



General Terms and Conditions of Supply

These terms apply between APJ1 Media Services Ltd and the Customer ("Customer") who orders products and software ("Equipment") from APJ1 Media Services Ltd.

1. Effect

These terms, with any special conditions specified by APJ1 Media Services Ltd, shall prevail over all others proposed by the Customer. APJ1 Media Services Ltd failure to object to other terms and conditions shall not be regarded as a waiver of this requirement. No modification of these terms will be binding on APJ1 Media Services Ltd unless made in writing and signed by an authorised officer of APJ1 Media Services Ltd. All customer orders are subject to written acceptance by APJ1 Media Services Ltd.

2. Prices

- 2.1. Unless otherwise stated, prices quoted are for ex-works and free of delivery.
- 2.2. Prices for Equipment and Services are exclusive of any taxes, charges or duties (if any) chargeable within or outside the United Kingdom. The Customer agrees to reimburse APJ1 Media Services Ltd where APJ1 Media Services Ltd pays the same, or is responsible for payment of all such taxes including penalties. Prices are inclusive of packing to full normal export standards.
- 2.3. If the Customer asks APJ1 Media Services Ltd to vary quantities, delivery dates or Equipment specifications from those against which prices were quoted APJ1 Media Services Ltd shall have the right to adjust the quoted price.

3. Payment

- 3.1. Unless other payment terms have been agreed full payment of the Contract Prices shall be due on delivery or deemed delivery in accordance with clause 4.3, in accordance with the payment arrangements agreed between APJ1 Media Services Ltd and the Customer for the Contract.

Exclusion to this clause: Special contract/commission projects to develop software and firmware and/or hardware builds to customer specific needs shall be paid in full prior to commencement of the works required. Any delay by the customer of this payment will delay the works. Where a customer delays payment by more than 28 days, the works start/restart date may be delayed by an additional 7 days after receipt of payment to allow time for resources to be re-allocated to the project. The agreed delivery date will extend by the same delayed period. APJ1 Media Services Ltd will not be held liable for this delay (see also clause 4.2 and 4.3)

- 3.2. Separate invoice(s) may be submitted in respect of any installation and commissioning or supervision charges for payment at the end of the calendar month in which the invoice is dated.
- 3.3. No payment may be withheld by the Customer by way of set off (legal equitable or otherwise) against any sums that may become due to the Customer.
- 3.4. Any sums payable to APJ1 Media Services Ltd that are ten days or more overdue shall bear penalty interest on a day to day basis of 2% per month from the due date until the date of payment and monies received by APJ1 Media Services Ltd may be applied by APJ1 Media Services Ltd at its option against such interest prior to application against other monies due from the Customer.

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3.5 All web-based orders are payment at point of sale by credit card and cards are cleared by WorldPay secure online payments.

4. Delivery

4.1. Quoted delivery periods are calculated from the last to occur of:

- a. APJ1 Media Services Ltd acceptance of the Customer's order; or
- b. provision by the Customer to APJ1 Media Services Ltd of all engineering and configuration details and Customer supplied parts and materials necessary to enable APJ1 Media Services Ltd to manufacture and supply the Equipment; or
- c. receipt of any necessary letter of credit, in the agreed form or a form acceptable to APJ1 Media Services Ltd, and other required documentation (including any confirmation or guarantee); or
- d. approval by the relevant authorities and confirmation of the availability of export licences should these be required; or
- e. approval by the competent Authorities in the Customer's country (and the country of installation of the Equipment if different) that all necessary import licences, permits and foreign exchange approvals have been obtained and will remain valid throughout the performance of the Contract.

4.2. APJ1 Media Services Ltd will endeavour to deliver Equipment and complete installation and commissioning within quoted target dates but (and without prejudice to APJ1 Media Services Ltd rights for breach) quoted dates for delivery, installation and commissioning may be automatically extended by APJ1 Media Services Ltd if the Customer delays in meeting its obligations or the Customer requires and APJ1 Media Services Ltd accepts a change in quantities or specification of the Equipment.

4.3. The Customer shall indemnify APJ1 Media Services Ltd for all losses and costs incurred by APJ1 Media Services Ltd if the Customer refuses or fails to accept delivery of the Equipment including storage charges incurred by APJ1 Media Services Ltd with any third party warehouse. In those circumstances delivery to a warehouse shall be deemed to be completed delivery by APJ1 Media Services Ltd.

5. Equipment Specification and Quality

5.1. APJ1 Media Services Ltd reserves the right to amend details of the technical specification for the Equipment in the Contract to improve the facilities or performance of the Equipment supplied or to substitute items of equivalent performance where items referred to in a quotation are no longer available.

5.2. All specifications, particulars and descriptions set out in catalogues, brochures and similar documents, shipping specifications and particulars of weight and dimension are approximate and being intended for general guidance and shall not be binding. The Customer accepts responsibility for the Equipment achieving the Customer's intended results and for the selection of results obtained from any other Equipment or software with which the Equipment supplied is to be used.

6. Inspection and Testing

6.1. The Equipment will be subjected to APJ1 Media Services Ltd standard tests before despatch. If the Customer wishes to attend these tests he shall inform APJ1 Media Services Ltd at the time the Equipment is ordered. In the event of delay on the Customer's part in attending beyond seven days from written notice given by APJ1 Media Services Ltd that APJ1 Media Services Ltd is ready, APJ1 Media Services Ltd will proceed with the tests in the Customer's absence and the tests shall be deemed to have been made in his presence.

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- 6.2 *Special exclusion:* Due to the sensitivity/device control of special items such as APJ1 Media Services Ltd cryptographic devices the initial build of these specific devices cannot be witnessed by the customer. The first part of clause 6.1 applies where the cryptographic devices are part of host equipment only. Anything else clause 6.2 applies.
- 6.3 Any additional tests of the Equipment, which may be required by the Customer, must be agreed separately in writing and these tests may then be the subject of extra charges and extra time for performance of such tests.

7. Risk and Title

- 7.1. Risk of damage to or loss of the Equipment shall pass to the Customer on delivery to the Customer's nominated carrier.
- 7.2. Title of hardware shall pass once APJ1 Media Services Ltd has received full payment for the relevant hardware and all other equipment supplied by APJ1 Media Services Ltd to the Customer; however, title to software, and the media on which it is embodied, together with copyright and other intellectual and industrial property rights in the software and in all data and information embodied in the hardware, shall at all times remain with APJ1 Media Services Ltd or its licensors. The rights of the Customer in software not produced by APJ1 Media Services Ltd but included in the Equipment may be subject to the Customer accepting conditions of sub-licence required by the owner of such software.
- 7.3. No claim for shortage or damage in respect of Equipment delivered will be considered unless received in writing by APJ1 Media Services Ltd within thirty days from the date of delivery of the Equipment to the Customer (or to a third party on the Customer's behalf, whichever first occurs).

8. Customer's Obligations

- 8.1. The Customer shall when required, supply APJ1 Media Services Ltd with such information and documents that are reasonably required to enable APJ1 Media Services Ltd to proceed with and complete the Contract without delay or interruption and shall indemnify APJ1 Media Services Ltd for any additional costs or expenses incurred by APJ1 Media Services Ltd as a result of delay or interruption caused through a failure of the Customer to supply all such information and documents in a timely manner.
- 8.2. Subject to the terms of APJ1 Media Services Ltd Support Agreement (if entered into by the Customer) the Customer will be responsible for the installation, operation and maintenance of the Equipment.
- 8.3. From and after installation the Customer agrees that that they are responsible the for primary power source, PABX and PSTN connections or lines, RF (Radio Frequency) coverage performance, the provision of suitable inter-site links, suitable antennae, multiplexing Equipment, and further installation of the Equipment at the Sites to which the Equipment is to be used.

9. Warranty

- 9.1. APJ1 Media Services Ltd undertakes to replace or (at its option) repair any hardware items proved to its reasonable satisfaction to have failed within twelve months of delivery by reason of faulty design, materials or workmanship Provided that:

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- a. The warranty shall not extend to any failure not reported to APJ1 Media Services Ltd within 30 days of delivery by APJ1 Media Services Ltd where such failure ought reasonably to have been discovered within said 30 days or where the Customer does not promptly inform APJ1 Media Services Ltd on discovery of the alleged failures and thereafter promptly returns the hardware items carriage paid with a full written report on the defects;
- b. The Customer shall refund to APJ1 Media Services Ltd the cost to APJ1 Media Services Ltd of any replacement, repair or redelivery of the hardware items effected by APJ1 Media Services Ltd where the failure is not within the terms of this warranty.
- c. The warranty shall not extend to any failure where the Equipment has not been stored, installed, maintained and used properly having regard in particular to APJ1 Media Services Ltd and (if any) other agreed applicable specifications and instructions; or where the Equipment has not been used in accordance with interference-free power, suitable environment (including but not limited to free from electronic or radio interference and pests) and correct maintenance of the Products; or where the Customer has not installed engineering changes or enhancements to the Equipment on APJ1 Media Services Ltd advice; or where the Customer has breached the terms of this agreement.
- d. The warranty does not cover fair wear and tear, abuse, correction or repairs or modifications made other than by APJ1 Media Services Ltd or any repairs required due to events beyond the control of APJ1 Media Services Ltd;

9.2. In cases where APJ1 Media Services Ltd authorises the Customer to undertake warranty repairs, APJ1 Media Services Ltd will replace faulty components free of charge. No reimbursement will be made in respect of labour.

10. **Limitation of APJ1 Media Services Ltd liability** (Important: Please Read Carefully)

10.1. To the maximum extent permitted by law, the parties agree that all terms implied by law including any warranty or condition as to the fitness for any particular purpose of the Equipment are hereby excluded.

10.2 The Customer acknowledges that it uses the Equipment for business purposes and therefore agrees that all consumer protection terms implied by law shall not apply.

10.3. The Customer warrants that it has not relied on any representation made by APJ1 Media Services Ltd which has not been stated expressly in this Agreement or upon any catalogues or publicity material produced by APJ1 Media Services Ltd and no statement made or agreed and no liability undertaken orally shall be binding upon APJ1 Media Services Ltd unless confirmed by APJ1 Media Services Ltd in writing.

10.4. The Equipment is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; intrinsically safe environments or in the design, construction, operation or maintenance of any nuclear facility. APJ1 Media Services Ltd disclaims any express or implied warranty of fitness for such uses. The Customer will not use or resell Products for such purposes.

10.5. The Customer acknowledges that any software supplied cannot be tested in every possible permutation and accordingly APJ1 Media Services Ltd does not warrant that software supplied will be free of all defects or that its use will be uninterrupted.

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10.6. Neither party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however it arises, whether for breach or in tort, equity or otherwise, even if that party has been previously advised of the possibility of such damage.

10.7. Notwithstanding anything herein APJ1 Media Services Ltd liability to the other for claims relating to this Agreement, whether for breach or in tort or otherwise, shall be limited to the amount paid by Customer for the Equipment which is within the twelve-month warranty period and the subject matter of the claims.

11. Intellectual Property Warranty

11.1. Because of the complexity of manufacturing techniques for electronic components and of the intellectual property rights pertaining thereto, APJ1 Media Services Ltd is unable to declare that the Equipment does not infringe the intellectual property rights of third parties. In the event that a third party makes a claim alleging that the Equipment infringes such third party's intellectual property rights APJ1 Media Services Ltd undertakes at its option and expense to defend the claim or seek a compromise. If an unfavourable judgement is rendered against APJ1 Media Services Ltd, APJ1 Media Services Ltd shall at its option take out a licence from the said third party or shall modify the Equipment in such way as to avoid infringement or replace the components or software with components or software of equivalent quality, functionality and performance. If such solution shall be impractical for economic and / or technical reasons APJ1 Media Services Ltd shall accept the return of the Equipment and refund to the Customer the Customer's net book value for the Equipment deemed to infringe.

11.2. APJ1 Media Services Ltd obligations under clause 11.1 shall only apply if the Customer promptly notifies APJ1 Media Services Ltd, permits APJ1 Media Services Ltd through its counsel to defend and if appropriate settle the claim at APJ1 Media Services Ltd expense, gives APJ1 Media Services Ltd all available information, assistance and authority to enable APJ1 Media Services Ltd to defend or settle the claim at APJ1 Media Services Ltd expense and has not settled or compromised such claim.

11.3. APJ1 Media Services Ltd obligations under clause 11.1 shall not apply if APJ1 Media Services Ltd has followed a design or instruction furnished or given by the Customer or the Equipment has been modified without APJ1 Media Services Ltd approval or used in a manner or for a purpose or in a country not specified by or disclosed to APJ1 Media Services Ltd prior to the Contract Date or the Equipment has been used in association with software or equipment not supplied by APJ1 Media Services Ltd.

11.4. Clause 11 states the entire liability of APJ1 Media Services Ltd and the exclusive remedies for the Customer for claims of infringement of third party intellectual property rights.

12. Copyright Intellectual Property and Confidentiality

12.1. Copyright in all APJ1 Media Services Ltd documents (including drawings and software) furnished to the Customer for the purposes of the Contract shall at all times remain vested in APJ1 Media Services Ltd or its licensors and neither the documents nor their contents shall be copied, reproduced or used for any purpose other than that for which they are furnished.

12.2. Data and information embodied in such documents, drawings and software or in firmware shall be held in confidence by the Customer and shall not be disclosed to third parties nor used for any purpose other than operation and maintenance of the Equipment.

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12.3. The Customer shall take all reasonable measures to protect confidentiality and will not cause or permit anything which may damage or endanger APJ1 Media Services Ltd goodwill, trademarks and intellectual property in the Equipment.

12.4. The Customer acknowledges that APJ1 Media Services Ltd intellectual property in the Equipment is unique and extraordinary and the Customer hereby agrees that the loss thereof cannot adequately be compensated by damages and that without limiting APJ1 Media Services Ltd remedies APJ1 Media Services Ltd shall be entitled to injunctive relief to enforce the provisions applicable to this Agreement.

13. Software

13.1. APJ1 Media Services Ltd hereby grants at no additional charge to the Customer a limited non-transferable and non-exclusive multi-site licence to:

- a. use the Software (excluding source code) (whether embedded or installed in the Equipment) solely in conjunction with the Equipment during the useful life of such Equipment, as they may be repaired or modified, from time to time.;
- b. modify the Software only with the approval of APJ1 Media Services Ltd provided that all such modifications shall remain the property of APJ1 Media Services Ltd subject to the provisions of this Agreement.

13.2. The Customer undertakes throughout the term of this Agreement and after termination of this Agreement to not copy, (other than for back up or purposes authorised by APJ1 Media Services Ltd) alter, reverse engineer, modify, enhance, compile, disassemble, licence, sub-licence, lease, sell, assign or reproduce any software, (whether in whole or in part) supplied under this Agreement and to not write or develop any derivative software or any other software programs based upon the Software.

14. Territorial Restrictions

14.1. The Customer shall not without the express written approval of APJ1 Media Services Ltd (which shall not be unreasonably withheld) export or use the Equipment, or sell or hire it to a person who to his knowledge intends to export or use it, outside the country of intended use as declared to APJ1 Media Services Ltd. The customer undertakes to comply with United Kingdom re-export control restrictions where applicable.

14.2. If export or import restrictions are imposed or export or import licences are cancelled, withdrawn or not renewed, then the Customer shall pay for all goods and services already delivered at the contract rate and payments already made may be used by APJ1 Media Services Ltd in respect of claims or demands made or losses incurred under or in connection with the Contract.

15. Survival

The provisions of this clause 10, 12, 13 & 14 shall survive termination of the Contract and extend to all media in which data and information may be stored or displayed.

16. Force Majeure

APJ1 Media Services Ltd shall not be liable for any delay, failure or non-performance of any of its obligations under this contract resulting from war, armed conflict, civil disturbance, Act of God, fire, explosion, accident, industrial dispute or any regulation, rule or act of any Government or Governmental agency, failure of third

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party suppliers to deliver parts and components, or any other cause beyond APJ1 Media Services Ltd reasonable control.

17. Default and Termination

If the Customer breaks any provision of this or any other contract with APJ1 Media Services Ltd, (and such breach is not remedied within 30 days of notice of the breach by APJ1 Media Services Ltd to the Customer) or suffers distress or execution on the equipment, or commits an act of bankruptcy, makes arrangements with creditors or goes into liquidation or receivership (except for amalgamation or reconstruction), ceases or threatens to cease trading, APJ1 Media Services Ltd may (without affecting any other claim or remedy) suspend performance or terminate this or any other contract between APJ1 Media Services Ltd and the Customer by written notice and shall be entitled to be paid for goods already delivered, and work-in-progress (including software generated but not supplied), at a rate reasonably based on the Contract Price.

18. General Terms

18.1. The Contract shall be governed by English Law and subject to the exclusive jurisdiction of the English Law Courts provided APJ1 Media Services Ltd may enforce this agreement in the Customer's jurisdiction or in any other jurisdiction the Customer breaches these terms and conditions in and in either such case, APJ1 Media Services Ltd may elect to enforce this agreement in accordance with the law of that jurisdiction.

18.2. Severability. In the event that any part or parts of this Agreement shall be held illegal or null and void by any Court or administrative body of competent jurisdiction, such determination shall not affect the remaining parts of this Agreement which shall remain in full force and effect as if such part or parts held to be illegal or void had not been included in this Agreement.

18.3. No waiver by APJ1 Media Services Ltd, whether expressed or implied, of any provision of these terms and conditions or of any breach or default thereof by the Customer shall constitute a continuing waiver of such provision or waiver of any term nor shall acceptance of payments by APJ1 Media Services Ltd be deemed a waiver of any breach by the Customer.

18.4. Nothing herein contained shall be construed to constitute the parties hereto as partners or joint ventures or the agent of the other Party in any sense of these terms whatsoever, and no Party may act for or bind another Party in any dealings with a third party.