be provided by the Consultancy Services, GDK may make additional charges at its then current applicable rates. However, GDK shall be under no obligation to comply with such request and it may require signing of a separate contract.
- 14.2 Both parties accept that the planned time of completion of the Consultancy Services and the dependent responsibilities of the Customer and GDK may be affected by additional work referred to in Clause 14.1.

### 15. Training Courses

- 15.1 The scope, extent and location of the Training Courses shall be as set out in the Quotation.
- 15.2 GDK may require payment in full when a training course is booked. If the Customer subsequently cancels a course then, unless this is caused by default of GDK, a refund of the course charge will only be made if GDK or the Customer is able to find an alternative person to fill the place originally reserved by the Customer.

### SECTION D – INTEGRATION WITH A CUSTOMER'S NETWORK

The provisions in this Section D, together with the General Provisions in Section A, apply to the integration of the Equipment or Software to be supplied by GDK with a Customer's Network as specified in the Quotation.

### 16. Responsibilities of the Parties

- 16.1 GDK will assist the Customer to assess whether the Equipment and/or Software to be supplied by GDK can be integrated with the Customer's Network ("the Integration"). The Customer is responsible for making arrangements with his existing software supplier(s) and meeting any charges imposed by them to effect the Integration if required. GDK may charge for any additional Consultancy Service days that arise in the event that the Integration causes unanticipated delay.
- 16.2 GDK reserves the right to refuse to carry out or stop the installation of any Equipment and/or Software, if in its opinion, the Customer's Network is not in a fit state to allow for the proper installation of the Equipment and/or the Software. In that event, GDK will notify the Customer who will be responsible for making suitable alternative arrangements to effect such Integration.
- 16.3 While GDK may assist the Customer in the conversion of its data the Customer will at all times be solely responsible for the accuracy and completeness of the data and information stored on its network and for its conversion.
- 16.4 The Customer warrants that if it requests GDK to assist in the data conversion, the Customer will comply with the Data Protection Act, 1988 - 2003.

### SECTION E - SUPPORT SERVICES

The provisions in this Section E, together with the General Provisions in Section A, and Schedule 1 apply to Support Services to be provided by GDK to the Customer. "Software" means the Software identified as such in the Quotation to which the Support Services apply.

### 17. Term

- 17.1 The scope, extent, level and duration of the Support Services to be provided to the Customer will be set out in the Quotation. If no period is specified in the Quotation then the Support Services will be provided initially for period of one year. Thereafter the Support Services will be provided on an annual basis until terminated by the Customer or GDK upon not less than one months Notice to take effect at the end of the initial period or a subsequent annual period. The Support Services for Software shall begin on the expiry of the relevant warranty period.

### 18. Scope and Operation of Services

- 18.1 The Customer shall opt for the Bronze Level or Silver Level of Support Services the scope of which are as set out in Schedule 1.
- 18.2 The rights and obligations of both parties and scope of the Support Services are as set out in the Quotation and Schedule 1.
- 18.3 Such Support Services may be limited by restrictions in the third party licensing terms.
- 18.4 These Support Services do not include any automatic right to Third Party Software upgrades.

### SECTION F - SALE OF GOODS AND EQUIPMENT

The provisions in this Section F, together with the General Provisions in Section A, apply if GDK sells Goods and Equipment to the Customer as set out in the Quotation.

**19. Sale and Delivery of Goods and Equipment**

- 19.1 GDK will sell the Goods and Equipment to the Customer for the prices in the Quotation.
- 19.2 The Goods and Equipment will be made available to the Customer as specified in the Quotation.
- 19.3 If specified in the Quotation GDK will deliver the Goods and Equipment to the Customer at the location(s) specified by the Customer. GDK will inform the Customer of the expected time of delivery. The Customer is responsible for making arrangements to receive the Goods and Equipment. Minor items are excluded from these provisions.
- 19.4 The Customer will dispose of all packaging and containers delivered with the Goods and Equipment in accordance with the relevant waste disposal regulations. The Customer will indemnify GDK against any claims arising from any failure to observe such regulations.

**20. Installation of Goods and Equipment**

- 20.1 If specified in the Quotation, GDK will install or arrange installation of the Goods and Equipment.
- 20.2 To the extent that the work is not undertaken by GDK, the Customer shall make available the installation site suitably equipped with all necessary ancillary services such as power, climate control and telecommunications in a timely manner.
- 20.3 The Customer will provide GDK with full and safe access to the installation site during GDK's normal business hours.

**21. Acceptance of Goods and Equipment**

- 21.1 Goods, other than Equipment, shall be deemed accepted when they are available for delivery.
- 21.2 The Equipment shall be deemed to have been accepted when either (i) if being collected by or on behalf of the Customer, it has been collected; or (ii) if being delivered by or on behalf of GDK, it has been delivered; or (iii) if being installed by GDK, it has been installed.

**22. Warranty**

- 22.1 No warranty over and above the manufacturers warranty shall be given for the Goods and Equipment supplied under the Contract.

**SECTION G - EQUIPMENT MAINTENANCE**

The provisions in this Section G, together with the General Provisions in Section A, apply to the maintenance of Equipment for the Customer.

**23. Term**

All Equipment supplied by GDK will be specified in the Quotation and will come with the manufacturers warranty. Equipment Maintenance will not be provided by GDK. The Customer may choose the contract directly with the third party maintenance provider identified by GDK in the Quotation or some other third party maintenance provider of its choice.