
Terms and Conditions

1. Definitions

In this Agreement the following expressions have meanings given to them below:

Agreement

(a) the Offer and Acceptance, of these Terms and Conditions and the Schedule(s) hereto.

The Company

(b) Heath Computers.

Service

(c) is the work, which the Company will perform and the items, if any, which the Company will deliver under the terms of the Agreement and is as described in the Schedule overleaf subject to such amendments as may be agreed in writing from time to time.

Contract

(d) means the Agreement formed by the signature by both parties of the order form set out overleaf for the provision of and payment for the Service, and includes such amendments as may be agreed in writing from time to time.

Company's Property

(d) includes any product belonging to the Company.

Customer's Equipment

(e) the equipment used in conjunction with the Products or Service, which belongs to the Customer.

Installation

(f) the Customer's Equipment together with the Company's Property or any licensed Product

2. Resources

(a) The Company will assign appropriately qualified personnel to perform the Service and will use all reasonable endeavours to minimise changes of personnel so assigned

(b) The Customer will give the Company promptly on request such information and facilities as the Company reasonably requires for the provision of the Service.

(c) The Customer will, before commencement of the Service, nominate an authorised representative who will be the Customer's prime point of contact with the Company whose decisions will bind the Customer for the purpose of the Contract.

(d) The Customer will use all reasonable endeavours to minimise changes in the personnel assigned to discharge the Customer's obligations under the Contract.

3. Terms of Payment

(a) The customer hereby agrees that all the charges payable by the customer shall be paid as per the payment terms on their invoice. If the customer does not make the relevant payment within the agreed period then the Company reserves the right to cease all work on behalf of the customer until all outstanding charges have been paid and the Company shall not be responsible for any resulting loss borne by the customer. Furthermore, the Company shall be entitled to terminate this Agreement by notice in writing to the customer in the event of the customer being overdue with any payment

(b) If any payment under the contract is overdue the Company reserves the right to charge interest on a daily basis from the original due date at four percent above lending rate or above such other equivalent rate as defined and applied by the Bank of England.

4. Additional Charges

(Not including Update Release & Telephone Support)

- (a) As detailed in the schedule.
- (b) If required by the customer for the Company to make a site visit unless otherwise agreed, the customer will reimburse the Company expenses reasonably incurred in providing the service, including all travel from an agreed base and hotel and subsistence expenses.
- (c) Unless otherwise agreed, charges will be made for magnetic media, stationary and other supplies, machine time and ancillary services.
- (d) If the provision of the service is delayed other than through the fault of the Company then subject to the customer's right to terminate under the term of clause 9(a).

(i) the Company will be entitled to payment by the customer in respect of idle time incurred as a result of such delay and/or for wasted time incurred owing to the provision by the customer of incorrect information.

(ii) Any Schedule date for the completion of any part of the service will, for the purposes of clause 4(a), be deferred by a reasonable period, which shall be not less than the period of such delay.

(e) Charges will fall due to be paid at the time(s) specified at the description of the service set out or referred to overleaf. In the absence of such specification, charges will fall due to be paid monthly in arrears in respect of any part of the service so invoiced.

5. Timescales and progress Control

- (a) The Company will use all reasonable endeavours to achieve any timescales stated in the schedule of the service or subsequently agreed in writing.
- (b) Before commencement of the service the parties will agree appropriate methods and frequency of monitoring the progress of the service and of the fulfilment of any phases of the contract
- (c) If idle time is incurred through failure of the customer to meet his obligations. The Company may revise any scheduled date for completion of any part of the service and/or by giving seven days written notice to suspend the contract

6. Termination

(a) If the Customer breaches the Contract (including by failure to pay any charge due) and fails to rectify the breach within fourteen days of receiving written notice from the Company, or commits an act of bankruptcy or goes or is put into liquidation (except solely for amalgamation or reconstruction) or if a receiver is appointed over any part of the Customer's business, the Company may (even if previously it has waived its rights) terminate or at its option suspend the Contract. Exercises of rights under this will not prejudice any other rights of the Company including rights to damages or other remedies.

7. Warranty

(a) The Customer will be entitled to any warranty which is implied in his favour by operation of the law, provided that the Company will not be liable for breach of any warranty unless the breach is reported to the Company within three months after completion of the service and having been given reasonable opportunity by the Customer to rectify any such breach, the Company fails to do so promptly and without additional charges to the Customer.

8. Intellectual Property Rights and Confidentiality

- (a) Copyright, patent right, and other intellectual property rights arising from provision of the service will remain the Company property and the Company may make and keep a copy of anything, which the Company supplies under the contract.
- (b) The parties agree not to disclose to any third party, other than for the purposes of performing the Contract any secret or confidential information or method of working revealed to each other, and within fourteen days of termination of the Contract will return any books, paper., records or other property belonging to each other if so requested.
- (c) The provisions of clause (a) and (b) will survive termination of the Contract

9. Exemptions

(a) Neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from any of the following (whether happening in the United Kingdom or elsewhere): force majeure, Act of God, refusal of license (including refusal or revocation of any British Telecom consent in respect of data communications equipment) or other governmental act, fire, explosion, accident; civil commotion, industrial dispute, impossibility of obtaining materials, or anything beyond the party's control. If such delay or failure persists for more than three months the party aggrieved by such delay may terminate the Contract without prejudice to rights accrued.

(b) The Company will not be liable for any injury damage, loss or delay to the Customer his servants or his agents or for any failure or breakdown in or damage to the Customer's equipment or programs, or loss of use of them, caused by-

- (i) any neglect or default of the customers, his servants or his agents or any third party, or
- (ii) Failure by the Customer, his servants or his agents to follow any reasonable instructions or recommendations the Company gives with respect to the service or to follow good computing practice.

10. Acceptance

(a) Any specifications or other document which is to be produced by the Company as part of the service and which requires the Agreement of the Customer is identified as such in one of the schedules to the Contract the Company will notify the Customer when any such document is available. If the Customer's Agreement thereto is unreasonably delayed, then the provisions of Clause 4(d) will apply.

(b) Any part of the service will be deemed to have been accepted by the Customer when the acceptance criteria therefore as set out in the schedule of the Contract have been satisfied. In the absence of each criteria, acceptance by the Customer will be deemed to have occurred on completion by the Company of that part of the service.

(c) Following acceptance of the service, the Company will not be liable for the consequences of any use which the Customer makes of anything delivered by the Company as part of the service, and no such thing will form part of "The System"

as defined in any Contract or license made between the Customer and the Company.

11. Contract Change Control

(a) The Customer may at any time request, and the Company may at any time recommend, changes in the service.

(b) Neither party will be obligated to agree to any requested or recommended change but neither party will unreasonably withhold its Agreement to such request.

(c) The Company will advise the Customer of the likely impact of any requested or recommended change on the price and timescales for the service.

(d) Until such time as any change is formally agreed, the Company will, unless otherwise agreed, continue to perform and to be paid for the services as if such change had not been requested or recommended.

(e) The parties will respond in writing to, or will meet to discuss, any requested or recommended change as soon as practicable, and in any event within four weeks following receipt of the request or recommendation.

(f) Any Agreement to a requested or recommended change will become valid as an amendment to the Contract only when recorded in writing and signed by authorised representatives of both parties.

12. Services after Acceptance

(s) Subject to the item of Clause 7, no error correction or updating service will be supplied by the Company, in respect of any program product delivered and accepted as part of the service, unless otherwise agreed in writing in a schedule or a formal amendment to the contract.