

GENERAL TERMS OF BUSINESS of e-customs[®] Ltd

GENERAL

'We' (and 'us' and 'our' in context) refers in all our terms of business to **e-customs[®] Ltd** and any associate company or entity with whom 'you' (and 'your' in context), the client or customer do business.

These terms apply to the "Agreement to use e-customs[®] web-based customs clearance systems 'webdecs' " or consultancy engagements [hereafter "the Agreement"] that you have signed with us irrespective of which element of those services you use for the supply of access to our custom processing web-site and services of whatever nature to you. These terms prevail over any terms put forward by you and supersede any previous agreements between you and us. These conditions may only be varied on the written authority of one of our directors. No other conduct on our part shall constitute acceptance of any term put forward by you.

The headings to these terms are included for convenience only and do not affect their interpretation.

1. COMMENCEMENT AND DURATION OF AGREEMENTS

- 1.1 The agreement commences when a binding contract is made. That is when we have accepted in writing, on the terms of the agreement, your duly signed order or contract.
- 1.2 We may terminate any agreement with you and any licence forthwith on giving notice to you if:-
 - 1.2.1 you fail to make payment due under the agreement within 60 days after the date of invoice;
 - 1.2.2 you commit any material breach of any terms of this agreement and (in the case of a breach capable of being remedied) fail, within 14 days after the receipt of a written request from us so to do, to remedy the breach; or
 - 1.2.3 you shall have a receiver or administrative receiver or administrator appointed over all or any part of your undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a solvent amalgamation or reconstruction on terms approved by us) or a Court of competent jurisdiction shall make an order to that effect or if you (including any individual person if you are a partnership) shall enter into any voluntary arrangement with your creditors or suffer or take any similar action in consequence of debt.

2. TITLE AND LICENCES

- 2.1 Title to all software and written word remains with us or with the owner of the intellectual property rights in programs and software and packages other than our own. We grant to you only the right to use our system of data or information provided under the terms of the Agreement or engagement subject to the terms of the Agreement.
- 2.2 Title to any medium which contains software e.g. a CD ROM and to any associated printed materials shall pass to you on payment of the price and any other sums due under contract but no rights of ownership in or title to copyright or other intellectual property rights are transferred at any time.
- 2.3 If you fail to pay the charges, fees or costs as agreed on the due date we shall have the right, without liability, to disconnect you with or without notice and at our own expense to avail ourselves of any legal remedy, including an action for the recovery of the equipment, software or other product and recovery of other sum due.

3. WARRANTY

- 3.1 This clause contains the warranties which we give to you. Therefore, except as expressly provided herein, all conditions and warranties (express or implied, statutory or otherwise) are excluded including without limitation any implied warranty of suitability or fitness for purpose.
- 3.2 Our entire liability to you and your remedies, whether in contract or in tort, are as set out and limited in Clause 6,

3.3 Pre-contract representations made by or on our behalf may be relied upon by you (subject as provided in this Clause) only if they are made in writing and are expressly reproduced and incorporated in the written agreement between us and you.

3.4 In respect of all programs and software packages other than our own:

3.4.1 such programs and software packages are supplied by us subject to the conditions of use imposed by the copyright owner and/or supplier:

3.4.2 you shall have the benefit of the copyright owner's or supplier's warranty and warranty service (if any is provided by the copyright owner or supplier) subject to their terms conditions and exclusions (if any); and

3.4.3 the copyright owner's warranty is in lieu of all other warranties or conditions, express or implied, (with the exception of those implied by S. 1 2 Sale of Goods Act 1979), including any implied conditions of suitability, merchantability or fitness for a particular purpose.

3.5 We do NOT warrant

3.5.1 that all software programs, programming or other products used alongside and/or along with other software platform systems will operate in all combinations selected by you;

3.5.2 that operation will be uninterrupted or error free: or that operation will meet your requirements.

4. STAFF AND EMPLOYMENT

4.1 Staff continuity is important to us and because our staff have access to confidential information, it is a condition of our agreement that you shall not employ or offer employment in any form to any member or former member of our technical or management staff for so long as they stay in our employment and (in the event of their leaving us) until they have been out of our employment for at least 12 months, and that you shall not attempt to persuade any member of our technical or management staff to leave our employment.

4.2 If we agree to modify our software for you or to supply software to your own specifications we will try to avoid changes in key staff allocated to your work.

5. CONFIDENTIALITY

5.1 We will observe confidence in respect of all confidential information about your business disclosed to you and we require you similarly to observe confidence (and to require your staff to do so) in respect of all confidential information which we may disclose to you. These mutual obligations of confidence shall continue after completion of our contract with you for so long as the information disclosed remains outside the public domain, but shall not restrict our freedom to copy and to re-use programs and techniques developed by us for or with you and whether or not based upon confidential information disclosed by you to us. 'Confidential information' in this clause includes all technical and commercial information about you and us and your and our respective businesses, products, services, policies and prices and all other information expressly or by implication passed on in confidence.

6. LIMITATION OF LIABILITIES AND INDEMNITY

6.1 To the extent we may be found liable, we do not seek to limit or exclude liability;

6.1.1 for death or for personal injuries arising from our negligence.

6.1.2 for any breach of the terms implied by s. 12 Sale of Goods Act 1979 or S.2 Supply of Goods and Services Act 1982.

6.2 You shall always inform us of any alleged default on our part and afford us and our manufacturer and supplier reasonable opportunity to investigate and correct any default including, without limitation, the option to substitute equipment, software or other product.

6.2.1 Neither we nor our manufacturer or supplier shall be liable for loss and expenses incurred:-

6.2.1.1 after the date that we correct or procure correction of the default: or

- 6.2.1.2 more than twelve months after the date of the default; or
- 6.2.1.3 after the date on which you terminate the licence for any affected software; or
- 6.2.1.4 to the extent that we afford you reasonable opportunity to reduce your loss and expenses by providing alternative equipment, software, other products, services or personnel.

6.3 We shall not be liable for the following loss or damage however caused and even if foreseeable by us:

- 6.3.1 economic loss, which shall include loss of profits, business, revenue, goodwill or anticipated savings;
- 6.3.2 special, indirect or consequential loss;
- 6.3.3 loss arising from any claim made against you or penalty imposed on you or on any other person; or
- 6.3.4 loss or damage arising from your failure to fulfil your obligations under this or any other agreement with us or from any matter under your control.

6.4 Our entire liability for actual loss, damages and expenses in respect of any one default shall not in any event (except as provided in paragraph 14.1 above) exceed the sum of £250,000.

6.5 Both you and we shall be discharged of liability in respect of any claim arising out of any transaction subject to these terms, whether in contract or in tort, unless formal legal proceedings are begun within two years after the aggrieved party first becomes or should reasonably have become) aware of the facts that constitute the cause of action, except in respect of liability under paragraph 6.1 above, to which the statutory limitation periods shall apply.

6.6 You shall indemnify us against any claim by a third party (including our personnel) which arises from our compliance with your instructions or which arises from or is occasioned by any act or default of yourself or the owner or occupier of any premises upon which our services are carried out.

6.7 This Clause 6 shall not affect any rights of termination specified elsewhere under these Terms of Business.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 We shall at your written request, defend and hold you harmless with respect to any and all claims filed against you in a court of competent jurisdiction, if and to the extent that such claims are based upon allegations that any current unaltered version of any equipment, software or other product sold or supplied under this agreement (including program documentation) infringes any patent or copyright or violates any trade secret or other proprietary rights in the confidential information of any person, firm or corporation provided that you shall have:-

- 7.1.1 promptly notified us in writing of any such claim;
- 7.1.2 provided all reasonable assistance requested by us; and
- 7.1.3 permitted us, at our option, to defend or control the defence and or settlement (and all negotiation) of any such claims.

7.2 In the event that such a claim has been made, or may possibly be made, in respect of any of the items specified in paragraph 7.1 above, we may at our option, discretion and expense:-

- 7.2.1 procure the right for you to continue using any affected item;
- 7.2.2 modify it so that it becomes non-infringing; or
- 7.2.3 replace any of it so that there is no infringement

7.3 Notwithstanding the above, we shall have no liability under this Clause 7 for any claim where such a claim arises solely or substantially from the alteration or modification of any equipment, software or other product unless authorised by us in writing;

- 7.3.1 the use of other than a current unaltered release of any software or program where the use of that current unaltered release would have avoided the claim;
- 7.3.2 the combination, operation or use of any equipment, software or other product with equipment, data or programs or products not supplied by us; or
- 7.3.3 the use of any equipment software programs or other products in other than the applicable specified operating environment.

7.4 This Clause 7 sets out our entire obligation and liability with respect to infringement or alleged infringements of any patent, design registration, design right in original designs, oral right, copyright or any other intellectual property right.

8. FORCE MAJEURE

8.1 Neither party shall be responsible for any delay or failure to fulfil its obligations under this agreement, apart from the payment of money, to the extent that this results from any cause beyond its reasonable control.

9. PARTIAL INVALIDITY

9.1 If any provision of an agreement between us and you is held to be invalid under any applicable statute, or rule of law, it is to that extent to be deemed omitted from such agreement.

10. WAIVER

10.1 No waiver by either party of any of rights under this agreement on one or more occasions shall prejudice its ability to enforce such rights on other occasions.

11. ASSIGNMENT

11.1 Any purported assignment, sub-licence use by a third or connected party or other transfer by you of all or part of any agreement with us will only be valid with our prior written consent.

12. NOTICES

12.1 Any notice or consent to be given under this agreement shall be in writing and shall be delivered personally or be sent by post or fax to the other party at the address given herein and shall be deemed to have been given:

12.2 in the case of a letter sent by ordinary pre-paid first class post: forty-eight hours after posting; and in the case of a fax: immediately following the date of despatch to the correct fax number of the addressee provided the hard copy of the facsimile is placed in the post on or as soon as practicable after the date of transmission, save that if notice is served outside of normal business hours notice shall be deemed served the next day.

13. INTERPRETATION AND JURISDICTION

13.1 All our contracts are governed by English Law and you submit to the non-exclusive jurisdiction of the English Courts.