

1. INTRODUCTION, DEFINITIONS AND INTERPRETATION

- (a) These Terms set out the whole agreement between you and us for the supply of the Services. These Terms only apply to our contracts with consumers.
 - (b) Please check that the details in these Terms and on the Order are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing by our authorised employees and agents.
- 1.1 Please ensure that you read and understand these Terms before you sign the Order Quotation, because you will be bound by the Terms once a contract comes into existence between us.
 - 1.2 The definitions in this clause apply to these Terms:
 - 1.3 Agreement means the entire agreement as defined in clause 18;
 - 1.4 PGT means PukkaGenTek Limited.
 - 1.5 Business Day means any day which is not a Saturday, a Sunday or a public holiday;
 - 1.6 Business Hours means from 08.30 hours to 17.30 hours Greenwich Mean Time, Monday to Friday except bank holidays.
 - 1.7 Device means any self contained operational Hardware;
 - 1.8 Goods means those goods itemised in the Quotation or as otherwise agreed in writing between the Parties from time to time;
 - 1.9 Hardware means the electronic and mechanical parts of a computer or system related piece of equipment;
 - 1.10 Hardware Provider means the provider of any of Your Hardware;
 - 1.11 Management Software means the software that is downloaded on to Your System to facilitate the provision of the Services;
 - 1.12 Management Software Providers means any person who provides Management Software used by PGT;
 - 1.13 Notice Period means one calendar month;
 - 1.14 Parties means PGT and You, or PGT's and Your successors and assigns where and when applicable;
 - 1.15 Personal Data means information about You that is protected under the Data Protection Act;
 - 1.16 Quotation means the quotation, proposal or other named document which provides details of the Services to be provided and a price quotation and which refers to these Terms;
 - 1.17 Services means those services itemised in the Quotation or as amended in writing between the Parties from time to time;
 - 1.18 Software means a set of instructions comprehensible by a computer that provides use, purpose and the inter-relation of Hardware;
 - 1.19 Software Provider means the provider of any Software;
 - 1.20 System means a collection of Hardware and Software and processes brought together and utilised for a purpose;
 - 1.21 Term means for as long as the Agreement is in full force and effect unless otherwise specified;
 - 1.22 Terms means these standard terms and conditions of PGT; and
 - 1.23 You or Your means the purchaser defined as such in the Quotation;
 - 1.24 Where PukkaGenTek Ltd receives payment for Goods and/or Services on behalf of a licensed Franchisee, PGT only acts as the money-handling agent and is in no way responsible for the provision of those goods and/or services and is not party to this contract.

2. PERSONAL DATA

- 2.1 By personal data we mean any data which identifies You or Your account with PGT. It includes identity, which you agree to supply to us accurately and to keep up to date by notifying us of any changes to the information held. It also includes any information contained on Your Systems together with any billing information ("Personal Data").
- 2.2 Personal Data will be collected, processed and used by PGT for the purposes of billing and for other purposes mentioned in these Terms.
- 2.3 In providing the Goods and Services PGT works with other organisations who produce the Software and Hardware and is required under its licences to provide certain information about You to these organisations. By agreeing to these Terms, you agree to have your Personal Data provided to such organisations.
- 2.4 PGT may also collect Personal Data for statistical purposes.
- 2.5 PGT may hold Personal Data relating to the transactions which you enter into with us. We will disclose this Personal Data only insofar as to facilitate the provision of the Goods and Services provided to You.
- 2.6 Any telephone calls made to or from our offices may be monitored or recorded.
- 2.7 You understand and acknowledge that some of the Software may be programmed to track the number of copies deployed and to provide the software provider with such deployment and usage information. You consent to this operation and agree at all times not to hinder, impede, alter, prevent or otherwise distort, the operation of such tracking and reporting functions.

3. SERVICES

- 3.1 PGT shall make every effort to provide the Goods and Services specified in the Quotation during Business Hours, or as otherwise agreed in writing between the parties and which:
 - 3.1.1 conform in all material aspects with their description;
 - 3.1.2 are carried out with reasonable care and skill;
 - 3.1.3 are fit for any purpose PGT say the Goods or Services are fit for, or for any purpose which you use the Services and have notified us; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements for supplying the Goods and Services in the UK.
- 3.2 The installation and service of new Hardware and Software is not included in the Services unless expressed to the contrary in the Quotation or in writing between the Parties. Any additional Hardware or Software provided and/or installed by PGT will be installed and Serviced at an extra charge in accordance with clause 5 of these Terms.
- 3.3 The provision of the Services may be temporarily suspended and without notice in the case of system failure, security issues, unexpected maintenance or repair of either the Hardware or the Software on Your System, where urgent or unexpected remedial action is required to protect the Services or Your System or for reasons beyond PGT's control. In such instances, it may be necessary to withdraw the Services in whole or part for an indefinite period of time.
- 3.4 Where Services are unavailable due to third party acts or omissions or where factors are outside the control of PGT, including, without limitation, the interference or withdrawal of support by PGT's licensors and business partners, virus attack and System sabotage, PGT shall make every effort to have such support reinstated as soon as is reasonably practicable but provide no guarantee.
- 3.5 PGT may have to suspend the Services if there are technical problems or to make improvements to the Service. We reserve the right not to give you advanced notice of this especially if the problem is urgent or an emergency.
- 3.6 PGT shall attempt to minimise disruption to You when carrying out any routine service work or updating the Management Software.
- 3.7 PGT, its Software Providers and other third party suppliers, may from time to time modify, add to or remove aspects of the Services.
- 3.8 You will be charged for using the Services in accordance with the Quotation. We reserve the right to change our fees or billing methods, but will provide You with at least thirty (30) days' advance notice of any such change. As the account holder, You are responsible for all charges incurred and purchases made by You.

- 3.9 You are required to have the following minimum requirements for PGT to provide the Services:
 - 3.9.1 in respect of a PC: Windows XP, 1Gb RAM, 1Ghz processor, 512Kbps broadband, 5Gb free hard disk space, recognised up to date antivirus software;
 - 3.9.2 in respect of a server: Microsoft Windows Server 2003, 2Gb RAM, 512Kbps broadband, 10Gb free hard disk space, recognised up to date antivirus software, hardware warranty;
- 3.10 The Services are provided for the benefit of one (1) Device and it will be presumed and the Services will be provided on the basis that Your System consists of one (1) Device unless otherwise specified.
- 3.11 In order for PGT to provide the Services You agree for PGT to download appropriate Management Software on to Your System for PGT's sole use except where otherwise agreed in writing by PGT.
- 3.12 Where non-Microsoft Software requires PGT's service or support You shall be expected to provide access and be solely responsible for the costs of third party support for PGT to liaise with where necessary.
- 3.13 Should a fault be Hardware related PGT will charge You for the part(s) replaced. PGT will use alternative, compatible parts where necessary.
- 3.14 It remains Your sole responsibility to ensure that any valid warranty in respect of any Hardware or Software is not invalidated by the performance of the Services. Any valid warranty claim remains Your sole responsibility.

4. DATA BACKUP SERVICE

- 4.1 This clause 4 applies only in the case where data managed services are expressly being provided to You by PGT in accordance with clause 1.17;
- 4.2 PGT provides various managed services whether by itself or via third parties, including, as part of its portfolio of products, data backup services;
- 4.3 Where data backup services are provided, PGT agrees to provide such services using reasonable skill and care by suitably qualified and experienced personnel. You acknowledge that there are risks inherent in Internet connectivity and data backup that could result in the loss of your privacy, Confidential Information and data and that PGT cannot be held liable for this unless such loss is caused by their negligence.
- 4.5 The parties agree that You are the best judge of the value and importance of the data held on Your computer system, and You will be solely responsible for:
 - 4.5.1 instituting and operating all necessary back-up performance management and review procedures to ensure your backups are working, including, but not limited to PGT's backup notification service, for Your own benefit;
 - 4.5.2 taking out any insurance policy or other financial cover for loss or damage which may arise from **loss of data** for any reason.
- 4.6 PGT will not be responsible for any delay in performing or failure to perform Our obligations to the extent that such delay or failure was due to a failure by You to perform Your obligations under this Agreement or if delay results from a failure by You to comply with reasonable requests by PGT for instructions information or action required by it to perform its obligations within a reasonable time limit.

5. DEFECTIVE SERVICES & REFUNDS

- 5.1 In the unlikely event that the Services do not conform with these Terms, please let us know as soon as possible after we have carried them out. We will:
 - (a) re-perform the Services.
 - (b) if we cannot re-perform the Services we may provide you with a full or partial refund depending upon what is reasonable;
- 5.2 These Terms will apply to any replacement Services we supply to you.
- 5.3 If you are contracting as a consumer remotely (via the internet or telephone), you may cancel a Contract at any time within seven working days, beginning on the day after you received the Goods. In this case, you will receive a full refund of the price paid for the Goods in accordance with our refunds policy. This also applies to the Services but your cancellation rights under clauses 5.3 and 5.4 will end when performance of the Services begins. This clause 5.3 does not apply to bespoke Services or Goods provided under this contract.
- 5.4 To cancel a Contract, you must inform us in writing. You must also return the Products to us as soon as reasonably practicable, and at your own cost. You have a legal obligation to take reasonable care of the Products while they are in your possession. If you fail to comply with this obligation, we may have a right of action against you for compensation. You may not return any Software items which have been unsealed.
- 5.5 Where you agree for us to start work before the end of the cancellation period set-out at clause 5.3, your rights of cancellation will end when performance of the Services starts.
- 5.6 Where this contract is entered into at your home address (but not via phone or telephone):
 - 5.6.1 You may terminate this agreement within a period of 7 days starting upon the date of receiving the notice of right to cancel ("the notice") attached to this agreement by completing and returning the notice unless You have signed the written request for performance of the contract to begin before expiry of the cooling-off period,
- 5.8 Subject to this clause 5, this agreement shall terminate automatically on expiry of the fixed term.

6. PAYMENT TERMS & REFUNDS

- 6.1 You should let us know about any billing problems or discrepancies promptly after they first appear on your account statement. If you do not bring them to PGT's attention in writing within 14 days, you will have waived your right to dispute those problems or discrepancies.
- 6.2 All monthly rates for Services shall be paid by standing order or Direct Debit in to PGT's nominated bank account on the first day of each month for which the Services are to be provided;
- 6.3 All payments other than those referred to in clause 6.2 shall be paid to PGT by cheque, electronic bank transfer or electronic internet payment, at Your choice unless otherwise notified to You by PGT.
- 6.4 All invoices for Goods and Services not provided on a monthly basis shall be submitted at the time of sale and must be settled within fourteen (14) days of their issue date.
- 6.5 PGT reserve the right to suspend performance of any Services until all sums due to PGT have been paid in full (but only after having given written notice to You of our intention so to do);

7. PROPERTY AND RISK

- 7.1 The Goods shall be at Your sole risk as from delivery;
- 7.2 In spite of delivery and/or installation of the Software or Hardware having been made, property in the Goods shall not pass to You from PGT until:
 - 7.2.1 You have paid the Price plus VAT in full and in cleared funds; and
 - 7.2.2 No other sums whatsoever are due from You to PGT;
- 7.3 Until such time as property in the Goods passes from PGT to You:
 - 7.3.1 You agree to store and mark them separately from all other goods in your possession where possible;
 - 7.3.2 You shall upon request deliver up such of the Goods as have not ceased to be in existence or been sold by PGT If you fail to do so PGT may enter upon any premises owned occupied or controlled by You where the Goods are situated and repossess the Goods.

8. MATERIAL AND CONDUCT

- 8.1 PGT reserves the right to refuse to provide or stop providing any Services where it reasonably believes that Your System contains material:
 - 8.1.1 that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing,

- scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience or is illegal;
- 8.1.2 for which You have not obtained all necessary licences and/or approvals;
- 8.1.3 which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in the UK or any other country in the world; or
- 8.1.4 which is technically harmful (including without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).
- 8.1.5 PGT will fully co-operate with any law enforcement authorities or court order requesting or directing PGT to disclose the identity or locate anyone dealing with or storing any material in breach of clause 7.1.
- 8.1.6 PGT will not use Your System for any purpose other than hosting any Management Software and in providing the Services.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Management Software upon or through which the Services are provided are owned by licensors ("Management Software Providers") who under agreement licence the use of the Management Software to PGT.
- 9.2 All title and intellectual property rights in and to the Management Software (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Management Software) are owned by our various Management Software Providers. The Management Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your hosting of parts of the Management Software does not transfer any ownership of the Management Software or any intellectual property rights to You.
- 9.3 You shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Management Software or that appear during use of the Management Software.
- 9.4 You shall not reverse engineer, de-compile, or disassemble the Management Software.
- 9.5 The Management Software is for PGT's use in providing You with the Services and under no circumstances are You to use, access or copy the same except with the express written consent of PGT.
- 9.6 You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Management Software to any third party, and you may not permit any third party to have access to and/or use the Management Software.
- 9.7 PGT may terminate the provision of Services if you fail to comply with these Terms. In the event of termination or cancellation for any reason whatsoever, you must permit or assist PGT or its agents to remove, delete and destroy any Management Software and all of its component parts from Your System.
- 9.8 Any rights not expressly granted in these terms are reserved.

10 DISCLAIMER

- 10.1 PGT, and its officers, directors, employees, shareholders or agents do not accept any liability for the use made by You of the Goods or Services other than is provided by law.

11 LIABILITY

- 11.1 If PGT or You fails to comply with these Terms, neither PGT or You shall be responsible for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these Terms.
- 11.2 Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories:
- loss of income or revenue;
 - loss of business;
 - loss of anticipated savings;
 - loss of data.
- However, this clause 11.2 shall not prevent claims for foreseeable loss of, or damage to, your physical property.
- 11.3 This clause does not include or limit in any way our liability for:
- death or personal injury caused by our negligence; or
 - fraud or fraudulent misrepresentation; or
 - any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
 - any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.
- 11.4 All costs associated with servicing, repair or correction of equipment, software or data or any other work carried out by PGT that is required due to Your negligent or careless actions or inactions in relation to, or use of, Your System will be at your additional expense.
- 11.5 You have responsibility to have adequate system protections installed and configured to provide regular updates. All problems relating to viruses, spyware, malware, and/or malicious code are chargeable even if under a service contract agreement. Consumables are not covered under any service contract agreement. You have responsibility to ensure each consumable item (such as ink cartridge, toner, paper etc.) is installed correctly and at a level in accordance with the manufacturer's instructions. All costs associated with servicing, repair or correction of equipment, software or data due to a consumable item will be chargeable at our standard rate.
- 11.6 PGT shall not be held liable for any costs or claims whatsoever that arise from Your failure to meet the minimum requirements specified in clause 3.10 or to upgrade Your System when and how recommended to do so by PGT.
- 11.7 PGT cannot and does not guarantee the full security of the servers it uses and does not guarantee that it will be impossible to 'hack' into any servers or back-up devices.
- 11.8 You must ensure that You have appropriate, up to date and valid policies of insurance for any Hardware or Software supplied or installed by PGT. You are responsible for insuring the Hardware or Software from the date of installation.

12 WAIVER AND REMEDIES

- 12.1 If PGT fail to, at any time while these Terms are in force to, to insist that You perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.

13 TERMINATION

- 13.1 Either of us may terminate the arrangement between us at any time by providing the other party with 30 calendar days' prior notice in writing.
- 13.2 Termination will not affect either party's outstanding rights or duties, including our right to recover from you any money you owe us under these Terms
- 13.3 We will provide the Services for the fixed or minimum term provided for in the details of the Quotation. After the Minimum Term has expired, either of us may terminate this contract at any time by providing the other party with [30] calendar days' prior notice in writing.
- 13.4 If the You become subject to any of the events listed in clause 13.5, or the we reasonably believe that the You are about to become subject to any of them and notifies You accordingly, then, without limiting any other right or remedy available to the us, we may cancel or suspend all further Services under the Contract or under any

other contract between the You and us without incurring any liability to You, and all outstanding sums in respect of Goods delivered to You shall become immediately due.

- 13.5 For the purposes of clause 13.4, the relevant events are:

- You suspend, or threaten to suspend, payment of Your debts, or are unable to pay Your debts as they fall due or You admit an inability to pay Your debts;
- You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors;
- You are the subject of a bankruptcy petition or order;
- a creditor of Yours attaches or takes possession of, or a distress or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days; (e) a person becomes entitled to appoint a receiver over the Your assets or a receiver is appointed over Your assets.

14 EVENTS OUTSIDE OUR CONTROL

- 14.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).

- 14.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

- Strikes
- Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- fire explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
- impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, or of the use of public or private telecommunications networks.

- 14.3 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

15 NO PARTNERSHIP/AGENCY

- 15.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have nor represent that it has, any authority to make any commitments on the other's behalf.

16 ASSIGNMENT

- 16.1 You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights under these Terms but this will not affect your rights under these Terms.

17 CONFIDENTIALITY

- 17.1 For the purposes of the Agreement, **Confidential Information** shall mean the existence and terms of the Agreement and all information (of whatever nature and however recorded or preserved) disclosed by one Party to the other, which is marked as or has been otherwise indicated to be confidential.

- 17.2 The Parties shall keep confidential all Confidential Information and not use it except for the purpose of exercising or performing their rights and obligations under the Agreement.

18 ENTIRE AGREEMENT

- 18.1 The Terms together with the details contained in the Quotation constitute the entire agreement and understanding of the Parties ("the Agreement") and supersedes any previous agreement between the Parties relating to the subject matter of the Agreement.

- 18.2 If any provisions of the Terms are inconsistent with provisions of the Quotation, the provisions in the Quotation shall prevail.

19 VARIATION

- 19.1 No variation of the Agreement shall be valid unless it is notified to You in writing by or on behalf of PGT.

20 SEVERANCE

- 20.1 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect.

21 NOTICES

- 21.1 Any notices sent by you to us must be sent to PGT at the address notified to you on the Quotation or Order Form. We may give notice to you at either the e-mail or postal address you provide to us in the Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that the e-mail was sent to the specified e-mail address of the addressee.

22 RIGHTS OF THIRD PARTIES (EXCLUSION)

- 22.1 A person or body who is not a Party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

23 ALTERNATIVE DISPUTE RESOLUTION

- 23.1 If any dispute arises out of the Agreement the Parties must attempt to settle it by negotiation in the first instance.

- 23.2 If negotiations fail to resolve the dispute either Party may serve notice on the other indicating that they wish to deal with the dispute through an alternative dispute resolution procedure. Upon receipt of such a notice the other Party must agree and submit to the alternative dispute resolution procedure proposed;

- 23.3 A Party cannot commence court proceedings until at least one method of alternative dispute resolution has been genuinely submitted to and a decision obtained.

- 23.4 Nothing in this clause 23 shall prevent PGT from taking immediate legal action no matter whether any of the procedures in clauses 23.1 to 23.4 (inclusive) have been carried out, where the interests of PGT or the Management Software Provider are at risk of being damaged, devalued or otherwise amended in any way whatsoever.

24 YOUR OBLIGATIONS AS A CUSTOMER

- 24.1 You are responsible for agreeing to a product or service. You must supply PGT with reasonable courtesy, information and cooperation so that PGT may perform its duties. You are responsible for having backups of all data from your Device and/or System.

25 CALL MONITORING

- 25.1 Calls made to or from PGT may be monitored and recorded:
- for training and quality purposes;
 - to ensure compliance and self-regulatory procedures;
 - as evidence of a business transaction

26 GOVERNING LAW AND JURISDICTION

- 26.1 These Terms shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties agree to submit.