

**TERABYTE**  
IT SOLUTIONS

# Hardware Supply Terms

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## Terabyte IT Solutions

### Part B

### Hardware Supply Terms

Where pursuant to the Master Services Agreement, the Customer requests or requires the supply of Hardware and/or Software from Terabyte IT Solutions, the terms of this Part B shall also apply.

#### AGREED TERMS:

#### 1. Interpretation

The definitions and rules of interpretation in the Master Services Agreement and in the terms set out in this Order shall apply.

##### 1.1 Definitions specific to this Part B:

**Contract:** means the Customer's Order and Terabyte IT Solutions' acceptance of it in accordance with these terms and incorporating the Master Services Agreement and these terms.

**Hardware:** means the Hardware referred to in the Order and agreed to be purchased by the Customer from Terabyte IT Solutions (including any part or parts of them).

**Software:** any operating system or other applications installed on the Hardware.

#### 2. Basis of sale

2.1 Terabyte IT Solutions may deliver the Hardware by separate instalments (where multiple Hardware products are to be supplied). Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Order. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

2.2 No Order which has been acknowledged and accepted by Terabyte IT Solutions may be cancelled by the Customer, except with the agreement in writing of Terabyte IT Solutions and provided that the Customer indemnifies Terabyte IT Solutions in full against all loss (including loss of profit), costs (including the cost of all labour and materials used and any unavoidable third party costs and charges), damages, charges and expenses incurred by Terabyte IT Solutions as a result of cancellation.

#### 3. Quantity and description

3.1 The quantity and description of the Hardware shall be as set out in the Order as accepted by Terabyte IT Solutions.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Terabyte IT Solutions, and any descriptions or illustrations contained in Terabyte IT Solutions' catalogues, brochures or online marketing materials (including on the Online Ordering Tool) are issued or published for illustrative purposes only and they do not form part of the Order or the contract for sale of the Hardware.

3.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Terabyte IT Solutions shall be subject to correction without any liability on the part of Terabyte IT Solutions.

- 3.4 Terabyte IT Solutions reserves the right (but does not assume the obligation) to make any changes in the specification of the Hardware which is required to conform with any applicable legislation or, where the Hardware is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Terabyte IT Solutions is not the manufacturer of the Hardware, Terabyte IT Solutions shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Terabyte IT Solutions but does not promise or warrant that this will be provided.
- 3.5 Terabyte IT Solutions' employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Hardware.

#### 4. Charges

- 4.1 All Charges for the Hardware shall either be as stated in the Order or as specified by Terabyte IT Solutions at the time of Order. All Charges are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 4.2 The Charges for the Hardware shall be Terabyte IT Solutions' quoted Charges or, where no Charge has been quoted (or a quoted Charge is no longer valid), the Charges listed in Terabyte IT Solutions' price list current at the date of acceptance of the Order. Terabyte IT Solutions' published export Charges list shall apply to exports of the Hardware as appropriate.
- 4.3 Terabyte IT Solutions reserves the right, by giving notice to the Customer at any time before delivery, to increase the Charges of any Hardware that has not been delivered to reflect any increase in the cost to Terabyte IT Solutions which is due to market conditions or any factor beyond the control of Terabyte IT Solutions (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials (including oil and gas) or other costs of manufacture), any change in delivery dates, quantities or specifications for the Hardware which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Terabyte IT Solutions adequate information or instructions.

#### 5. Payment

- 5.1 Subject to any special terms agreed in writing between the Customer and Terabyte IT Solutions in the Order or otherwise, Terabyte IT Solutions may invoice the Customer for the Charges of the Hardware on or at any time after:
- a) the delivery of the Hardware including where the Customer has requested a phased delivery of the Hardware; or
  - b) the Hardware is available for use by the Customer.
- 5.2 The terms of payment shall be:
- (a) in the case of Hardware delivered in the United Kingdom, within 14 days of the invoice date, whether or not delivery has taken place or title in the Hardware has passed to the Customer ("Due Date"); and
  - (b) in the case of export sales, in accordance with clause 10 of the terms set out in this Order.
- 5.3 If the Customer fails to make payment in full on the Due Date, the whole of the balance of the Charges for the Hardware then outstanding shall become immediately due and payable and,

without prejudice to any other right or remedy available to Terabyte IT Solutions as set out in the Master Services Agreement, Terabyte IT Solutions shall be entitled to:

- (a) terminate the Contract for the provision of the Hardware in question or suspend any further deliveries of the Hardware (whether ordered under the same Contract or not) to the Customer;
- (b) appropriate any payment made by the Customer for the Hardware (supplied under any other Contract between the Customer and Terabyte IT Solutions) as it thinks fit (despite any purported appropriation by the Customer);
- (c) suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- (d) make a storage charge for any undelivered Hardware at its current rates from time to time;
- (e) stop any Hardware in transit; and
- (f) a general lien on all Hardware and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Terabyte IT Solutions. Terabyte IT Solutions shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Hardware or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

5.4 All Charges payable to Terabyte IT Solutions under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This clause 5.4 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

5.5 Terabyte IT Solutions may, without prejudice to any other rights it may have, set off any liability of the Customer to Terabyte IT Solutions against any liability of Terabyte IT Solutions to the Customer.

## 6. Delivery of the Hardware and acceptance

6.1 Terabyte IT Solutions shall use its reasonable endeavours to deliver the Hardware on the date or dates specified in the agreed Order, but any such date is approximate only and Terabyte IT Solutions may be delayed by receipt of the Hardware from its third party suppliers. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the Order. Time is not of the essence as to the delivery of the Hardware and Terabyte IT Solutions is not in any circumstances liable for any delay in delivery, however caused.

6.2 Hardware may be delivered by Terabyte IT Solutions in advance of the quoted Delivery Date on giving reasonable notice to the Customer.

6.3 Delivery shall be made during Normal Business Hours (excluding bank or public holidays). Terabyte IT Solutions may levy additional charges for any deliveries made outside such hours at the Customer's request.

6.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If Terabyte IT Solutions is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Terabyte IT Solutions may levy additional charges to recover its loss arising from this event.

- 6.5 The Customer shall be deemed to have accepted the Hardware when the Customer has had 3 Business Days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with clause 11 of the terms in this Order.
- 6.6 Terabyte IT Solutions shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Terabyte IT Solutions (or its carrier, if applicable) within 3 Business Days of delivery or the proposed delivery date of the Hardware and that the Hardware has been handled in accordance with Terabyte IT Solutions' stipulations. Any remedy under this clause 6.6 shall be limited, at the option of Terabyte IT Solutions, to the replacement or repair of any Hardware which are proven to Terabyte IT Solutions' satisfaction to have been lost or damaged in transit.

## 7. Risk and property

- 7.1 The Hardware shall be at the risk of Terabyte IT Solutions until delivery to the Customer at the place of delivery specified in the agreed Order. Terabyte IT Solutions shall off-load the Hardware at the Customer's risk.
- 7.2 Ownership of the Hardware shall pass to the Customer on the later of completion of delivery (including off-loading), or when Terabyte IT Solutions has received in full in cleared funds all sums due to it in respect of:
- (a) the Hardware; and
  - (b) all other sums which are, or which become due to Terabyte IT Solutions from the Customer on any account.
- 7.3 Until ownership of the Hardware has passed to the Customer under clause 7.2 above, the Customer shall:
- (a) hold the Hardware on a fiduciary basis as Terabyte IT Solutions' bailee;
  - (b) store the Hardware (at no cost to Terabyte IT Solutions) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Terabyte IT Solutions' property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
  - (d) keep the Hardware insured on Terabyte IT Solutions' behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Terabyte IT Solutions, ensure that Terabyte IT Solutions' interest in the Hardware are noted on the policy, and hold the proceeds of such insurance on trust for Terabyte IT Solutions and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4 Terabyte IT Solutions' right to possession of the Hardware before ownership has passed to it shall terminate immediately if any of the circumstances set out in this clause 7 below arise or if the Customer encumbers or in any way charges the Hardware, or if the Customer fails to make any payment to Terabyte IT Solutions on the Due Date.
- 7.5 Until ownership of the Hardware is/are transferred to the Customer in accordance with clause 7.2 above, the Customer grants Terabyte IT Solutions, its agents and employees an irrevocable licence at any time to enter any premises where the Hardware is/are or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Terabyte IT Solutions in repossessing the Hardware shall be borne by the Customer.

- 7.6 On termination of the Contract for any reason, Terabyte IT Solutions' (but not the Customer's) rights in this clause 7 shall remain in effect.
- 7.7 Terabyte IT Solutions may appropriate payments by the Customer to such Hardware as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary and may make such appropriation at any time.

## 8. Inspection and testing of Equipment

- 8.1 Terabyte IT Solutions may:
- (a) test and inspect the Hardware on delivery to ensure that it complies with the requirements of the Contract; and
  - (b) if so, requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

## 9. Software licence

- 9.1 If Terabyte IT Solutions refers to a software licence in the acknowledgment of Order or Software is to be supplied under the Order, the Charges for the Hardware includes the licence fee for the Customer's right to use the Software.
- 9.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to Terabyte IT Solutions within 7 days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 9.3 If no Software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following terms:
- (a) the Customer shall not copy (except to the extent permissible under Applicable Law which is not capable of exclusion by agreement or for normal operation of the Product(s)), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without Terabyte IT Solutions' prior written consent;
  - (b) the Customer shall not use the Software on any equipment other than the Product(s), and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party on 28 days' written notice, provided that Terabyte IT Solutions terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Terabyte IT Solutions is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to Terabyte IT Solutions all copies of the Software in its possession.

## 10. Export terms and compliance with policies

- 10.1 Where the Hardware is supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any contrary terms agreed in writing between the Customer and Terabyte IT Solutions) override any other contrary provisions of these clauses set out in this Order.
- 10.2 The Customer shall be responsible for complying with any legislation governing:
- (a) the importation of the Hardware into the country of destination; and

- (b) the export and re-export of the Hardware, and shall be responsible for the payment of any duties on it.

## 11. Warranty

- 11.1 Where Terabyte IT Solutions provides its own Hardware, Terabyte IT Solutions:
  - (a) warrants to the Customer that the Hardware is free from defects of workmanship and materials;
  - (b) undertakes (subject to the remainder of this clause 11), at its option, to repair or replace Product(s) (other than consumable items) which is/are found to be defective as a result of faulty materials or workmanship within 6 months of delivery and installation.
- 11.2 Where Terabyte IT Solutions provides third party Hardware it shall use reasonable commercial endeavours to obtain for the benefit of the Customer any third-party warranties in respect of the Hardware but shall not be under an obligation to do so and shall have no liability to the Customer if it is unable to transfer the benefit of any third party warranty. The Customer shall be solely responsible solely responsible for the repair and maintenance of the Hardware once the original warranty has expired, and the Customer fails to order an extended warranty for any third-party Hardware.
- 11.3 Terabyte IT Solutions shall not in any circumstances be liable for a breach of the warranty contained in clause 11.1 or 11.2 above unless:
  - (a) the Customer gives written notice of the defect to Terabyte IT Solutions within 7 days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) after receiving the notice, Terabyte IT Solutions is given a reasonable opportunity of examining such Hardware and the Customer (if asked to do so by Terabyte IT Solutions) returns such Hardware to Terabyte IT Solutions and Terabyte IT Solutions' cost for the examination to take place.
- 11.4 Terabyte IT Solutions shall not in any circumstances be liable for a breach of the warranty in clause 11.1 if:
  - (a) the Customer makes any use of the Hardware in respect of which it has given written notice under clause 11.3(a) above; or
  - (b) the defect arises because the Customer failed to follow Terabyte IT Solutions' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
  - (c) the Customer alters or repairs the relevant Hardware without Terabyte IT Solutions' written consent.
- 11.5 Where Terabyte IT Solutions provides its own Hardware any repaired or replacement Hardware shall be under warranty for the unexpired portion of the six-month period.
- 11.6 Terabyte IT Solutions shall not in any circumstances be liable for any damage or defect to the Hardware caused by improper use of the Hardware or use outside its normal application.

## 12. Remedies

- 12.1 Terabyte IT Solutions shall not in any circumstances be liable for any non-delivery of Hardware (even if caused by Terabyte IT Solutions' negligence) unless the Customer notifies Terabyte IT Solutions in writing of the failure to deliver within 7 days after the scheduled Delivery Date.

- 12.2 Any liability of Terabyte IT Solutions for non-delivery of the Hardware shall in all circumstances be limited to replacing the Hardware within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Hardware.
- 12.3 If Terabyte IT Solutions' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event as defined in the Master Services Agreement), the Customer shall in all circumstances be liable to pay to Terabyte IT Solutions all reasonable costs, charges or losses sustained by it as a result, subject to Terabyte IT Solutions notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 12.4 In the event of any claim by the Customer under the warranty given in clause 11.1 of the terms in the Order, the Customer shall notify Terabyte IT Solutions in writing of the alleged defect. Terabyte IT Solutions shall have the option of testing or inspecting the Hardware at its current location or moving it to Terabyte IT Solutions' premises (or those of its agent or subcontractor) at the cost of Terabyte IT Solutions. If the Customer's claim is subsequently found by Terabyte IT Solutions to be outside the scope or duration of the warranty in clause 11 of this Order, the costs of transportation of the Hardware, investigation and repair shall be borne by the Customer.

### 13. Intellectual Property Rights

- 13.1 In addition to the provisions set out in clause 10 of the Master Services Agreement the following provisions in respect of the IPRs in the Hardware shall apply:
- (a) the Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Hardware are and shall remain the sole property of Terabyte IT Solutions or (as the case may be) the third-party rights owner.
  - (b) Terabyte IT Solutions shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without Terabyte IT Solutions' prior written consent.
  - (c) Terabyte IT Solutions' Intellectual Property Rights in and relating to the Hardware shall remain the exclusive property of Terabyte IT Solutions, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
  - (d) In relation to the Software:
    - (i) the Customer acknowledges that it is buying only the media on which the Software is recorded and the accompanying user manuals;
    - (ii) nothing contained in the Order, or the Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
    - (iii) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence contracts, terms of use and registration requirements relating to them.

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