

NOLAN BUSINESS SOLUTIONS PLC
STANDARD CONDITIONS FOR THE SUPPLY OF PRODUCTS, SOFTWARE AND SERVICES

1 INTRODUCTION

- 1.1 These terms and conditions (these “Terms”) apply to all sales of Products, Software, and Services (each as defined below) by Nolan Business Solutions Plc or any of its subsidiaries (“Nolan”). By placing an order with Nolan for any Products, Software or Services, you accept and are bound by these Terms.
- 1.2 These Terms may be appended to a Services Agreement (as defined below). These Terms together with the relevant Services Agreement form a legally binding contract between you and Nolan in relation to your purchase and use of the relevant Products, Software and Services. In the event of a conflict between the Services Agreement and these Terms, the Services Agreement shall prevail.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms the following definitions apply:
- 2.1.1 “Charges” means the charges payable by the Customer for the supply of the Products, Software and/or Services in accordance with clause 7.
- 2.1.2 “Contract” means the contract between Nolan and the Customer for the supply of the Products, Software and/or Services, incorporating either (a) the applicable Service Agreement and these Terms; or (b) if no Service Agreement is entered into, Nolan’s quotation in relation to the applicable Products, Software or Services and these Terms.
- 2.1.3 “Customer” means the person identified as the customer of the Products, Software or Services in a Services Agreement, or any other person ordering or purchasing Products, Software or Services governed by these Terms.
- 2.1.4 “Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 2.1.5 “Products” means any goods supplied or to be supplied by Nolan to the Customer pursuant to the Contract, including hardware and/or software products.

- 2.1.6 “Services Agreement” means an agreement under which Nolan agrees to supply Products, Software and/or Services to the Customer subject to these Terms.
- 2.1.7 “Services” means any services provided or to be provided by Nolan to the Customer pursuant to the Contract, including installation, implementation, software development and support and maintenance;
- 2.1.8 “Software” means any software provided or to be provided by Nolan to the Customer pursuant to the Contract, including software developed by Nolan and Third Party Software.
- 2.1.9 “Third Party Software” means all software supplied by Nolan (or otherwise made available to the Customer) pursuant to the Contract which is owned or licensed by a third party (together with any manuals or other documentation supplied with such software).
- 2.2 In these Terms the following rules of interpretation apply:
 - 2.2.1 a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 2.2.2 a reference to a party includes its successors or permitted assigns;
 - 2.2.3 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - 2.2.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - 2.2.5 the headings of the clauses of these Terms are provided for convenience only and shall not contribute to or affect the meaning or construction of the said clauses; and
 - 2.2.6 a reference to “writing” or “written” includes e-mail and faxes; and
 - 2.2.7 the term subsidiary undertaking shall have the meaning given to it in section 1159 of the Companies Act 2006.

3 BASIS OF CONTRACT

- 3.1 Subject to clause 3.2, any quotation given by Nolan for the supply of Products, Software or Services shall not constitute an offer capable of acceptance, and an order for Products, Software or Services by the Customer shall not be deemed to be accepted by Nolan, unless and until Nolan and the Customer have each signed a Services Agreement for the Products, Software or Services in question.
- 3.2 If Nolan issues a written quotation for the supply of Products, Software or Services and commences such supply without Nolan and the Customer recording their agreement in a

written Services Agreement, such supply shall be governed by the relevant quotation and these Terms.

3.3 The Services Agreement (or the applicable quotation) and these Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.4 All of these Terms shall apply to the supply of Products, Software and Services except where the application to one or the other is specified.

4 **DESCRIPTION AND DELIVERY OF PRODUCTS, SOFTWARE OR SERVICES**

4.1 The Products, Software or Services to be supplied pursuant to the Contract shall be as set out in the relevant Services Agreement or applicable quotation.

4.2 Where Nolan agrees to deliver Software, then unless otherwise expressly stated in the Services Agreement (or applicable quotation), the Software shall be deemed to be delivered once Nolan has made the relevant licence keys available to the Customer. Installation, commissioning or other services in relation to delivered Software shall be chargeable separately.

4.3 Nolan shall have the right to make any changes to the Products, Software or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Nolan shall notify the Customer in any such event.

4.4 Orders for Third Party Software or other third party products or services are subject to availability and may be cancelled by Nolan if they cease to be available.

4.5 Nolan shall use all reasonable endeavours to meet any delivery or performance dates specified in the Services Agreement or quotation, but any such dates shall be estimates only.

4.6 Nolan shall deliver the Products to the location set out in the Services Agreement or such other location as the parties may agree at any time after Nolan notifies the Customer that the Products are ready.

5 **TITLE AND RISK**

5.1 Risk in the Products shall pass to the Customer on delivery.

5.2 Title to the Products (other than title to Software which shall remain with the applicable licensor) shall pass to Customer upon receipt of payment in full by Nolan for the relevant Products and any associated Software or Services provided under the Contract.

5.3 Until title to the Products has passed to the Customer, the Customer shall:

5.3.1 hold the Products on a fiduciary basis as Nolan's bailee;

5.3.2 store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Nolan's property;

5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

- 5.3.4 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Nolan's behalf from the date of delivery;
 - 5.3.5 notify Nolan immediately if it becomes subject to any of the events listed in clause 12.3.2 to clause 12.3.5; and
 - 5.3.6 give Nolan such information relating to the Products as the Supplier may require from time to time.
- 5.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clauses 12.3.2 to clause 12.3.5, or Nolan reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Nolan may have, Nolan may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

6 **CUSTOMER'S OBLIGATIONS**

Subject always to Nolan conforming with all reasonable normal security and safety requirements of the Customer, the Customer shall afford to employees of Nolan and its agents and subcontractors all information reasonably requested and/or necessary to enable Nolan to carry out the Services (if relevant), full and safe access to and reasonable facilities at the Customer's premises at all reasonable times for the purpose of Nolan's performance of its obligations under these Terms.

7 **CHARGES, EXPENSES AND VAT**

- 7.1 Subject to clause 7.2, the Charges for the Products, Software or Services shall be as set out in the Services Agreement or applicable quotation.
- 7.2 Nolan reserves the right to increase the Charges, provided that such Charges cannot be increased more than once in any 12 month period. Nolan will give the Customer written notice of any such increase four months before the proposed date of the increase.
- 7.3 Nolan shall be entitled to charge the Customer for the following costs and expenses:
 - 7.3.1 any expenses reasonably incurred by the individuals whom Nolan engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses,
 - 7.3.2 the cost of materials and media;
 - 7.3.3 any shipment costs for Products not expressly indicated as included in the price of the sale
- 7.4 Unless expressly indicated at the time of sale VAT is not included in the prices for the Products, Software or Services. The Customer shall, subject to the receipt of a valid VAT invoice, pay to Nolan (in addition to and at the same time as the Charges) a sum equal to the amount of VAT payable on all supplies made by Nolan to the Customer under this Agreement.

8 **PAYMENT**

- 8.1 Nolan shall be entitled to invoice the Customer either weekly or monthly or on completion of the Services in arrears as agreed with the Customer in the Services Agreement or applicable quotation, save that:
- 8.1.1 if the relevant Charges are for support and maintenance services the Charges shall be invoiced annually in advance. Renewals of Contracts for maintenance and support will be invoiced up to three months (less one day) prior to the commencement of the new annual support term; and
- 8.1.2 if the relevant Charges are for the delivery of Software, the Charges for such shall be invoiced upon delivery in accordance with clause 4.2.
- 8.2 The Customer shall pay each invoice submitted by Nolan in full and in cleared funds to a bank account nominated in writing by Nolan within the time period noted on the invoice or, if not so noted, then within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract.
- 8.3 Without limiting any other right or remedy of Nolan, if the Customer fails to make any payment due to Nolan under the Contract by the due date for payment, Nolan shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current base rate of Barclays Bank Plc accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement, and compounding monthly.
- 8.4 Nolan, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all Services and refuse additional orders for Products or Software from the Customer until all overdue amounts under the Contract or any other Contract between Nolan and the Customer have been paid.
- 8.5 The Customer shall pay all amounts due under the Contract in full without any set-off, deduction or withholding except as required by law.

9 **INTELLECTUAL PROPERTY RIGHTS AND LICENCE TERMS**

- 9.1 All Intellectual Property Rights in or arising out or in connection with the provision of Products, Software (other than Third Party Software) and Services, shall, unless otherwise agreed and set out in the Services Agreement or applicable quotation, belong to Nolan.
- 9.2 Subject to the Customer's payment therefor Nolan grants the Customer a non-exclusive, non-transferable licence to use the Software (other than the Third Party Software) for the purposes of receiving the Services or for such other purpose and subject to such other terms as may be set out in the Services Agreement or applicable quotation. The term of the licence shall be as set out in the Services Agreement or applicable quotation. If no term is specified, the licence shall be perpetual.
- 9.3 If Nolan is authorised to grant a sub-licence in respect the Third Party Software then, unless Nolan notifies the customer otherwise, and subject to the Customer's payment therefor,

Nolan hereby grants the Customer a non-transferable, non-exclusive sub-licence to access and use such software for the purposes of receiving the Services or for such other purpose and subject to such other terms as may be set out in the Services Agreement or applicable quotation. The term of the licence shall be as set out in the Services Agreement or applicable quotation. If no term is specified, the licence shall be perpetual.

- 9.4 If Nolan is not authorised to grant a sub-licence in respect of the Third Party Software, or if Nolan so notifies the Customer, the Customer's use of the Third Party Software shall be subject to a separate licence agreement between the Customer and the relevant third party software licensor in the form accompanying the relevant Third Party Software or in such other form as the relevant third party licensor may specify at the time of supply. The Customer shall comply with the terms of any such third party licence and shall indemnify Nolan against any loss, liability or cost suffered by Nolan as a result of its failure to do so. Nolan may treat a breach of any such third party licence as a breach of this Agreement.
- 9.5 The Customer acknowledges that, the Customer's use of any other third party Intellectual Property Rights is conditional on Nolan obtaining a written licence from the relevant licensor or on such terms as will entitle Nolan to license such rights to the Customer.
- 9.6 The Customer shall use all reasonable endeavours to prevent any infringement of Nolan's Intellectual Property Rights in the Products, Software and/or Services and shall promptly report to Nolan any such infringement that comes to its attention.
- 9.7 The Customer may not make adaptations or variations of the Software without Nolan's prior written consent. The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Software except as permitted by law.
- 9.8 All materials, equipment, documents and other property of Nolan are and shall remain the exclusive property of Nolan.

10 **WARRANTIES**

- 10.1 Nolan warrants that on delivery and for a period of 6 months from the date of delivery the Products shall conform in all material respects with their description and be free from material defects in design, material and workmanship.
- 10.2 Subject to clause 10.3 Nolan shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 10.3 Nolan shall not be liable for the Products' failure to comply with the warranty in clause 10.1 if:
 - 10.3.1 the defect arises because the Customer failed to follow the Nolan's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good practice;
 - 10.3.2 the Customer alters or repairs such Products without the written consent of Nolan;

- 10.3.3 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 10.3.4 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 10.4 Except as provided in this clause 10, Nolan shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 10.1.
- 10.5 Nolan warrants that it has the right to grant the licences in relation to the Software referred to in clauses 9.2 and 9.3.
- 10.6 Subject to clauses 10.7 and 10.8, Nolan warrants that, the Software shall be reasonably free from defects for a period of six months from the date of its installation. The sole remedy for breach of this clause 10.6 shall be correction of the defects by Nolan within a reasonable time or the provision of a workaround if rectification of the defect is not reasonable possible.
- 10.7 Nolan makes no warranty in relation to any Third Party Software for which the Customer requires a licence from a third party licensor in accordance with clause 9.4. Such Third Party Software shall be subject to any warranty that the third party licensor may provide.
- 10.8 Nolan's warranty under clause 10.6 shall be null and void to the extent caused by any unauthorised modifications, use or improper installation of the Software by or on behalf of the Customer, or if unauthorised attempts to rectify the defect have been made by persons other than Nolan personnel.
- 10.9 Save to the extent expressly stated otherwise in the Service Agreement (such as where the Contract is for software development services), Nolan does not warrant that the functions of the Software will meet the Customer's requirements or that operation of the Software will be uninterrupted or error free. The Customer assumes responsibility for selecting the Software to achieve its intended results and for the use and results obtained from the Software. Unless purchased separately, a Contract for the purchase of Software does not entitle the Customer to any maintenance or support for the Software.
- 10.10 Nolan warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with applicable law.

11 **LIABILITY**

- 11.1 Nothing in the Contract shall limit or exclude Nolan's liability for:
 - 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1:

- 11.2.1 Nolan shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of data or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.2.2 Nolan's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total value of the Charges paid or payable under the Contract.
- 11.3 Except as set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

12 **TERM AND TERMINATION**

- 12.1 The Contract commences on the date specified in the Services Agreement or applicable quotation, or, where no commencement date is specified, on the date when Nolan commences supply of Products, Software or Services. Subject to earlier termination under this clause 12, the Contract shall terminate
 - 12.1.1 at the expiry of any fixed term specified in the Services Agreement or applicable quotation;
 - 12.1.2 where the Contract is for the provision of support and maintenance, it shall continue until terminated by the Customer or Nolan giving three months' prior written notice to the other; or
 - 12.1.3 in the case of any other Contract, when the supply of Products, Software and/or Services required to be supplied under the Contract is complete.
- 12.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 12.2.1 the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - 12.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
 - 12.2.4 an administrator is appointed over the other party or a receiver is appointed over the assets of the other party; or

12.2.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.

12.3 Without limiting its other rights or remedies, Nolan may suspend provision of the Services under the Contract or any other contract between Nolan and the Customer if the Customer becomes subject to any of the events listed above in clauses 12.2.1 to 12.2.5, or Nolan reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

13 CANCELLATIONS AND REFUNDS

13.1 If the Customer cancels a confirmed order under the Contract for any Products, Services and/or Software the Customer shall not be entitled to a refund of any amounts paid or payable in respect of the cancelled order save that if, as a result of such cancellation, Nolan is able to avoid incurring any out-of-pocket expenses or disbursements that it would otherwise have incurred, the amount of such savings shall be refunded to the Customer.

13.2 If, pursuant to the Contract, Nolan is required to provide Services to the Customer at the Customer's premises or which otherwise require the involvement of the Customer, the parties shall agree suitable date(s) for the provision such Services in advance (the "Agreed Dates"). If the Customer subsequently wishes to change the Agreed Dates, it shall give Nolan as much prior notice as possible and Nolan and the Customer will agree new Agreed Dates. If the Customer gives less than 5 working days' notice of any required change to any of the Agreed Dates then the Customer shall pay for the Services that would have been provided on such Agreed Dates unless Nolan notifies the Customer that it is able to re-allocate the staff or contractors allocated to provide Services to the Customer on such dates to other fee earning project(s).

13.3 The Customer acknowledges that Nolan's ability to provide maintenance services in relation to certain third party software (including Microsoft Dynamics GP and Microsoft CRM) is subject to subcontracts between Nolan and the third party software author which must be renewed by Nolan annually for successive 12-month periods commencing on a renewal date set by the third party software author (an "Annual Maintenance Period"). In the event of termination of a Software and Maintenance Contract by the Customer pursuant to clause 12.1.2 no refund will be given for any unexpired portion of the then current Annual Maintenance Period.

14 FORCE MAJEURE

Nolan shall not be liable to the Customer for any delay or non-performance of its obligations under the Contract or for any loss or damage caused by delay where the same is occasioned by any cause whatsoever that is beyond Nolan's control. Should such event occur Nolan may suspend the Contract

without incurring liability for any loss or damage thereby occasioned. Nolan shall be entitled to such extension of time as is required by Nolan to fulfil its obligations under the Contract. Examples include (but are not limited to) acts of God, governmental act, war, fire, flood, explosion or civil commotion.

15 **CONFIDENTIALITY**

A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know if for the purposes of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Contract.

16 **WAIVER**

The failure of either party at any time to enforce any provisions of the Contract shall in no way affect that party's rights thereafter to require complete performance by the other party hereto, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or to be or held to be a waiver of the provision itself. Any waiver to be effective must be in writing.

17 **WHOLE AGREEMENT**

The Contract constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all previous communications, representations and agreements, whether written or oral and the Customer hereby acknowledges that no reliance is placed on any representation or warranty made (verbally or otherwise) but not embodied in the Contract.

18 **ASSIGNMENT AND SUBCONTRACTING**

18.1 The Contract is personal to the Customer and the Customer shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, without the prior written consent of Nolan.

18.2 Nolan may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any of all of its obligations under the Contract to any third party or agent.

19 **SEVERABILITY**

If any term, part or provision of the Contract is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable as being contrary to applicable law or public policy, such provision shall to the extent reasonably possible be construed in a manner so as to be enforceable and the remaining provisions thereof shall remain in full force and effect and in no way be affected, impaired

or invalidated, except when by reason thereof the fundamental nature of the Contract is thereby frustrated.

20 **AMENDMENT**

The Contract may only be amended by written agreement between the parties hereto signed by the duly authorised representatives of both parties hereto.

21 **THIRD PARTY CONTRACTS**

No person who is not a party to the Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any part of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from such Act. Any rescission variation amendment or waiver to or of the Contract shall not require the consent or approval of any person who is not a party to the Contract.

22 **NOTICES**

22.1 Any notice required to be given by either party to the other shall be in writing and shall be served by sending the same by pre-paid first class post or facsimile transmission or by delivering the same by hand to the registered office for the time being of the relevant party and any notice so served shall be deemed to have been served:

22.1.1 if delivered by hand at the time of such delivery;

22.1.2 if sent through the post 48 hours after the time of despatch and in proving service it shall be sufficient to prove in the case of a letter that such letter was properly delivered or stamped addressed and placed in the post (as the case may be); and

22.1.3 if sent by facsimile transmission at the time of transmission and in proving service it shall be sufficient to prove that such facsimile was duly despatched to a current facsimile number of the addressee for the said addressee.

23 **GOVERNING LAW**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties submit to the exclusive jurisdiction of the courts of England and Wales.