



STANDARD TERMS AND CONDITIONS PRELIMINARY

1. Interpretation

1.1 In these conditions: "Company" means Powercore International Limited "Conditions" means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer "Contract" means the contract for the purchase and sale of the Goods and/or the supply of Services "Customer" means the person who accepts a quotation of the Company for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Company "Goods" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions being any goods which the Company may supply to the Customer from time to time in accordance with these Conditions "Services" means the installation services carried out by the Company in respect of the Goods in accordance with these Conditions "Writing" includes e-mail, facsimile transmission and comparable means of communication

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience sake and shall not affect their interpretation

2. Basis of the Sale

2.1 The Company shall sell and the Customer shall purchase the Goods and/or Services in accordance with any written quotation of the Company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company

3. Orders and Specification

3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms

3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company)

3.3 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EC requirements

4. Price of the Goods

4.1 The price of the Goods and/or Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order

4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the Control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Customer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods and/or Services otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance

4.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company

5. Terms of Payment

5.1 The Company shall be entitled to render an invoice to the Customer in respect of the price of the Goods or the price of the Services in case of Goods on or at any time after delivery of the Goods and in the case of Services at any time on or after completion of the Services

5.2 The Customer shall pay the price of the Goods and/or Services within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:-

5.3.1 cancel the Contract or suspend any further deliveries of Goods to the Customer or cease performing any Services for the Customer;

5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.4 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per annum above National Westminster Bank's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest

6. Delivery of Goods

6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Customer, by the Customer delivering the Goods to that place

6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer

7. Performance of Services

The Company shall endeavour to perform the Services in accordance with any timescales agreed between the Company and the Customer but time of performance of the Services shall not be of the essence of the Contract unless previously agreed by the Company in writing

8. Risk and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer:-
8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and Services relating to such Goods and all other goods and/or Services agreed to be sold by the Company to the Customer for which payment is then due

8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee

8.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Customer shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods

8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable

9. Warranties and Liability

9.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship in respect of Goods relating to the IBM range of systems for a period of 30 days from the date of delivery; in respect of Goods relating to the HP range of systems for a period of 60 days from the date of delivery; in respect of Goods relating to the SUN range of systems for a period of 90 days from the date of delivery and the Company further warrants that any Services shall be performed with reasonable skill and care

9.2 The above warranties are given by the Company subject to the following conditions:

9.2.1 the Company shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Customer;

9.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval; 9.2.3 the Company shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Goods and/or any related Services has not been paid by the due date for payment;

9.2.4 the above warranties so far as the same relates to Goods does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company

9.2.5 the Company shall be under no liability in respect of any defects or faults of the Customer's systems in conjunction with which the Goods are used or in respect of any problems which are due to the individual workings of the Customer's systems in conjunction with which Goods are used 9.3 Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing 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

9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions

9.5 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract

9.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer

9.7 Where any valid claim is notified by the Customer to the Company based upon any failure by the Company to perform the Services with reasonable skill and care (such claim to be notified to the Company within 7 days from the discovery by the Customer of circumstances giving rise to a valid claim in respect thereof) then the Company shall at its expense take such action as it considers necessary to remedy any such failure but the Company shall have no further liability to the Customer in respect thereof

9.8 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods and/or the Services (as the case may be) or the proceeds of any insurance policy received by the Company in respect of such liability (whichever is the greater), except as expressly provided in these Conditions

9.9 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-

9.9.1 Act of God, explosion, flood, tempest, fire or accident;

9.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.9.4 import or export regulations or embargoes;

9.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

9.9.6 difficulties in obtaining raw materials, labour fuel, parts or machinery;

9.9.7 power failure or breakdown in machinery

10. Insolvency of Customer

10.1 This clause applies if:-

10.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

10.1.3 the Customer ceases, or threatens to cease, to carry on business; or

10.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for and Services have been provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions 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

11.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected

11.4 Nothing in these Conditions confers on anyone other than the parties to it any right pursuant to the Contracts (Rights of Third Parties) Act 1999

11.5 The Contract shall be governed by the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the English courts Powercore International Limited 5, The Griffin Centre Staines Road Bedfont Middx TW14 0HS UK