

# INTERACTIVE EDUCATION LIMITED TERMS AND CONDITIONS

## I. INTERPRETATION

1.1 In these Conditions unless the context otherwise permits: -

**“Authorised Representative”**

Means a person whose job title is that of Director, Senior Director or Managing Director.

**“Customer”**

Means the person, firm, company, entity or organisation with whom Interactive Education Ltd contracts for the sale of Products and/or supply of Services.

**“The Conditions/These Conditions”**

Means the standard terms and conditions of sale set out in this document or such replacement standard terms and conditions as are in force at the date of the Contract and which at that date appear on Interactive Education Limited web site at [www.interactive-education.co.uk](http://www.interactive-education.co.uk) and/or which are available on request from the Quality Team or Legal Department at Interactive's principal trading address at Libra House, 2 Upper Zoar Street, Wolverhampton WV3 0LA.

**“The Contract”**

Means any contract for the purchase and sale or other supply of Products and/or the supply of Services by Interactive Education Ltd to a customer.

**“Electronic Means”**

Means any electronic means including without limit on the Web by EDI or Inside Line.

**“Interactive Means”**

Means Interactive Education Ltd (registered in England number 3835008)

“The Conditions/these conditions” shall apply to sales of all products described in Interactive's current comprehensive product listing or have been configured to purchaser's specifications.

“Products” means any products (including, for the avoidance of doubt software and instalment of the products or any parts of or for them) sold by Interactive to a customer.

“Services” means any services supplied by Interactive to a customer.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. BASIS OF THE SALE

2.1 All Contracts between Interactive and a customer shall be governed by these Conditions to the exclusion of any other Terms and conditions including without limit any terms on or a referred to in any purchase order. It is the Customers responsibility to be aware of the Conditions as current from time to time. In addition to any acceptance of these Conditions by the Customer by signing Interactive's account application form the Customer's acceptance of these Conditions shall also be made (in respect of the first Contract and all subsequent Contracts) either by (1) Customer providing a purchase order to Interactive or (2) Customer accepting Products or Services from

Interactive, whichever occurs first.

**2.2** No variation to these Conditions shall be binding unless agreed by letter signed by an authorised representative of Interactive.

**2.3** No employee or agent of Interactive other than an Authorised Representative has any authority to make any representation at all concerning Products or Services and an Authorised Representative has no authority to make such representation other than by letter (an "authorised representation") and accordingly the customer agrees that in entering into any Contract it does not rely on any unauthorised representation and customer agrees it shall have no remedy in respect of any unauthorised representation (unless made fraudulently).

### **3. CUSTOMER IDENTIFICATION**

**3.1** In placing an order Customer may utilise one or a combination of account name, account number and other forms of identification including password or other code issued to Customer (together and individually "Customer's Identification" or "Customer Identification").

**3.2** It is the Customer's responsibility to keep the Customer's Identification confidential. Customer has the sole responsibility for its Customer Identification. Customer shall immediately inform Interactive in case of loss of password or other Customer Identification. Customer agrees that Customer is entirely responsible for use of Customer's Identification and that it is Customer's responsibility to have to place security measures and procedures to ensure use of its Customer Identification only by authorised personnel for authorised purposes.

**3.3** Customer agrees that Interactive is entitled to rely absolutely on any orders placed on Interactive, which have utilised Customer's Identification, and to deliver as directed by such orders and invoice and be paid in respect of such orders.

**3.4** Customer agrees that any order placed via Electronic Means mentioning or utilising Customer's Identification is a valid and binding purchase order.

**3.5** Customer acknowledges that Interactive cannot guarantee the security of the Internet and the possibility of interception or corruption of data transmitted from Customer to Interactive using correct Customer Identification exists and that Interactive is nonetheless entitled to rely on data transmitted in the form received at Interactive.

**3.6** Interactive Education Limited has the right to accept or decline any purchase order submitted by Customer.

### **4. INTERACTIVE EDUCATION LIMITED INFORMATION**

**4.1** All Product pricing description, availability and related information ("Information") provided by Interactive, in any form, is the property of Interactive or its vendors. Interactive hereby grants Customer a limited, non-exclusive, non-transferable license to use the information for its internal use only for the purpose of Customer's purchases and sale of products sold by Interactive to it. Interactive shall be entitled to stop the provision of information at any time without notice. Purchaser agrees to hold in confidence and not to directly use, reveal, report, publish, disclose or transfer to any other person or entity any of the information or utilize the information for any purpose except as permitted herein. Interactive makes no warranty, either express or implied on the information or its accuracy. All information is provided to purchaser "as is". If Interactive provides information to customer by Electronic Means, Customer agrees to update such information regularly to ensure its

accuracy. Customer agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish disclose or transfer to any other person or entity any of the information or utilize the information for any purpose except as permitted herein. Specifically but without limitation Customer is not entitled to utilise information for any purpose other than in the normal course of Business of a Reseller and is not entitled to use, reproduce or display the information in any way, which in Interactive's opinion: (1) Would enable it to be identified as Information obtained from Interactive, (2) Would enable comparison of the information with other suppliers information relating to Products or (3) Could be damaging to Interactive's business interests.

## **5. ORDERS AND SPECIFICATIONS**

**5.1** The customer shall be responsible to Interactive for ensuring the accuracy of the Terms of any order.

**5.2** Interactive reserves the right to make any changes in the specification of the Products that are required to conform to any applicable safety or other statutory requirements. **These changes will be duly notified to the Customer. The Customer cannot cancel the order placed provided the changes do not alter the basic terms of the contract. For other types of changes, the possibility of cancellation will be subject to manufacturer's discretion.**

**5.3 The withdrawal or cancellation of any order that has been placed by Customer can only take place by means of letter, fax or email of an Authorised Representative of Interactive to that end.**

**5.4** Notwithstanding any other terms of these Conditions it is agreed that the provision or display of Product pricing and other Information (as defined in clause (4.1) by Interactive to Customer does not amount to an Offer by Interactive to sell such Products at that Price or on any other terms. Supply of such Information is only an invitation to treat. An Order by the Customer for Product or Services shall be the offer. In the case of orders placed by Electronic means if Interactive shall accept such order it shall do so by delivering the Product to the Customer or the Customer's customer. Notwithstanding any order confirmation or acknowledgement, the acceptance of any order placed by Electronic Means shall not take place or be deemed to have taken place until such time as the product shall have been so delivered.

**5.5** In the case of orders placed by Electronic Means only, notwithstanding any acceptance by Interactive of any offer for any Product, if there has been a material and obvious Pricing error by Interactive, Interactive shall be entitled within 30 days of its acceptance of such offer to either invoice the Customer for the Customer's true price of the product at the date of Order or, if the Customer shall prefer, collect the Product at Interactive's expense and credit the Customer for any charges (e.g. price and freight) invoiced by Interactive.

**5.6** Orders for direct shipment to Purchaser's Customers or Special Order Products may require repayment and may be subject to additional fees.

## **6. PRICE OF THE PRODUCTS**

**6.1** All prices are subject to change without notice and subject to the provisions of clause 6.2 and clause 5.5 will be established at the time the order which gives rise to a Contract is received by Electronic Means or in other cases confirmed or acknowledged by Interactive.

**6.2** If customer agrees to place an order for Product not available at the time of order (a "backorder") such order shall be irrevocable and be deemed to be for

the product at the price established at the time the backorder is taken or confirmed. Should there be any price increase due to a rise of its suppliers price to Interactive or direct costs to which Interactive becomes subject (including without Limit costs resulting from currency fluctuation) Interactive shall only increase its price by such level as is necessary.

**6.3** Unless otherwise agreed by letter by an Authorised Representative of Interactive all prices exclude the cost of delivery.

**6.4** All prices and charges are exclusive of any applicable Value Added Tax, which the Customer will be additionally liable to pay to Interactive.

## **7. TERMS OF PAYMENT**

**7.1** Unless Interactive shall have previously agreed in writing with the Customer that the Products shall be supplied on credit payment for the Products shall be made in full by the Customer with the Customer's order or on delivery or collection of the Product as determined by Interactive.

**7.2** Where Interactive has agreed to supply the Products on credit Customer shall pay the Price of the products within 14 Days of the Date of Interactive's invoice notwithstanding that the property in the Products has not passed to the customer. Invoices will be dated the day of dispatch of the products. Interactive shall be entitled at its absolute discretion to alter Terms of Payment (other than on concluded Contracts) and withdraw or alter any credit limit granted at any time without notice.

**7.3** The time of payment of the price shall be of the essence of the Contract. If the customer fails to make a payment on the due date then without prejudice to any other right or remedy available to it Interactive shall be entitled to: -

**7.3.1** Cancel the Contract or suspend any further deliveries or suspend any services to the Customer.

**7.3.2** Appropriate any payment made by the customer to such of the products as Interactive may think fit (notwithstanding any purported appropriation by the customer).

**7.3.3** Charge the customer interest (both before and after judgement) on the amount unpaid at the rate of 5% per annum above Barclays Bank plc base rate from time to time until payment in full is made such interest being calculated on a daily basis.

## **8. DELIVERY**

**8.1** Delivery of the products shall be made by Interactive to such place as shall have been agreed between Interactive and the Customer. Unless the customer shall have notified Interactive in writing within 5 working days of the date of Interactive's invoice that the Products have not been delivered then delivery shall deemed to have taken place in accordance with the Contract and the Customer shall not be entitled to raise any claim of short or mis- shipment. Interactive is entitled to issue its invoice on or after the date of dispatch of Products from its facility.

**8.2** Interactive shall be entitled to assume that any person who both reasonably appears and claims to have authority to accept delivery who signs a note in respect of the Products on behalf of the Customer or the Customer's customer (if Interactive has agreed to deliver direct) does in fact have the authority.

**8.3** Any dates quoted for the delivery of Products are approximate only and Interactive shall not be liable for any delay in delivery of the products howsoever caused.

**8.4** Partial delivery is allowed unless otherwise mutually agreed by both parties. Failure by Interactive to deliver the rest of the goods shall not entitle the Customer to treat the order as a whole as repudiated.

**8.5** For the purpose of these Conditions where Interactive has agreed to deliver Products direct to the Customer's customer any such delivery shall be deemed to be delivery to the customer and any refusal by the Customer's customer to accept delivery shall be deemed to be a refusal by the Customer.

**8.6** The customer shall bear all costs associated with the unjustified refusal of delivery of products. If the refusal is made on the grounds that the order was wrongly placed (i.e. wrong product, wrong pricing, etc.) and the refusal is accepted by Interactive, Interactive reserves its right to charge accordingly additional fees for return transportation and administrative expenses related thereto, and original costs will not be reimbursed.

## **9. RISK AND PROPERTY**

**9.1** Risk of damage to or loss of Products shall pass to the customer at the time of delivery or if the Customer unjustifiably fails to take delivery of Products the time when Interactive has tendered delivery of the Products.

**9.2** Notwithstanding delivery and the passing of risk of the Products or any other provisions of these Conditions the property in the Products shall not pass to the Customer until Interactive has received in cash or cleared funds Payment in full of the price of the Products and all other Products and Services previously sold or supplied by Interactive to the Customer for which payment is then due.

**9.3** Until such time as the property in the Products passes to the Customer the Customer shall hold the products as Interactive's fiduciary agent and bailee and shall keep the Products separate to those of the Customer and third parties and properly stored protected and insured and identified as Interactive's property.

**9.4** Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) Interactive shall be entitled at any time to require the Customer to deliver up the Products to Interactive and If the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

## **10. WARRANTIES AND LIABILITY**

**10.1** Interactive does not manufacture the products (or where the Products comprise computer software does not publish or license the software) and subject to the conditions set out below in this clause<sup>10</sup> Interactive sells the Products with the benefit of the manufacturer's or publisher's or licensor's ("publishers") warranty (as the case may be).

### **10.2**

**10.2.1** Interactive will accept liability for defective Products only to the extent that Interactive is entitled to make a claim under the manufacturer's or publisher's, dead on arrival, warranty or other defective goods terms and actually obtains from the manufacturer or publishers a refund credit repair or replacement in respect of the defective Products. Processing of these defective Products shall be made according to the manufacturer's procedure and the instructions set in clause<sup>10.4</sup> below. Interactive cannot and shall have no obligation to accept a return of and/or grant a credit for product not compliant with the manufacturer's procedures.

**10.2.2** Interactive shall be under no liability in respect of any defect arising from fair wear and tear willful damage negligence abnormal working conditions failure to follow Interactive's or the manufacturer's or publisher's Instructions (whether oral or in Writing) misuse or alteration or repair of the Products without Interactive's approval.

**10.2.3** Interactive shall be under no liability under the above warranty if the total price of the Products has not been paid.

**10.3** All warranties, conditions or other terms implied by common law or statute, or otherwise in connection with the sale or sale or supply of goods or goods or services (save, in the case of goods as to title) are excluded to the fullest extent permitted by law.

**10.4** Any claim by the Customer that is based on a defect in the quality or condition of the Products shall be notified to Interactive's Customer Services Department. Upon notification of any such claim by the Customer Interactive shall either notify the Customer whether the policy of the Manufacturer of the Products is to deal with the Customer direct (in which case the Customer shall deal with the manufacturer direct provided Interactive gives sufficient details to enable the Customer so to do) or shall provide the Customer with an RMA number (in which case the Customer shall return the products to Interactive in their original UNMARKED packaging together with details of the RMA number and the Customer's name and address). This clause 10.4 shall only apply to Product; Customer is entitled to return to Interactive as provided in these Conditions.

**10.5** Interactive shall not be liable to the Customer for any economic or financial loss or damage (including without limit any loss of profits, loss of revenue, liabilities incurred by the Customer to third parties, or additional expenses incurred or the cost of time spent) or any consequential, indirect, or special loss or damage costs expenses or other claims for consequential compensation whatsoever (including without limit loss of or damage to data or loss of goodwill) incurred or suffered by the Customer and in every case howsoever caused or arising( and whether caused by the negligence of Interactive its employees or agents or otherwise).

**10.6** Interactive's liability for direct loss or damage arising from damage to tangible property for which Interactive is liable shall be limited to the VAT Exclusive price of the relevant Product or Service in connection with which any claim for damage or loss is made.

**10.7** Nothing in these Conditions shall in any way exclude or limit any liability Interactive may have for death or personal injury caused by its negligence.

**10.2.5** Strikes lockouts or other industrial actions or trade disputes (whether involving employees of Interactive or a third party).

**10.2.6** Difficulties of Interactive's supplier in obtaining raw materials labour fuel parts or machinery.

## **11. RETURNS AND REPAIRS**

**11.1** Except for Special Order Products, which are expressly excluded from these rules and cannot be returned under any circumstances, if Interactive agrees to accept the return of any Products (other than for the purpose set out in Clause 10 (above) or agrees to carry out repairs to other Products which have not been purchased from Interactive or agrees to repair Products which are out of warranty the Customer shall not send the same to Interactive unless they are accompanied by an RMA number previously advised by Interactive's customer services department and a copy of the suppliers sales invoice and are sent in their original packaging or same or similar material.

**11.2** The customer shall notify Interactive within 7 working days of any delivery discrepancies, other than for the purposes set out in clause 10. If Interactive issues a returns number (RMA), goods must be returned to Interactive within 7 working days of the date thereof.

**11.3** If Interactive has agreed to carry out repairs or to replace Products (or any parts thereof) other than for the purpose set out in clause 10 above the

Customer irrevocably authorises Interactive to carry out such repairs or provide such replacements as shall place the Products in proper working order.

**11.4** Interactive shall accept no liability for any damage to or loss in transit in Products returned to Interactive whether under this clause or under Clause 10 above. If Interactive has agreed to accept the return of Products other than for the purpose set out in Clause 10 above or than for the purpose of carrying out any other repair or replacement the Products must be returned in their original packaging and in a clean re-saleable condition failing which Interactive will refuse to accept the same and the Customer shall remain liable for the price thereof.

## **12. INSOLVENCY OF CUSTOMER**

**12.1** This clause applies if:

**12.1.1** The customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purposes of amalgamation or reconstruction.

**12.1.2** An encumbrancer takes possession or a receiver is appointed of any of the property assets of the Customer or

**12.1.3** The customer ceases or threatens to cease carrying on business or

**12.1.4** Interactive reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

**12.2** If this Clause applies then without prejudice to any other right or remedy available to Interactive, Interactive shall be entitled to cancel the contract or suspend any further deliveries or services under the Contract without any liability to the Customer and if the Products have been delivered and not paid for then the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **13.0 EXPORT RESTRICTIONS**

**13.1** The Customer acknowledges that the transfer of any of the Products imported from the United States of America is subject to the export control laws and regulations of the USA and any amendments thereof which restrict exports and re-exports of hardware, Software, technical data, and direct products of technical data, including services derived from use of the Products. The Customer agrees that it will not export or re-export any USA imported Products or any information and documentation related thereto, directly or indirectly, without first obtaining permission to do so as required from the United States of America Department of Commerce's Bureau of Export Administration or other appropriate governmental agencies to any countries, end-user's or for any end-user's that are restricted by USA export laws and regulations and any amendments thereof which include, but are not limited to the following:

**13.1.1** Restricted Countries: Cuba, Haiti, Federal Republic of Yugoslavia (Serbia and Montenegro), Iran, Iraq, Libya, North Korea, South Africa (military and police entities only), Syria and Vietnam.

**13.1.2** Restricted End-Users: Any End-user whom the Customer knows or has reason to know will use USA imported Products in the design, development or production of missiles and missile technology, nuclear weapons and weapons technology or chemical and biological weapons.

**13.1.3** Restricted End-uses: Any use of USA imported Products related to the design, development or Production of missiles and missile technology, nuclear weapons and weapons technology or chemical and biological weapons.

**13.1.4** These restrictions change from time to time. If the Customer has any questions regarding its obligations under USA export regulations the Customer should contact the Bureau of Export Administration, United States Department of Commerce, Office of Export Licensing, Washington DC, USA (202) 377 4811 or the local United States Consulate.

#### **14.0 CONFIGURATION**

**14.1** On agreement Interactive will provide configuration services to Customer. Configuration services will be at the price agreed at the time the order is taken or confirmed. The Customer shall be solely responsible for the accuracy of its order, the specification of the components and their configuration and for ensuring that the configured Product specified is satisfactory for the purposes for which it is required including without limit that it has sufficient overall functionality, and will support, be compatible and inter-operable with any hardware, software or middleware with which it is intended to operate.

**14.2** Configuration Services will have a warranty of days from the date of shipment to the Customer. Interactive's sole liability (and the Customers sole remedy against Interactive) in respect of any defective Services for which Interactive is responsible shall be the repair by Interactive or at Interactive's option replacement of the product on which the services have been performed. (If any alleged defect shall be attributable to defect in Product the provisions of Clause 10 shall apply). Claims in respect of defective services must be made within 7 days of the date of delivery of the configured product.

#### **15. GENERAL**

**15.1** Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to the 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 notice.

**15.2** No waiver by Interactive 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.

**15.3** If any provision of these conditions is held by any 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 provisions in question shall not be affected thereby.

**15.4** The Contract shall be governed by the laws of England and the Customer submits to the exclusive jurisdiction of the English Courts. <sup>λ</sup>