



## **TERMS AND CONDITIONS OF SALE**

Crimson Tide (IE) Limited (company number 289818) whose registered office address is at 3013 Lake Drive, Citywest Business Campus, Dublin 24 ("Crimson Tide") agrees to supply the Order (as defined below) on these terms and conditions of contract ("Terms").

By signing the Order Form (as defined below), the signing party (the "Customer") unconditionally accepts these Terms and agrees to be bound by the provisions of these Terms which shall govern the relationship between Crimson Tide and the Customer (the "Agreement").

### 1. DEFINITIONS

In these Terms the following words and expressions shall have the following meanings:

"Equipment" means the equipment and accessories specified on the Order Form and detailed in Schedule 1 thereto together with any replacement equipment or accessories supplied at any time;

"Fees" means the total charges set out on the Order Form including any VAT and interest thereon;

"Licence" means a non-exclusive, non-transferable licence to use the Software;

"Licence Terms" means the terms relating to the Licence published by the owner of the Software in respect of that Software;

"Order" means a signed written order for Equipment and Software using the Order Form;

"Order Form" means the form headed Equipment And Accessories Order Form, signed and dated for and on behalf of the Customer, accepting these Terms, creating the agreement between the Parties on these Terms;

"Parties" means Crimson Tide (its successors and assigns) and the Customer;

"Software" means the computer software specified in the Order Form;

### 2. EQUIPMENT AND SOFTWARE

2.1 Once Crimson Tide has accepted the Order, the Customer may not cancel it. Crimson Tide will supply the Order to the Customer who shall accept (i) delivery thereof and (ii) that the Order has been delivered in satisfactory condition by signing a receipt to that effect.

2.2 The Customer shall satisfy itself that the Equipment is in good working order on or soon after delivery and, if there is a fault (not being a fault referred to in Clause 2.3) in any such Equipment, the Customer shall notify Crimson Tide of the same immediately upon becoming so aware and in any event within 10 days of delivery.

2.3 If the Equipment is faulty within the time specified in Clause 2.2 for any reason other than arising out of (a) neglect or misuse of the Equipment, (b) modifications made to the Equipment, (c) use of any equipment, software or peripherals in conjunction with the Equipment which are not supplied or approved by Crimson Tide, (d) use of the Equipment in conditions outside of the manufacturer's recommendations and/or normal use, (e) maintenance of the Equipment by anyone other than the manufacturer or Crimson Tide and/or (f) loss, theft or destruction of the Equipment, Crimson Tide will replace the same within 72 hours of the fault being reported and immediately confirmed in writing to Crimson Tide. Unless otherwise agreed in writing, delivery of a replacement piece of Equipment will be conditional on the simultaneous return of the faulty piece of Equipment. If the returned piece of Equipment is not faulty, the Customer will pay an administration charge of £150. If the returned piece of Equipment is faulty due to (a) to (f) above, the Customer will immediately return the replacement piece of Equipment to Crimson Tide and pay an administration charge of £150.

2.4 Crimson Tide grants to the Customer the Licence on the Licence Terms and the Customer agrees (i) at all times to abide by the Licence Terms and (ii) to fully indemnify Crimson Tide in respect of any breaches thereof.

- 2.5 The Customer shall not transfer or sell the Licence to any other person or corporate entity (or permit the same to re-use the Licence in any way) other than to another employee of the Customer, provided this is permitted in the Licence Terms.
- 2.6 The Customer shall not copy, adapt, replace, update, decompile or otherwise modify or tamper with the Software in any way or use it for any purpose other than as strictly contemplated by the Licence Terms.
- 3 SUPPORT
- 3.1 Crimson Tide will provide technical support to the Customer if support is specified on the Order Form and included in the total Fees. Technical support from Crimson Tide will be available by telephone on working days between 8:30am and 5:30pm.
- 3.2 Crimson Tide will deal with all faults reported to it on a case-by-case basis and as it deems necessary in the particular circumstances.
- 3.3 Additional technical support is often provided by the owner of the Software both during and outside normal working hours. Crimson Tide will advise specific support details for each type of Software included on the Order Form.
- 4 LIMITATION OF LIABILITY
- 4.1 Nothing in these Terms shall exclude or limit Crimson Tide's liability for (i) death or personal injury arising out of its negligence or (ii) in respect of fraud.
- 4.2 Crimson Tide shall not be liable to the Customer in tort, contract or otherwise for any economic loss, loss of business opportunity, loss of revenue, anticipated profits or business, and/or the cost of procuring substitute services.
- 4.3 Crimson Tide shall not be liable to the Customer in excess of the Fees paid to it.
- 4.4 Crimson Tide shall not be liable to the Customer for any loss arising to the Customer out of the unavailability of telephony connection for any reason.
- 4.5 Crimson Tide's liability shall be limited to using its reasonable efforts to remedy any fault, or at its sole option, to cancelling, crediting or refunding all or part only of Fees received from the Customer in respect of the Order. This obligation to remedy discrepancies or cancel, credit or refund a proportionate part of the Fee payable by the Customer shall constitute the full extent of Crimson Tide's liability in respect of any loss or damage sustained by the Customer.
- 4.6 Crimson Tide specifically excludes all other warranties, conditions or other terms (whether express or implied or statutory) to the fullest extent permitted by law including any warranty of merchantability or fitness for a particular purpose in relation to the supply of the Order.
- 4.7 The Customer's attention has been brought to (i) the existence and extent of this Clause 4 and (ii) the fact that, for an increased fee, Crimson Tide may be willing to vary the terms of this Clause 4.
- 4.8 If the Customer is a consumer, then the Customer's statutory rights shall not be adversely affected, notwithstanding any other provision in these Terms.
- 5 FEES AND PAYMENT
- 5.1. Crimson Tide shall supply the Order to the Customer subject to these Terms in consideration of the payment of the Fees.
- 5.2. Unless otherwise agreed by the Parties in writing, the Customer shall pay promptly (i) the deposit shown on the Order Form before the Order is delivered and (ii) the balance of the Fees within five (5) days of receipt of Crimson Tide's invoice, without any set off, restriction or condition.
- 5.3 Interest will accrue on all Fees not paid by the due date at a rate of 4 per cent above the base rate from time to time of Allied Irish Bank Bank (before or after judgement).
- 5.4 Only when the total Fees have been paid will title to the Equipment and the right to use the Software under the Licence Terms pass to the Customer

## 6 TERMINATION

- 6.1 This Agreement may be terminated by Crimson Tide without notice if:-
- 6.1.1 The Customer defaults in making payment of any Fees and fails to remedy such default within five (5) working days of Crimson Tide's notification to the Customer; or
- 6.1.2 The Customer commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within ten (10) working days of notification in writing by Crimson Tide; or
- 6.1.3 The Customer is unable to pay its debts as they fall due or becomes subject to administration, company voluntary arrangement, receivership, liquidation or similar process.
- 6.2 Following such termination, Crimson Tide shall be entitled to recover from the Customer all sums owing including any interest thereon and all costs, charges and expenses reasonably incurred as a consequence of termination.

## 7 GENERAL

- 7.1 The benefit or the burden of this Agreement may not be assigned by the Customer without the prior written consent of Crimson Tide. Crimson Tide may assign its rights and subcontract its obligations under this Agreement without the consent of or notice to the Customer.
- 7.2 Any variation to this Agreement shall only be valid and binding if it is recorded in writing and signed by a director of Crimson Tide.
- 7.3 Crimson Tide shall not be liable to the Customer in any way for failure or delay in performing its obligations under this Agreement if the failure or delay is due to a cause outside the reasonable control of Crimson Tide. Time shall not be of the essence in relation to the provision of the Order.
- 7.4 The failure by Crimson Tide to exercise or delay in exercising any right or remedy provided by this Agreement or by law on any one occasion does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and shall not affect either party's right to enforce another right or remedy or the same right or remedy on another occasion.
- 7.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 7.6 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 7.7 This Agreement shall be governed by and construed according to the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish Courts.