

**AMI Education Solutions Ltd - Terms and Conditions of Sale**

Unless a written quotation has been given (whereupon the terms quoted thereon will be fixed for a period of thirty days or such other period as is specified therein) the terms of sale for the Products are subject to alteration without notice and the terms of sale for the Customer will be those applicable at the date of acceptance of the order by AMI Education.

**1. DEFINITIONS**

- a. "Conditions" - these terms and conditions
- b. "Customer" - any purchaser or licensee of the Products
- c. "Hardware" - the equipment to be purchased
- d. "Products" - any Hardware or S/W sold or licensed by AMI Education
- e. "S/W" - the S/W to be purchased and related materials, updates and enhancements developed by AMI Education or third parties and supplied by AMI Education

**2. TITLE TO THE HARDWARE**

- a. Notwithstanding delivery, installation and acceptance, title to the Hardware shall not pass to the Customer but shall be retained by AMI Education until full payment for the Products has been received by AMI Education from the Customer.
- b. Until such time as title in the Hardware has passed to the Customer, AMI Education:
  - i. shall have absolute authority to retake, sell or otherwise deal with or dispose of any or part of the Hardware; and
  - ii. for the purpose specified in (b)(i) above, AMI Education or any of its agents or authorised representatives shall with reasonable cause be irrevocably entitled at any time and without notice to enter upon any premises in which the Hardware or any part thereof is installed, stored or kept, or is reasonably believed so to be; and
  - iii. shall be entitled to seek a Court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Hardware.

**3. HARDWARE WARRANTY**

- a. Unless otherwise specified AMI Education warrants to the Customer that the Hardware supplied hereunder by AMI Education is free from defects of workmanship and materials for the period set out below which commences on installation by AMI Education or on delivery of Hardware if not to be installed by AMI Education. If the Customer delays installation by AMI Education for more than 30 days from delivery, installation shall be deemed to have occurred on the thirtieth day following delivery. AMI Education undertakes subject to Paragraphs (c), (d) and (e) below to repair or, at its option, to replace the hardware purchased here-under which AMI Education has on inspection found to be defective:
  - i. for ninety (90) days in the case of upgrades and spare parts sales;
  - ii. for a minimum of one (1) year and as specified by the manufacturer in the case of printers and peripherals; and

- iii. and otherwise for one (1) year provided that AMI Education may vary the warranty periods and service level at its discretion from time to time as published in the AMI Education Systems Price List applicable at the time of purchase.
  
- b. Each claim by the Customer under this warranty shall be notified to AMI Education within the warranty period specifying the serial number and date of purchase of Hardware and nature of defect. On notification, AMI Education or its agents or representatives shall have the option of telephone diagnostics and remote resolution. Should further testing, inspection, repair or replacement be required, AMI Education shall have the option of providing such service on-site at the Customer's location or of having the Hardware returned to AMI Education or such other address as may be notified to the Customer freight pre-paid. Replacement parts or Hardware shall be sent by AMI Education to the Customer ordinary freight pre-paid, subject always to (c), (d) and (e) below.
  
- c. On-site service is only available within the UK mainland and islands connected by road bridges.
  
- d. In the event of any claim presented under warranty being found on investigation by AMI Education either to be outside the scope or duration of this warranty or the fault not being confirmed, then, as AMI Education's discretion, the cost of such investigation and repair may be borne by the Customer.
  
- e. AMI Education shall not be liable at any time for damage or defects in the Hardware or parts caused by:
  - i. improper use or installation; or
  - ii. use of the Hardware outside the specifications detailed in any documentation relating to the Hardware; or
  - iii. outside the specific application of the Hardware; or
  - iv. where Hardware has been repaired or modified by persons not authorised by AMI Education.
  
- f. Maintenance and Support options are subject to separate terms and conditions available on request.

#### **4. S/W LICENSE**

- a. You are not purchasing the title to the software, only the right to install and use this software on the paid for number of computer systems. You may make backup copies to facilitate this. This program continues to be protected by copyright law and international treaties and unauthorised reproduction or distribution of this program, or any portion of it, may result in civil and criminal penalties.
  
- b. AMI Education does not warranty the software for more than a value of £150 pounds (where possible under local law) and specifically does not warrant the use of the software in situations that are potentially life threatening. All use of the software is at the customers own discretion and the customer agrees to indemnify AMI Education to this effect. AMI Education retains the right to remedy potential cases of copyright infringement or situations where you have failed to pay other agreed contractual fees by preventing the software from functioning; the client grants permission to perform this remedy
  
- c. AMI Education (or it's nominated agents) shall be entitled from time to time during working hours, on giving reasonable notice, to enter on to Customer's premises where S/W is installed to verify whether the Customer is complying with these conditions.

#### **5. TERM**

This License is effective from the date of delivery of S/W by AMI Education and shall remain in effect until it expires or is terminated by the Customer or by AMI Education. AMI Education shall only exercise its right to terminate in the event that continued use or possession of the S/W by the Customer infringes rights of the developer or of a third party or if AMI Education is forced so to do by law or if the Customer is in breach of contract. In the event of such exceptional termination, the Customer shall cease all further use of S/W and will

certify in writing to AMI Education that to the best of its knowledge the original and all copies of the S/W have been (at the option of AMI Education) either returned to AMI Education or destroyed.

## **6. S/W WARRANTY**

- a. In the case of S/W produced by AMI Education ("AMI Education S/W") AMI Education S/W is warranted to conform substantially to its published functional specifications for a period of one (1) year from the date of installation. AMI Education will during this period, at its own expense, correct any such non-conforming S/W provided that the Customer has notified AMI Education and upon inspection AMI Education has found the S/W to be non-conforming. The Customer's sole and exclusive remedy under this warranty will be limited to such correction. This warranty is subject to the following conditions:
  - i. Any modification of the S/W by any persons not authorised by AMI Education shall void this warranty.
  - ii. Damage resulting from or aggravated by negligence or misuse is excluded.
  - iii. This warranty is subject to the Customer following the procedures (if any) specified by AMI Education from time to time for fault recording.
  - iv. The Customer reporting any faults in the S/W within seven (7) days of the fault becoming apparent and co-operating with AMI Education in carrying out such diagnostic and test routines as AMI Education may require in accordance with AMI Education's instructions.
  - v. The Customer returning to AMI Education, if so required by AMI Education, at its own expense the S/W suitably packed.
- b. In the case of non AMI Education S/W ("Non AMI Education S/W"), AMI Education will use reasonable endeavours at its own expense to procure that the Customer will have the benefit of any warranty given by a Third Party in respect of non AMI Education S/W delivered subject to the Customer complying with the conditions of such warranties.

## **7. APPLICATION**

Unless specifically agreed in writing and authorised by a Director of AMI Education these Conditions shall supersede all Terms and Conditions of the Customer. These Conditions shall constitute the entire understanding between the parties and (for the avoidance of doubt) acceptance of deliveries of the Products hereunder shall constitute acceptance by the Customer of these Conditions. No liability shall attach to AMI Education its agents or employees in respect of any representations made or advice given with regard to Products to be supplied unless confirmed in writing and signed by a Director of AMI Education.

## **8. CANCELLATION / RETURNS**

AMI Education reserves the right to charge the Customer for 30% of the value of any goods already sourced by AMI Education for an accepted order that is then subsequently changed by the customer (unless more than 30 days written notice is provided by the Customer to AMI Education). Any Carriage charges incurred by AMI Education as a result of an order being amended by the customer will still apply.

If for any reason the Customer is unhappy with any purchase, the Customer shall be entitled to return it to AMI Education, at the Customer's expense, in its original condition within 28 days of the date the relevant item is received by the Customer, unopened (with any seals and shrink-wrap intact) and AMI Education will issue a full refund for the price paid for the item. This does not apply to installed or fitted solutions; in those instances the terms and conditions of the standard warranty applies as detailed in Section 3.

The Customer must ensure the Product delivery note, the customer's name and address together with proof of authorisation to return the product are enclosed with the returns package to enable AMI Education to identify the Customer and the returns package. Provided the Customer has complied with the provisions of this paragraph 8 (Cancellation), the Customer will be liable only for the cost of return of the Product to AMI

Education. The Customer must take reasonable care of the Product whilst it is in the Customer's possession and ensure it is appropriately marked for safe return to AMI Education.

## 9. PRICE

Unless a written quotation has been given (whereupon the price quoted will be fixed for a period of thirty days or such other period as is specified therein) the prices for the Products are subject to alteration without notice and the price charged to the Customer will be that applicable at the date of AMI Education's acceptance of the order. Orders are not binding upon AMI Education until accepted by AMI Education. All prices are exclusive of Value Added Tax (and any similar tax), and carriage. Where applicable, other charges (such as, but not restricted to, Carriage) will be added as separate items on AMI Education's invoice.

## 10. PAYMENT

Unless otherwise notified to the Customer in writing by AMI Education, the Customer shall be invoiced by AMI Education using the following criteria:

- a. **Hardware / Software product and installation charges** - On the date of delivery of the Products in terms of Hardware and Software supplied
- b. **Support and Maintenance** - When AMI Education are in possession of a signed Support and Maintenance agreement (Support will not be given prior to this)
- c. **Training Charges** – Upon completion of all ordered Training

The Customer shall pay all invoices within thirty (30) days of the date thereof. Terms of payment are within the sole discretion of AMI Education and unless otherwise agreed to by AMI Education, payment may be received by AMI Education prior to AMI Education's acceptance of an order. AMI Education reserves the right to charge interest at a rate of 3% per annum above the LIBOR rate, ruling from time to time on any payment or any part payment overdue calculated from the date due and to recover its expenses including legal fees and costs of collection and to suspend delivery, performance of any warranty or (at AMI Education's option) forthwith to determine the same. AMI Education has no obligation to provide service or support until AMI Education has received full payment for the Product or services or support that the Customer has purchased.

## 11. DELIVERY AND INSTALLATION

- a. Dates for delivery of the Products are estimates only and are subject to AMI Education's availability schedule. AMI Education shall make every reasonable effort to meet any delivery date(s) acknowledged but shall not be liable for failure to meet such date(s).
- b. Where AMI Education installs Hardware, AMI Education shall perform the standard inspection diagnostic checks. For Hardware, designated by AMI Education as Customer installable the Customer shall be responsible for the installation of Hardware in accordance with instructions provided by AMI Education.
- c. All deliveries shall be made between 09.00 hours and 17.00 hours ("working hours") Monday to Friday inclusive excluding Public Holidays. If the Customer requires delivery to be made outside such times an additional charge may be payable. AMI Education reserves the right to make partial deliveries.

## 12. DAMAGES, SHORTAGES OR LOSS IN TRANSIT

The Customer shall inspect the Products immediately on delivery and AMI Education will accept responsibility for damages, shortage or loss in transit only if:

- a. Such loss or damage is noted on the consignment note or delivery document upon receipt, and copies provided to AMI Education or is notified in writing to AMI Education in cases of outwardly non visible loss or damage to unchecked Products to arrive in either case within five (5) working days from receipt of the Products by the Customer; and
- b. In cases of suspected damage in transit the added packaging is retained for inspection; and

- c. The Products are handled by the Customer in accordance with AMI Education 's or the carriers conditions of carriage or handling stipulations.

Where AMI Education accepts responsibility under this clause AMI Education shall at its option replace or repair any Products proved to AMI Education 's satisfaction to have been lost or damaged in transit.

**13. ACCEPTANCE OF PRODUCTS**

- a. For AMI Education installed Products, satisfactory completion of AMI Education's standard test procedure and an Acceptance Form signed by the Customer and AMI Education will be sufficient to establish acceptance.
- b. If the acceptance Form is not signed by the Customer within seven (7) days after physical installation of the Hardware and in the absence of written notification of valid reasons justifying non acceptance, the Customer shall be deemed to have accepted the Products on the eighth (8th) day.
- c. If installation is not performed by AMI Education, AMI Education shall be under no obligation to perform any acceptance test procedures and the date of acceptance shall be the date of delivery to the Customer.

**14. PASSING OF RISK**

Subject to Clause 8 risk of loss and damage shall pass from AMI Education to the Customer upon delivery of Products to the Customer or its agent.

**15. CONFIDENTIAL INFORMATION**

Customer agrees to maintain in confidence and not disclose, reproduce or copy any materials, documentation or specifications which are provided to the Customer hereunder the Customer shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Customer.

**16. INTELLECTUAL PROPERTY RIGHTS**

- a. If notified promptly in writing of any action (and all prior claims relating to such action) brought against the Customer, based on a claim that the Customer's use of Products infringes a United Kingdom patent or copyright, AMI Education will defend such action at its expense and pay the costs and damages awarded, provided that AMI Education shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. At any time during the course of any litigation arising out of a claim of infringement for a United Kingdom patent or copyright, or if in AMI Education 's opinion, a Product is likely to become the subject of a claim of infringement of a United Kingdom patent or copyright, AMI Education will at its option and expense either procure for the Customer the right to continue using the Product, replace or modify the same so that it becomes non-infringing, or grant the Customer a credit for the Product as depreciated and accept its return. Depreciation will be an equal amount per year over the lifetime of the Product as established by AMI Education. AMI Education will not have any liability to the Customer under any provision of this clause if the infringement or claim thereof is based upon:-
  - i. use of Products in combination with other equipment or S/W not supplied by AMI Education; or
  - ii. the use of Products in carrying out any patented process; or
  - iii. infringement as described in (c) below.
- b. The foregoing states the entire liability of AMI Education with respect to infringement of patents or copyrights by Products or any part thereof or by their operation. No costs or expenses will be incurred for the account of AMI Education without the prior written consent of AMI Education.

- c. The Customer will hold AMI Education harmless against any expense, judgement or loss of infringement of any patents, copyrights or trademarks which results from AMI Education's compliance with Customer's designs specifications or instructions.

**17. AMI EDUCATION'S LIABILITY**

- a. Products have been manufactured or developed by AMI Education or third parties to standard specifications. The Customer accepts that for certain products AMI Education is acting only as a supplier and that it is the Customer's responsibility to verify that the Hardware and S/W will be suitable for its own requirements. There are no warranties, conditions, guarantees or representations as to description merchantability or fitness for a particular purpose or other warranties, conditions, guarantees or representations whether express implied by statute or otherwise oral or in writing except as provided herein and except as to statute implied term as to title.
- b. Notwithstanding (a) above the remedies set out in this Agreement do not apply to consumer transactions except in so far as they add to Customer's rights implied by statute. In relation to such transactions the rights and obligations of AMI Education and the Customer in respect of defects in any Products supplied by AMI Education to the Customer under this agreement, the fitness for any particular purpose of such Products and the correspondence of such Products with any description or sample shall be determined by the Terms and Conditions implied by Statue.
- c. Notwithstanding (a) and (b) above all rights which the Customer may have under the Consumer Protection Act 1987 and the Consumer Protection (Distance Selling) Regulations 2000 are in addition to those set out in this Agreement.
- d. If AMI Education is unable other than through the act or default of the Customer within a reasonable time to replace or repair the defective Hardware or correct non-conforming S/W in accordance with the warranty set forth herein and where the Hardware or S/W in question is totally unusable due to the defect or non-conformity the Customer may reject it and upon its return to AMI Education 's premises is entitled to recover the purchase price of the Hardware or the license fee for the S/W as appropriate.
- e. AMI Education shall be liable for death or personal injury arising from the use of Products to the extent that it results from the negligence of AMI Education or its employees. AMI Education shall also be liable to the Customer for any other direct loss of or damage to tangible property caused solely by the negligence of AMI Education or its employees subject always to the maximum aggregate liability of AMI Education under this Agreement or in connection with the supply of any products or services under it, whether in respect of contract, tort or otherwise in relation to any successful claim made on AMI Education by the Customer not exceeding the amount received by AMI Education from the Customer in respect of sale of the products and services to which the claim relates.
- f. The Customer agrees that AMI Education will not be liable for any loss arising out of the provision of goods or services by any company organisational person other than AMI Education or for any loss caused by the Customer's failure to perform his obligations in relation to this agreement.
- g. AMI Education shall not in any event be liable for any indirect, special or consequential loss, howsoever arising (including but not limited to loss of anticipated profits or of data) in connection with or arising out of the supply, functioning or use of the Hardware or the S/W even if AMI Education shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided for in this agreement.
- h. Except in respect of the liability of AMI Education for death or personal injury resulting from the negligence of AMI Education or its employees or a claim under (b) or (c) above or in respect for a claim for non-payment of monies due under this agreement no action regardless of form arising out of the transactions in relation to this agreement may be brought by either party more than 2 years after the cause of action has accrued.

**18. EXPORT CONTROL**

Under regulations governing United Kingdom trade and by virtue of its agreements with suppliers, AMI Education requires to be pre-notified of shipments outside the United Kingdom. Customer is required to obtain all

necessary licenses prior to export. Delivery of Products is subject to all such authorisations being available at the time of delivery. AMI Education will provide guidance and required data or at its option seek to obtain the relevant licenses on behalf of the end user.

**19. SPECIFICATIONS**

AMI Education reserves the right to change specifications of Products at any time and without notice and to supply Hardware and/or S/W which differs from the specifications agreed between AMI Education and Customer provided that such substitutions do not materially affect the performance of the Products.

**20. TERMINATION**

a. AMI Education shall have the right, without prejudice to any other remedies, at any time by giving notice in writing to the Customer to terminate forthwith this agreement, including any S/W license in any of the following events:-

- i. if the Customer fails to pay any sums to AMI Education on the due date of payment; or
- ii. if the Customer commits any other breach of any of the Conditions provided that if the breach in question is one which the Customer can effectively remedy then the said notice of termination shall not be effective to terminate this agreement unless the Customer fails within thirty (30) days of the date of such notice effectively to remedy the breach complained of; or
- iii. if the Customer ceases to carry on business or substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.

**21. MISCELLANEOUS**

- a. Neither party shall be liable to the other for any delay in or failure to perform its obligations hereunder (other than a payment of money) provided that such a failure is due to causes beyond its reasonable control.
- b. Failure by AMI Education to exercise or delay exercising any of these Conditions shall not constitute or be deemed to be a waiver of AMI Education 's rights hereunder nor prejudice AMI Education 's rights to take subsequent action.
- c. The headings in these Conditions are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of these Conditions.
- d. The invalidity or unenforceability for any reason of any part of these Conditions shall not prejudice the continuation in force of the remainder thereof.
- e. The Agreement set out in these Conditions shall not be assigned by the Customer without the prior written consent of AMI Education. Any such attempt to assign shall be void.
- f. Any notice required to be given under these Conditions shall be in writing and shall be sent to the address of the Customer set out in each sales order (for notices to be sent to the Customer) or the registered office of AMI Education (for notices sent to AMI Education).
- g. Where the customer comprises two or more persons their liability and obligations to AMI Education shall be joint and several.

**22. RIGHTS OF THIRD PARTIES**

Both parties expressly agree to waive any rights that they may have under the Contracts (Rights of Third Parties) Act 1999 to bring a claim in respect of any other agreement entered into between the parties to this Agreement in relation to the subject matter of this Agreement and that any third party mentioned in this Agreement either specifically or by implication shall be expressly excluded from bringing a claim under the said Act.

**23. DATA PROTECTION**

The information that you provide about your educational institution to AMI Education will be used by AMI Education for the effective administration of its services and to communicate with you generally. Your details will only be disclosed outside of AMI Education to AMI Education's partners who help in the delivery of those services.

**24. GOVERNING LAW**

These Conditions shall be governed by and construed in all respects in accordance with the laws of England and Wales and both the Customer and AMI Education hereby agree to the exclusive jurisdiction of the English Courts in the event of any dispute in relation thereto.

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