

HARDWARE AND SOFTWARE TERMS

1. APPLICATION OF THE GENERAL CONDITIONS

- 1.1 This Hardware and Software Terms shall be read together with the General Conditions and unless the context otherwise requires, such defined terms used in this Hardware and Software Terms shall have the same meaning as those in the General Conditions and vice versa.
- 1.2 In the event if any inconsistencies between the General Conditions and this Hardware and Software Terms, the provisions in this Hardware and Software Terms will prevail.
- 1.3 Continental Limited may trade under the name of Webnetism and these terms apply equally to both names.

2. DEFINITIONS:

- 2.1 In this Hardware and Software Terms:
 - 2.1.1 **'Acceptance Test'** means the acceptance test set out in the Order.
 - 2.1.2 **'Damage'** means damage as defined in Clause 5.1 below.
 - 2.1.3 **'Intellectual Property'** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.
 - 2.1.4 **'Order'** means the order placed by the Client including those recorded in the Initial Brief and Brief, placed through the Website and/or the telephone.
 - 2.1.5 **'Products'** mean any product, article, item (including without limitation to) hardware, software and servers listed on the Continental's Website and/or catalogue (including part or parts thereof).
 - 2.1.6 **'Product Price'** means the price payable in respect of the Products by the Client as specified in the Order and/or the Website (as the case may be).
 - 2.1.7 **'Website'** means <http://www.continental.co.uk>, <http://www.new-monitors.co.uk>, or such variations to the name or alias of the aforesaid domain names.
 - 2.1.8 **'System Support and Maintenance Services'** means the System Support and Maintenance Services defined in Clause 9.1 of this Hardware and Software Terms.
 - 2.1.9 **'System Support and Maintenance Fees'** means the fees specified in the Order which is payable in respect of the System Support and Maintenance Services.
 - 2.1.10 **'User Training'** means the training specified in the Order to be provided by Continental to the Client to enable a reasonably skilled employee of the Client to operate and use the Products.

3. TERMS OF ACCEPTANCE

- 3.1 Any quotations and/or estimates given by Continental shall be deemed as an 'invitation to treat' and not an offer. The Contract is formed between the Client and Continental when (and not before) Continental notifies the Client by e-mail, fax, letter, electronically and/or signs Continental's order form that the Order has been accepted.
- 3.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply in any Contracts.

4. DELIVERY OF PRODUCTS

- 4.1 The Client may place an Order for the Products:
 - 4.1.1 by submitting a signed the Order to Continental;
 - 4.1.2 through the Website;
 - 4.1.3 by telephone on 01452 855222 (between the hours of 8.30am to 5.30pm from Monday to Friday GMT); or
 - 4.1.4 postal order by posting such order to the following address:
Continental Limited
Unit C2

Herrick Way
Staverton Technology Park
Cheltenham
Gloucestershire
GL51 6TQ

- 4.2 Where an Order is not made through the Website or Continental's Order form, the Order made shall clearly state (1) the type of Products; (2) the quantities ordered; and (3) the location where the Products are to be delivered. Where an Order is placed verbally or in the event of any dispute as to the order, Continental's version of the Order shall be deemed as the authoritative order and the Client shall not dispute the correctness of the same.
- 4.3 Continental will notify the Client when the Products are ready for collection and the Client shall collect the Products from Continental's premises.
- 4.4 Where Continental agrees to deliver the Products to the Client, the Products will be delivered to the address which the Client has submitted to Continental via the Website, the address which is specified in the Order and/or addressed notified by the Client to Continental (as the case may be). In addition, Continental will use reasonable endeavours to meet any delivery dates agreed between the parties but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Products.
- 4.5 For the avoidance of doubt, where Clause 4.4 applies, as the actual delivery of the Products may be carried out by third party couriers, in such a case, Continental shall be under no liability for any delay or failure to deliver the Products except to return the purchase price.
- 4.6 Where Clause 4.4 applies, unless otherwise agreed in writing by the Parties, the Client agrees that risk or loss or damage of Products passes to the Client upon delivery of the Products or on the date of first attempted delivery by Continental and/or its courier.
- 4.7 If Continental is unable to affect delivery due to any fault of the Client, the Client may incur additional delivery charges.

5. LOSS OR DAMAGE

- 5.1 Any Products delivered to the Client shall be deemed to be in good order unless the Client informs Continental of any defects, damage and/or faults to the Products (collectively as 'Damage') within 5 working days from the day of collection or receipt of the Products (as the case may be).
- 5.2 Subject to Clause 11, Continental shall (at its sole discretion), make good any Damage in respect of the Products or reimburse the Client for the whole or part of the price of the Products (if the quantity of Products is more than one).

6. CANCELLATIONS

- 6.1 Without prejudice to Clause 11, no cancellations of orders shall be permitted unless agreed in advance by a director of Continental.
- 6.2 Without prejudice to Clause 5.2, if Products have been delivered, the Products may not be returned unless agreed in advance by a director of Continental. Any return which has been agreed shall be subject to the following conditions:
 - 6.2.1 the Products are in brand new and in unused condition;
 - 6.2.2 the packaging of the Products remain intact and unbroken and in reasonable condition;
 - 6.2.3 the Products are returned at the cost of the Client; and
 - 6.2.4 the returned Products are received within 14 days from when a director of Continental agreed to accept the returned Products.
- 6.3 Where Products are cancelled or returned pursuant to this Clause 6, Continental reserves the right to charge a 15% administration cost.

7. PRICE AND PAYMENT

- 7.1 Any price quoted by Continental is based on its current price as on the date the quotation is made but the price payable for the Products shall be based on the actual current price of Continental as at the time of acceptance of the Client's Order.
- 7.2 Where the Client purchases the Products through other means other than through the Website, and if the client has an account set up with Continental, the Client shall make payment to Continental in respect of the Products within 30 days after receipt of Continental's invoice.
- 7.3 Where orders are made through the Website and/or telephone, Continental accepts payment through Visa and Master Card (collectively as 'Credit Cards') and Switch.
- 7.4 No payment for the Products shall be deemed to have been received until Continental has received cleared funds.
- 7.5 Where the Client wishes to pay Continental by Credit Card, Continental reserves the right to charge the Client a surcharge of 3%.
- 7.6 Risk in the Products will pass to the Client upon the Products leaving Continental's premises but title will remain with Continental until Continental has received cleared funds for such Products.
- 7.7 Until title to Products has passed to the Client, the Client shall:
- 7.7.2 hold such Products on a fiduciary basis as Continental's bailee;
 - 7.7.3 store such Products separately from all other goods held by the Client so that they remain readily identifiable as Continental's property;
 - 7.7.4 not remove, deface or obscure any identifying mark or packaging on or relating to such Products; and
 - 7.7.5 maintain such Products in satisfactory condition and keep them insured on Continental's behalf for their full price against all risks with an insurer that is reasonably acceptable to Continental. The Client shall obtain an endorsement of Continental's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request, the Client shall allow Continental to inspect such Products and the insurance policy, but the Client may resell or use Products in the ordinary course of its business.
 - 7.7.6 If before title to Products passes to the Client, the Client becomes subject to any of the events in Clauses 12.1.4 to 12.1.12 then, provided that such Products have not been resold and without limiting any other right or remedy Continental may have, Continental may at any time require the Client to deliver up such Products and, if the Client fails to do so promptly, enter any premises of the Client or of any third party where the relevant Products are stored in order to recover them.

8. INSTALLATION AND ACCEPTANCE TESTING

- 8.1 Where Continental agrees to install the Products for the Client, Continental will install the Products using reasonable skill and care. Unless otherwise agreed, Continental shall be entitled to charge the Client an installation fee on a time and materials basis based on Continental's then standard time and materials charge out rate.
- 8.2 Upon installation, Continental and the Client will jointly carry out the Acceptance Test.
- 8.3 Where the installation passes the Acceptance Test, the Client shall forthwith confirm such acceptance of the installation in writing (in such a form as may be reasonably requested by Continental).
- 8.4 Where the installation fails the Acceptance Test, Continental will take such steps to ensure that the Products are properly installed and functions properly in accordance with the requirements set out in the Acceptance Test. Thereafter the Parties will commence acceptance testing in accordance with the Acceptance Test.
- 8.5 Where the Products installed pass the Acceptance Test on the second attempt, Clause 8.3 of this Hardware and Software Terms will apply. If the Products installed fail the Acceptance Test on the second attempt, Clause 8.4 of this Hardware and Software Terms will apply.
- 8.6 Where the Products installed passes the Acceptance Test on the third attempt, Clause 8.3 of this Hardware and Software Terms will apply. If the Products installed fail the Acceptance Test on the third attempt, any installation fees paid by the Client to Continental will be refunded.

Without prejudice to Clause 6, the Product Price will not be refunded unless the Products were Damaged by Continental.

9. SYSTEM SUPPORT AND MAINTENANCE SERVICES

9.1 Where agreed by the Parties in the Order, Continental will perform such support and maintenance services specified in the Order ('System Support and Maintenance Services') in the event there are problems, faults and/or errors with regard to the Products during such period specified in the Order in question Continental will provide support and maintenance using reasonable skill and care.

9.2 The Parties may mutually agree to renew the System Support and Maintenance Services for such additional periods as may be agreed between the Parties. Unless otherwise waived by Continental, any renewals of the System Support and Maintenance Services shall be made in writing.

10. SOFTWARE

10.1 Notwithstanding any other provisions in this Hardware and Software Terms, where Products sold consist of software, title and/or Intellectual Property in such software shall not be assigned to the Client.

10.2 In cases where the software is owned by Continental, unless otherwise agreed in writing, Continental grants to the Client a non-exclusive licence to use such software for its own internal business purposes.

10.3 In cases where the software is owned by third parties, the Client agrees to be bound by the licensing terms and conditions of such third parties.

11. WARRANTIES AND LIABILITY

11.1 Continental will use its best endeavours to pass on any manufacturer's warranty to the Client.

11.2 Notwithstanding Clause 5.2 above, Continental shall not be liable for any Damage in respect of the Products if:

11.2.1 such Damage arose as a result of the Products being improperly used and/or not used in accordance with the manufacturer's manual; or

11.2.2 such Damage was the result of unauthorised modification of the Products without the written consent of Continental.

11.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Hardware and Software Terms and/or Contracts.

11.4 Nothing in this Hardware and Software Terms excludes or limits the liability of Continental for death or personal injury caused by Continental's negligence or for fraudulent misrepresentation.

11.5 Subject to Clauses 5.2, 11.2, 11.3, 11.4 and 11.6, Continental' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Hardware and Software Terms shall be limited to:

11.5.1 in respect of matters for which Continental does not carry insurance, the price of the Products; and

11.5.2 in respect of matters for which Continental carries insurance, the insured value.

11.6 Continental shall not be liable to the Client for any indirect or consequential loss or damage (whether for loss of profit, loss of opportunity, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Hardware and Software Terms or Contracts.

11.7 The provisions of this Clause 11 shall survive the termination of this Hardware and Software Terms and/or Contracts.

11.8 The exclusions and limitations of liability set out in this Clause 11 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 11.

12. TERMINATION AND SUSPENSION

12.1 Without prejudice to the rights and remedies available to Continental (whether under this Hardware and Software Terms, Contracts or otherwise), Continental shall be entitled to (at its

sole discretion) upon providing the Client with notice of such intention, terminate and/or suspend in whole or in part, any Contracts entered into between the Client and Continental if:

- 12.1.1 The Client fails or refuses to take delivery of any Products in accordance with this Hardware and Software Terms;
 - 12.1.2 The Client commits any material breach of these Conditions;
 - 12.1.3 The Client fails to pay any sums due to Continental; or
 - 12.1.4 The Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.1.5 The Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
 - 12.1.6 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
 - 12.1.7 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client;
 - 12.1.8 A floating charge holder over the assets of the Client has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.9 A person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
 - 12.1.10 A creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 12.1.11 The Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; and/or
 - 12.1.12 The Client, being an individual, is the subject of a bankruptcy petition or order
- 12.2 On termination of a Contract for any reason the Client shall immediately pay to Continental all of Continental's outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Continental may submit an invoice, which shall be payable immediately on receipt.
- 12.3 The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

13. FORCE MAJEURE

- 13.1 Continental shall not be liable to the Client or be deemed to be in breach of this Hardware and Software Terms or any Contracts by reason of any delay in performing or any failure to perform any of its obligations in relation to the Products if the delay or failure was beyond Continental's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond Continental's reasonable control:
- 13.1.1 Act of God, explosion, flood, tempest, fire or accident;
 - 13.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 13.1.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
 - 13.1.4 import or export regulations or embargoes; and/or
 - 13.1.5 strikes, lockouts or other industrial actions or trade disputes.