

ADVANTAGENFP LIMITED

General Conditions (Terms Definition)

- In these conditions, unless the context otherwise requires:
'Company' means AdvantageNFP Ltd, a company incorporated in England and Wales under number 4097768 whose registered office is at 26 Ver Road, Redbourn, St. Albans, Hertfordshire, AL3 7PE.
'Conditions' means these General Conditions and the other conditions set out in the document of which these General Conditions form part.
'Contract' means the contract between the Company and the Customer set out in the document of which these General Conditions form part.
'Contract Products' means the software and other products to be sold and/or supplied by the Company to the Customer pursuant to the Contract.
'Intellectual Property Rights' means patents, trade marks, service marks, registered designs applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade secrets, trade or business names and any other similar protected rights in any country.
'Services' means the services to be provided by the Company to the Customer pursuant to the Contract.
'Working Hours' means between 9:15am and 5:15pm on Mondays to Friday except public holidays.
'Writing' includes telex, facsimile transmission and comparable means of communication.
- References to 'prices' include license fees, maintenance, and support charges, consultancy fees and similar payments.
- Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- The headings are for convenience only and shall not affect interpretation.

General Conditions

The following terms and conditions shall apply (where appropriate) to the Contract Products and the Services to be provided to the Customer under the Contract:

- If the Contract or any part thereof is to be performed in accordance with a specification submitted by the Customer, the Customer shall indemnify and keep indemnified the Company on demand against all loss, damages, costs and expenses awarded against or incurred by the Company in settlement of any claim for infringement of any Intellectual Property Rights of any person which results from the Company's use of the Customer's specification.
- Title and Payment**
 - The time for payment shall be of the essence under the Contract.
 - Title to the Contract Products shall remain with the Company until they are paid for in full by the Customer. Risk in the Contract Products shall pass to the Customer on delivery in the case of hardware and upon acceptance in the case of software.
- If the Customer fails to make any payment to the Company on the due date then the whole of the balance of the price of the Contract Products then outstanding shall become due and payable forthwith and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - terminate the whole or any part of the Contract (including any software license) or suspend any deliveries or further deliveries of products (whether ordered under the same contract or not) to the Customer or suspend the performance or further performance of its obligations under the Contract;
 - charge the Customer interest (both before and after judgement) on the amount outstanding on a daily basis at the rate of 3 per cent per annum above the base rate of Barclays Bank plc (or such other London Clearing Bank as the Company may nominate) from time to time in force, such interest to be calculated from the due date to the date of actual payment (both dates inclusive) compounded quarterly;
 - repossess those Contract Products in respect of which payment (in whole or in part) is overdue and enter the Customer's premises for this purpose and thereafter sell the same.
- In the absence of express agreement to the contrary each payment due to the Company under the Contract shall be paid within 30 days of the date of the Company's invoice or demand for payment.
- The Customer waives all and any further claims and rights of set-off against any payment due under the Contract and agrees to pay all amounts under the Contract regardless of any equitable claims, set-off or cross claim on the part of the Customer against the Company.
- All sums payable under the Contract are exclusive of any Value Added Tax or any other applicable sales taxes, which the Customer shall be additionally liable to pay the Company.
- If it shall be necessary for any of the Company's staff or agents to visit the Customer's premises or make any other journeys in the course of performing the Contract, then the Customer shall reimburse the Company for all reasonable travelling and subsistence expenses properly incurred in so doing.
- Performance**

All delivery performance and completion dates given by the Company are estimates only and the time of delivery of the Contract Products or the provision or completion of any Services under the Contract shall not be of the essence under the Contract. The Services shall be performed or (as the case may be) made available during Working Hours only. If the Customer requires performance or availability outside Working Hours then (subject to acceptance by the Company) an additional charge shall be payable at the Company's standard rates in force from time to time. (Normally time plus one half except Sundays and Public Holidays which is at double time).
- Compliance with Laws**

It is the Customer's responsibility to ensure and satisfy himself that the Contract Products and the work to be carried out pursuant to the Contract comply with all relevant laws, local bye-laws and regulations. The Company cannot accept any responsibility or liability relating to or arising from any failure by the Customer to ensure such compliance.
- Consequential Loss**

The Customer acknowledges that:

 - the amount of any consequential loss which arises out of the failure of the Company to comply with its obligations under the Contract is a matter which is better known to and/or more readily ascertainable by the Customer than the Company;
 - the potential extent of the damage that might be caused to the Customer is disproportionate to the amounts that can reasonably be charged (and are charged) by the Company to the Customer and;
 - the Company is concerned to keep down the costs of the products and services which it provides to the Customer under the Contract and this must necessarily involve limiting and/or excluding the liability of the Company for any loss or damage caused to the Customer in the manner specified in the following provisions (each of which shall be deemed to constitute an independent and separate agreement and shall be severally enforceable as such):
 - The Customer accepts that it is the Customer's responsibility to verify that the Contract Products will be suitable for its requirement and confirms to the Company that prior to entering into the Contract it has fully and accurately advised the Company of its requirements both present and anticipated and given to the Company in writing all relevant material relating to its business and anticipated business. The Company shall not be liable to the Customer for any failure of the Customer in complying with the foregoing.
 - The Company shall not be liable for any loss arising out of the failure by the Customer to keep full and up-to-date security copies of its computer programs and data in accordance with best computing practices or any loss caused by the Customer's failure to comply with its obligations under the contract.
 - The Company shall not be liable to the Customer for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss (including without limitation, loss of programs and data) whatsoever even if the Company shall have been advised of the possibility thereof.
 - The Company shall not be liable in any circumstances whatsoever for damage caused to the Customer or any other person by the negligence, breach of duty or other wrongful act or omission of any independent contractor or of any employee or agent of any of them.
 - The defenses, exclusions, indemnities and limits of liability provided for in these conditions shall apply in any section against the Company whatsoever howsoever arising, whether the action be founded for breach of contract, misrepresentation, negligence, breach of statutory duty or otherwise and shall have full effect notwithstanding any termination, breach of, repudiation of the contract of whatever nature or howsoever caused or arising.
- The Customer will promptly notify the Company of any incident which could give rise to a claim against the Company in respect of personal injury or death or loss of damage to property.
- Termination**

If:

 - 12.1 either party commits any material or persistent breach of any of the terms of the Contract and (if capable of being remedied) shall fail to remedy such breach within 30 days after notice in writing from the other party requiring the same, or;
 - 12.2 either party:
 - becomes insolvent or makes any voluntary arrangement with its or his creditors or becomes subject to an administration order; or
 - (being a partnership) is dissolved or has a winding up order made against it; or
 - (being a company) goes into liquidation or is dissolved; or
 - (being an individual) dies or suffers an interim order (within the meaning of the Insolvency Act 1986) to be made against him or suffers the making of a statutory demand or the presentation of a petition for a bankruptcy order; or

- has a receiver or administrative receiver appointed of it or him or over any of its or his property or assets or suffers or permits an encumbrance to take possession of the same; or
 - has any distress for rent or other seizure under executions or other legal process made in respect of its or his assets, or has any judgement obtained against it or him; or
 - ceases, or threatens to cease, to carry on business; or
- 12.3 the other party reasonably apprehends that any of the events mentioned above is about to occur and notifies the first party accordingly;
then, and in any such event, and without prejudice to any other right or remedy available to the other party and notwithstanding any other provision of these Conditions, the other party shall be entitled to terminate the whole or any part of the Contract or suspend performance or further performance of any of its obligations under the Contract without any liability to the first party and, if the first party shall be the Customer and any of the Contract Products have been delivered but not paid for, the price thereof shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary; and the first party shall notify the other party immediately upon each and every occurrence of the events mentioned in paragraphs 12.1 and 12.2 above.
- Consequences of Termination**

On the expiration of termination of the Contract:

 - 13.1 all rights and obligations of the parties under the Contract shall automatically terminate except for such rights of action as shall have accrued prior thereto and any rights or obligations which expressly or by implication are intended to come into or continue in force on or after such expiration or termination.
 - 13.2 The Customer shall at its own expense forthwith return to the Company (free of any condition, restriction, lien or other encumbrance) or otherwise dispose of as the Company may instruct all copies of the Contract Products and all property of the Company, being in each case in the Customer's possession or under its control and the Company may repossess such items and thereafter sell or dispose of the same as it thinks fit.
 14. Where the Company is entitled to repossess any item in accordance with these Conditions, the Customer hereby grants to the Company, its employees and agents for the purpose of the right (without prejudice to any other remedy) to do all that is reasonably necessary to take possession of such item. All costs incurred by the Company in repossessing any such item shall be borne by the Customer and any such right or repossession shall continue to subsist notwithstanding the termination of the Contract for any reason.
 - Confidentiality**
 - 15.1 The Customer undertakes to treat the Contract Products as strictly confidential and shall not (save as provided in paragraph 15.2 below) disclose the whole or any part thereof to any third party.
 - 15.2 The Customer shall be permitted to disclose aspects of the Contract Products to those of its employees who need to know the same, but the Customer shall be responsible for ensuring that its employees are aware of and comply with the confidentiality and non-disclosure obligations contained in paragraph 15.1 above (both before and after the termination of employment) and shall indemnify the Company against any such loss or damage which the Company may sustain or incur as a result of any breach of confidence by any of the Customer's employees or former employees.
 - 15.3 The foregoing obligations as to confidentiality and non-disclosure shall survive any termination of the Contract.
 - Variation**

If at any time during the currency of the Contract the Customer wishes to alter the products or services to be provided by the Company under the Contract then the Customer shall provide the Company with full written particulars of such alterations and with such information as the Company may reasonably require.

 - 16.1 The Company shall then (at its option) either:
 - submit to the Customer as soon as reasonably practicable a written quotation for such alterations specifying what changes (if any) will be required to the terms of the Contract, or
 - inform the Customer that the Company does not agree to make such alterations (without being obliged to give any reason therefor) in which case the Contract shall continue in force subject to paragraph 16.2.
 - 16.2 The Company shall be entitled to make a reasonable charge on a time and materials basis for considering such alterations and (where applicable) preparing the said quotation and if such activity results in a delay in the performance of the obligations of the Company under the Contract then the Company shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.
 - 16.3 The Company shall not be obliged to consider or make any alterations to the Contract save in accordance with the foregoing procedure.
 - Customer Employment of Company Personnel**

The Customer accepts that the Company will suffer loss if the member of the Company's staff or agents employed on work on the Customer's behalf accepts an offer of either a contract of service or a contract for services with the Customer within twelve months of the termination of the work which is the subject of the contract between the Company and the Customer. If such a member of the Company's staff or agent accepts such offer of either a contract of service or a contract for services in such circumstances the Customer agrees to pay to the Company the equivalent of nine months remuneration at the Company's highest rate for that member of the Company's staff or agent.
 - 17.1 The Company accepts that the Customer will suffer loss if a member of the Customer's staff accepts an offer of either a contract of service or a contract for services with the Company within twelve months of the termination of the work which is the subject of the contract between the Company and the Customer. If such a member of the Customer's staff accepts such offer of either a contract of service or a contract for services in such circumstances the Company agrees to pay the Customer the equivalent of nine months remuneration at the Customer's highest rate for that member of the Customer's staff. - Special Conditions**

The contract is subject to the special conditions (if any) agreed in Writing between the Company and the Customer and designated as such. In the event of any inconsistency between the terms of such special conditions and the remaining Conditions set out in this document such special conditions shall prevail. No modification or waiver of these Conditions shall be effective unless made by an express written agreement between the parties and no waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. The Contract shall be governed by and construed in accordance with the laws of England. The Company may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company for all the purposes of the Contract. Each provision of these Conditions shall be construed separately (save as otherwise expressly provided in these Conditions). If any of the provisions of these Conditions proves to be illegal or unenforceable the remaining conditions shall continue in full force and effect. The Contract is not assignable by the Customer.
 - Disputes**

Any dispute which may arise between the Company and the Customer concerning the Contract shall be determined as follows:

 - 19.1 If the dispute shall be of a technical nature concerning the interpretation of any specification or requirements or relating to the functions or capabilities of any of the Contract Products or any similar related matter, then such dispute shall be referred for final settlement to an expert nominated jointly by the Company and the Customer or, failing such nomination, within fourteen days after either party's request to the other therefor, nominated at the request of either party by the president for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees or other share as the expert shall so determine.
 - 19.2 In any other case the dispute shall be determined by the English Courts and the parties hereby submit to their exclusive jurisdiction for such purpose.
 - Liability for Delay**

The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform any of the Company's obligations under the Contract where such delay or failure is due to any cause beyond the Company's reasonable control and the Company shall be entitled to a reasonable extension of time for performing such obligations.
- Whole Agreement**

The Contract supersedes any previous agreement between the parties in relation to the matters dealt with therein and represents (together with any documents referred to therein) the entire agreement between the parties in relation thereto and no variation of the Contract shall be effective unless made in Writing. The Customer hereby warrants to the Company that the Customer has not been induced to enter into the Contract by any prior representations whether oral or in writing, except as specifically mentioned in the Contract or these Conditions, and the Customer hereby waives any claim to be entitled to any remedy or relief in respect of any such prior representations.

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