

Terms and Conditions of Trade

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1. General

1.1. In these terms and conditions (the "Terms") references to "Digital Detective" are to Digital Detective Group Limited. "Client" means any person, firm, company or any other party with whom Digital Detective enters into any contract whether directly or indirectly. "Contract" means any Contract for Goods howsoever made between Digital Detective and the Client. "Goods" shall be taken to include, but shall not be limited to, any computer hardware, firmware, software, training or consultancy services supplied by Digital Detective for the purposes of data recovery, data conversion, data analysis, data duplication, computer consultancy services, computer software design and forensic services and, "Client Goods" shall be taken to include but not be limited to any computer hardware, firmware or software supplied by the Client to Digital Detective so that Digital Detective may undertake data recovery, data conversion, data analysis, data duplication, and/or forensic services.

1.2. Each Contract with Digital Detective shall be subject to these Terms and any terms specified or referred to in writing signed by an authorised signatory of Digital Detective in the relevant quote or TOR (terms of reference). These Terms shall prevail over any other inconsistent terms, communications or form of contract unless such terms are expressly agreed in writing signed by a Director of Digital Detective.

1.3. If the Client submits any instruction containing terms inconsistent with or purporting to override these Terms, Digital Detective's acknowledgement or acceptance of such instruction shall constitute a counter offer to these Terms.

1.4. No waiver by Digital Detective of any breach of these Terms, shall be effective unless in writing, or prejudice Digital Detective's rights in respect of any subsequent breach.

1.5. Digital Detective will use reasonable endeavours to meet relevant response times. However, failure to meet response times is not of the essence of any contractual obligation.

2. Basis of Sale

2.1. Digital Detective will sell, and the Client will purchase, the hardware and/or software in accordance with any written order of the Client which is accepted by Digital Detective, subject in either case to these Terms.

2.2. These Terms govern the Contract to the exclusion of any other terms and conditions (if any) contained on or referred to in an order form or other communication from the Client. No addition, variation or substitution of these Terms will bind Digital Detective or form part of any order unless agreed in writing and signed by authorised representatives of both parties.

2.3. These Terms and the terms of any order constitute the entire understanding of the parties and supersede all prior promises, representations and undertakings.

2.4. No Digital Detective employee or agent is authorised to make any representations concerning the subject matter of the Contract unless confirmed by Digital Detective in writing. The Client acknowledges that it is not relying on any such representation not so confirmed.

3. Orders

3.1. Any order placed with Digital Detective will be accepted at Digital Detective's sole discretion and, if accepted, will only be accepted on and subject to these Terms.

3.2. Each order so accepted constitutes a separate legally binding Contract between Digital Detective and the Client.

3.3. The Client is responsible for ensuring the accuracy of any order submitted to Digital Detective.

3.4. Digital Detective reserves the right to modify any hardware and/or software ordered, which are required to conform to any applicable safety or statutory requirements, or which do not materially affect their quality or performance.

3.5. Once accepted by Digital Detective, no order may be cancelled by the Client without Digital Detective's express prior written agreement.

4. Prices

4.1. Unless otherwise stated, quotations are valid for acceptance for 30 days or earlier acceptance, after which they will lapse. Any quotation that has lapsed must be reconfirmed with Digital Detective prior to an order being accepted.

4.2. Digital Detective reserves the right, by giving the Client written notice at any time before delivery, to increase the price of hardware and/or software and/or support and/or services to reflect any increase in the cost to Digital Detective which is due to any factor beyond Digital Detective's control. Where possible, Digital Detective will provide 30 days' notice of any price changes but the Client acknowledges this may not always be possible where prices vary for reasons outside of Digital Detective's control. Digital Detective therefore reserves the right to vary prices at short, or even no, notice. Any price changes will be notified to the Client as soon as reasonably possible.

4.3. All prices are exclusive of VAT and any other sales taxes and delivery charges, unless otherwise stated. All delivery charges are charged as extra, irrespective of invoice value. Any overseas duties and taxes will be the responsibility of the Client.

4.4. Digital Detective shall be able to increase the price for support and maintenance services by giving the Client not less than 30 days' notice prior to the commencement of the next 12-month period of support and maintenance.

5. Payment

5.1. Payment will be made by the Client within 30 days of delivery or of receipt of invoice, if earlier, except that payment at the time of order will be required for new Clients, or Client's for whom Digital Detective deems immediate payment to be necessary.

5.2. Any account unpaid after sixty days from invoice date will attract interest at 4% above the current National Westminster Bank Plc base lending rate; alternatively, Digital Detective reserves the right to apply for the provisions of the Late Payment of Commercial Interest Act 1998. All outstanding invoices shall be immediately due and payable, regardless of the date of the invoice. In addition, any costs arising in the pursuance of recovery of overdue invoices, howsoever incurred, will become the liability of the Client. The Client is not entitled to withhold or delay any payment due by reason of any actual or alleged defect, whether or not such defect is the subject of any claim.

5.3. The Client is responsible for any bank or other charges (including, but not exclusively, transfer charges, costs of cheques not being honoured etc.).

5.4. If and for so long as there are any overdue invoices (whether under this Contract or otherwise), the Company shall be entitled to suspend provision of any goods or services to the Client.

5.5. If:

5.5.1. any sum owed by the Client to Digital Detective or any other associated company, under this or any other contract is overdue; or

5.5.2. at any time, the credit standing of the Client has in Digital Detective's reasonable opinion been impaired for any reason; or

5.5.3. the Client fails to make any payment when it becomes due; or

5.5.4. the Client makes any voluntary composition or arrangement with its creditors;

5.5.5. or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Client; or if a resolution for the winding up of the Client is passed or a court makes an order to that effect; or if there is any breach by the Client of these Terms; or the Client ceases, or threatens to cease, to carry on business; or there is a change of control of the Client (as described in Section 840 of Income and Corporation Taxes Act 1988) or any purported arrangement of the legal or beneficial interest in this contract; or Digital Detective reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly, then Digital Detective may, without prejudice to its other rights and remedies and at its option, be entitled to cancel the Contract or withhold any further deliveries and/or suspend the provision of further services without liability to the Client until arrangements as to payment or credit have been established to Digital Detective's reasonable satisfaction.

5.6. Digital Detective shall be entitled but not obliged at any time or times without notice to the Client to set off any liability of the Client (or any group company of the Client) to Digital Detective against any liability of Digital Detective to the Client (or any group company of the Client) (in either case howsoever arising and whether any such liability is present or future liquidated or un-liquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by Digital Detective of its rights under this clause shall be without prejudice to any other rights or remedies available to Digital Detective under this Contract or otherwise.

6. Delivery

6.1. Delivery is the responsibility of the Client and Digital Detective arranges delivery solely as the Client's agent. Digital Detective accepts no responsibility for any loss or damage in transit. Any such loss or damage must be notified to Digital Detective and the courier, in writing within 48 hours.

6.2. Dates are given in good faith but are business estimates only and are not guaranteed. Digital Detective is not liable for any loss or damage suffered by the Client as a result of Digital Detective's failure to comply with such delivery times.

6.3. The Client's refusal to accept delivery (either part or whole) shall permit Digital Detective to treat the Contract as repudiated by the Client and to decline to make any further deliveries, without prejudice to Digital Detective's right to recover damages for breach of contract.

6.4. Digital Detective reserves the right to make deliveries in instalments. If the Client refuses or fails to accept any delivery, Digital Detective reserves the right to invoice the Client in respect of the balance remaining undelivered, with payment becoming due immediately, and Digital Detective shall be entitled to charge reasonable storage costs to the Client, the hardware and/or software being held at the Client's risk.

7. Overseas Clients

7.1. Unless otherwise agreed by the Company in writing the Client shall be responsible for all duties, levies, imposts, taxes or other liabilities arising on the exportation of the Goods from the United Kingdom and importation of the Goods overseas.

8. Title and Risk

8.1. Property in the hardware shall only pass to the Client on receipt by Digital Detective in cash or cleared funds payment in full of the price of that hardware.

8.2. Property in any software shall, at all times, remain vested as per the software licence agreement of its licensor, and the Client's rights shall be governed by the terms of any licence relating to such software. All third-party licensing agreements must be compiled with by the Client in all respects. Copies are available at Digital Detective's website: <https://kb.digital-detective.net/x/fIUU>. The Client shall indemnify Digital Detective against the consequences of any breach or infringement of that licence.

8.3. In the absence of express agreement to the contrary, any software written, created, adapted or developed by Digital Detective shall remain the exclusive property of Digital Detective. The Client shall not reverse engineer, decompile, disassemble, assign transfer sell lease rent charge or otherwise deal in or encumber Digital Detective's intellectual property and shall keep the same confidential, shall maintain a record of the whereabouts and number of licensed copies and shall take all necessary steps to prevent unauthorised use.

8.4. Subject to the other provisions of this clause 8, risk in the hardware and/or software shall pass to the Client:

8.4.1. if delivered by Digital Detective to a place nominated by the Client, when tendered for delivery at that place; or

8.4.2. if to be collected by the Client (or its agent), when loaded onto the Client's (or its agent's) vehicle, or at such time as they are available for so loading and would have been loaded but for the Client's (or its agent's) failure to collect them; or

8.4.3. if withheld by Digital Detective for any valid reason, at such time as the Client would have been able to collect them had Digital Detective not been so withholding them, and the Client is responsible for insuring the hardware and software from any such time.

8.5. Until such time as property in the hardware passes to the Client:

8.5.1. the Client shall hold the hardware as Digital Detective's fiduciary agent and bailee, and shall keep all such items separate and distinct from those of the Client and third parties, and separately stored, protected and adequately insured, and identified by labelling as Digital Detective's property. Until such time, the Client shall be entitled to resell or use such items in the ordinary course of its business provided that the net proceeds of sale are sufficient to discharge the outstanding payment obligations to Digital Detective, but shall account to Digital Detective for the proceeds of sale or otherwise of such items, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate and distinct from any moneys or property of the Client and third parties and, in the case of tangible proceeds, properly stored, protected and adequately insured; and

8.5.2. provided that the hardware is still in existence and has not been resold, Digital Detective shall be entitled at any time to require the Client to deliver up the hardware to Digital Detective and, if the Client fails to do so forthwith, to enter on any premises of the Client or any third party where such items are stored and repossess them.

8.5.3. the Client will indemnify Digital Detective for any loss or degradation of or damage to any hardware caused whilst such hardware is in the possession or under the control of the Client.

8.6. Any hardware and/or software supplied to the Client which is subject to any restrictions or provisions imposed by the manufacturer's and/or licensor's conditions are supplied to the Client by Digital Detective subject to any such conditions and on the terms of any applicable licence agreement.

8.7. The Client is not entitled to pledge or in any way charge by way of security for any indebtedness any hardware and/or software which remain the property of Digital Detective (or its licensor) but, if the Client does so, all moneys owing by the Client to Digital Detective shall (without prejudice to Digital Detective's other rights and remedies) become immediately due and payable.

9. Confidentiality

9.1. Each of the parties to this agreement undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this agreement save that which is:

9.1.1. Trivial or obvious;

9.1.2. Already in its possessions other than as a result of a breach of this clause; or

9.1.3. In the public domain, other than as a result of a breach of this clause.

9.2. Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 8.1 above by its employee's agents and sub-contractors.

10. Warranties

10.1. All hardware and/or software are supplied on and subject to the terms and conditions of warranties and licences of the original manufacturers and/or licensors. Digital Detective will pass on to the Client the benefit of any guarantees or indemnities given to it by its supplier. Any software supplied is not warranted to operate error-free or on an uninterrupted basis.

10.2. Digital Detective makes no warranty as to the description, quality, fit for purpose, suitability or otherwise of any hardware and/or software supplied. Digital Detective accepts no responsibility for any loss or damage, arising directly or indirectly, from the use of any hardware and/or software supplied by it, including any loss arising by reason of any failure of the hardware and/or software to comply with any specifications provided by the Client.

10.3. Digital Detective warrants that all services provided under this Contract will be provided with reasonable skill and care.

10.4. Except as otherwise expressly provided, and except where the Client deals as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.5. Where the hardware and/or software are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Client are not affected by these Terms.

11. Returns

11.1. Digital Detective operate a returns policy for USB licence keys within 7 days of purchase which carries a full refund, less Digital Detective's actual shipment and re-stocking charge. Once software has been installed, unless in Digital Detective's reasonable opinion there is a fault with the software, Digital Detective operate a no returns policy.

12. Defects

12.1. Digital Detective reserves the right, at its sole discretion (acting reasonably), to determine whether any hardware and/or software is defective. Defective hardware and/or software will, at Digital Detective's option, be replaced or rectified. The Client will have no claim in respect of any breach of warranty that should have been apparent on a reasonable visual examination of the hardware and/or software supplied. All associated transport charges for delivery to Digital Detective are the responsibility of the Client. The Client is not entitled to terminate the Contract as a result of any defects discovered in any delivery.

13. Limitation of Liability

13.1. Except in respect of death or personal injury caused by Digital Detective's negligence (for which there shall be no limit on liability) Digital Detective is not liable to the Client by reason of any representation, implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, consequential or special loss or damage (including but not limited to loss of profit, business opportunity, contracts or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of Digital Detective, its employees or agents or otherwise) arising out of or in connection with the supply of the hardware and/or software; or their use or resale by the Client; or the supply of any advice and/or consultancy services by Digital Detective; or otherwise. The Client is reminded by the Company that the Client can insure against the types of loss referred to in this clause 13.1.

13.2. Except as may otherwise be expressly provided, Digital Detective's liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or otherwise shall not under any circumstances, save as set out in clause 10.1, exceed the aggregate price payable by the Client under this Contract. If the Client does not consider that this limit is sufficient to protect its interests, the Client should contact Digital Detective and Digital Detective will be pleased to discuss with the Client whether it is able to amend this limit. The Client accepts that Digital Detective shall be entitled to charge the Client, and the Client shall pay, an additional fee for accepting any different limit if Digital Detective agrees to do so.

13.3. The Client shall indemnify Digital Detective and keep Digital Detective fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors or by any breach of its contractual obligations.

14. Force Majeure

14.1. Digital Detective shall not be liable for any loss or damage caused by delay in performance or non-performance of any of its obligations under any Contract where the same is caused by any event beyond Digital Detective's control including but not limited to an act of God, war, riots, insurrection, governmental or parliamentary prohibitions or enactments, import or export regulations, fires, flood, casualty, epidemic, strikes, lock-outs, cessation of labour, trade disputes, destruction or shutdown of production facilities, shortage or curtailment, delay or disruption in transportation, difficulties in obtaining labour or materials, breakdowns or accidents, financial requirements or manufacturing limitation imposed by third-party manufacturers, suppliers or vendors. Should any such event occur, Digital Detective may cancel or suspend this Contract without incurring any liability for any loss or damage caused thereby, and Digital Detective shall be entitled to recover all monies owing to them in respect of deliveries made or services performed prior to any such failure.

15. Entire Agreement

15.1. These Terms supersede any previous agreement between the parties in relation to the matters with which they deal and represent the entire understanding between the parties in relation to those matters.

16. Notices

16.1. Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

17. Severance

17.1. If at any time all or any part of one or more of the provisions of these Terms is held by any competent authority to be invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

18. Law and Jurisdiction

18.1. These Terms and all contracts made between Digital Detective and the Client shall be governed in accordance with the laws of England and Wales and the Client submits to the sole jurisdiction of the English Courts.