

**1. Definitions**

- 1.1 “YLCG” shall mean Mark Andrews T/A Your Local Computer Guy its successors and assigns or any person acting on behalf of and with the authority of Mark Andrews T/A Your Local Computer Guy.
- 1.2 “Client” shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods (including, but not limited to, parts, hardware and software) supplied by YLCG to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by YLCG to the Client.
- 1.5 “Services” shall mean all Services supplied by YLCG to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the cost of the Goods as agreed between YLCG and the Client subject to clause 4 of this contract.

**2. Application of these terms and conditions to consumers**

- 2.1 Where the Client buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

**3. Acceptance**

- 3.1 Any instructions received by YLCG from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by YLCG shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of YLCG.
- 3.4 The Client undertakes to give YLCG at least fourteen (14) days notice of any change in the Client’s name, address and/or any other change in the Client’s details.

**4. Price And Payment**

- 4.1 At YLCG’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by YLCG to the Client in respect of Goods supplied; or
  - (b) YLCG’s quoted Price (subject to clause 4.2) which shall be binding upon YLCG provided that the Client shall accept YLCG’s quotation in writing within thirty (30) days.
- 4.2 YLCG reserves the right to change the Price in the event of a variation to YLCG’s quotation.
- 4.3 At YLCG’s sole discretion.
- 4.4 At YLCG’s sole discretion:
  - (a) a deposit may be required; and
  - (b) payment shall be due on delivery of the Goods; or
  - (c) payment shall be due before delivery of the Goods; or
  - (d) payment for approved Clients shall be made by instalments in accordance with YLCG’s payment schedule.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and YLCG.
- 4.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Delivery**

- 5.1 At YLCG’s sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at YLCG’s address; or
  - (b) the Client takes possession of the Goods at the Client’s address or other address nominated by the Client (in the event that the Goods are delivered by YLCG or YLCG’s nominated carrier).
- 5.2 At YLCG’s sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) in addition to the Price and (if applicable) charged to the Customer’s account.
- 5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.4 The failure of YLCG to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 YLCG shall not be liable for any loss or damage whatever due to failure by YLCG to deliver the Goods (or any of them) promptly or at all.

**6. Risk**

- 6.1 If YLCG retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, YLCG is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by YLCG is sufficient evidence of YLCG's rights to receive the insurance proceeds without the need for any person dealing with YLCG to make further enquiries.
- 6.3 YLCG shall not be held liable for any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from the Services provided by YLCG. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to YLCG providing the Services. The Client accepts full responsibility for existing software and data, and YLCG is not required to advise or remind the Client of appropriate backup procedures.

## **7. Title**

- 7.1 It is the intention of YLCG and agreed by the Client that ownership of the Goods shall not pass until:
- (a) the Client has paid all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to YLCG in respect of all contracts between YLCG and the Client.
- 7.2 Receipt by YLCG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then YLCG's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until YLCG shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from YLCG to the Client YLCG may give notice in writing to the Client to return the Goods or any of them to YLCG. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) YLCG shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Goods to YLCG then YLCG or YLCG's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
  - (e) the Client is only a bailee of the Goods and until such time as YLCG has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for YLCG; and
  - (f) the Client shall not deal with the money of YLCG in any way which may be adverse to YLCG; and
  - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of YLCG; and
  - (h) YLCG can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that YLCG will be the owner of the end products.

## **8. Defects**

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days notify YLCG of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford YLCG an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which YLCG has agreed in writing that the Client is entitled to reject, YLCG's liability is limited to either (at YLCG's discretion) replacing the Goods or repairing the Goods.
- 8.2 No Goods shall be accepted for return except in accordance with 8.1 above.

## **9. Warranty**

- 9.1 Subject to the conditions of warranty set out in clause 9.2 YLCG warrants that if any defect in any workmanship of YLCG becomes apparent and is reported to YLCG within twelve (12) months of the date of delivery (time being of the essence) then YLCG will either (at YLCG's sole discretion) repair the defect or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by clause 9.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) Failure on the part of the Client to properly maintain any Goods; or
    - (ii) Failure on the part of the Client to follow any instructions or guidelines provided by YLCG; or
    - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) Fair wear and tear, any accident or act of God.
  - (b) The warranty shall cease and YLCG shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled by any third party and/or without YLCG's consent.
  - (c) In respect of all claims YLCG shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.

- 9.3 For Goods not manufactured by YLCG, the warranty shall be the current warranty provided by the manufacturer of the Goods. Whilst YLCG shall honour such warranty YLCG shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982**
- 10.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
- 11. Intellectual Property**
- 11.1 Where YLCG has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings shall remain vested in YLCG, and shall only be used by the Client at YLCG's discretion.
- 11.2 The Client warrants that all designs or instructions to YLCG will not cause YLCG to infringe any patent, registered design or trademark in the execution of the Client's order.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify YLCG from and against all costs and disbursements incurred by YLCG in pursuing the debt including legal costs on a solicitor and own client basis and YLCG's collection agency costs.
- 12.3 Without prejudice to any other remedies YLCG may have, if at any time the Client is in breach of any obligation (including those relating to payment), YLCG may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. YLCG will not be liable to the Client for any loss or damage the Client suffers because YLCG exercised its rights under this clause.
- 12.4 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 12.5 Without prejudice to YLCG's other remedies at law YLCG shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to YLCG shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to YLCG becomes overdue, or in YLCG's opinion the Client will be unable to meet its payments as they fall due; or
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 13. Security and Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which YLCG may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to YLCG or YLCG's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that YLCG (or YLCG's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - should YLCG elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify YLCG from and against all YLCG's costs and disbursements including legal costs on a solicitor and own client basis.
  - The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint YLCG or YLCG's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
- 14.1 YLCG may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice YLCG shall repay to the Client any sums paid in respect of the Price. YLCG shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by YLCG (including, but not limited to, any loss of profits) up to the time of cancellation.

**15. Data Protection Act 1998**

- 15.1 The Client and the Guarantor/s (if separate to the Client) authorises YLCG to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
  - (b) to disclose information about the Client, whether collected by YLCG from the Client directly or obtained by YLCG from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Client on publicly accessible credit reporting databases.
- 15.2 YLCG may also use information about the Client to monitor and analyse its business. In this connection the Client authorises YLCG to disclose personal information to agents or third parties engaged by YLCG.
- 15.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 15.4 Where the Client is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 15.5 The Client shall have the right to request YLCG for a copy of the information about the Client retained by YLCG and the right to request YLCG to correct any incorrect information about the Client held by YLCG.

**16. Limitation of Liability**

- 16.1 YLCG shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by YLCG of these terms and conditions.
- 16.2 In the event of any breach of this contract by YLCG the remedies of the Client shall be limited to damages and YLCG's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.
- 16.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict YLCG's liability to any person for death or personal injury to that person resulting from YLCG's negligence.

**17. Unpaid YLCG's Rights**

- 17.1 Where the Client has left any item with YLCG for repair, modification, exchange or for YLCG to perform any other Service in relation to the item and YLCG has not received or been tendered the whole of the Price, or the payment has been dishonoured, YLCG shall have:
- (a) a lien on the item;
  - (b) the right to retain the item for the Price while YLCG is in possession of the item;
  - (c) a right to sell the item.
- 17.2 The lien of YLCG shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

**18. Client's Disclaimer**

- 18.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by YLCG and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

**19. General**

- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of England and Wales.
- 19.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by YLCG.
- 19.4 YLCG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.5 YLCG reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which YLCG notifies the Client of such change. Except where YLCG supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 19.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.