



## **CAPTION DATA LIMITED TRADING TERMS AND CONDITIONS**

### **1. DEFINITIONS**

In these Trading Terms and Conditions all references to "the Seller", "we" or "us" are to CAPTION DATA LIMITED, whose registered office is at Unit 8 Brindley Court, Gresley Road, Worcester WR4 9FD. All references to "the Customer" are to the person or entity giving the order. All references to "Goods" are to the goods and services which are the subject of the order, and all references to "the Contract" are to the contract of sale of the Goods by the Seller.

### **2. PRICING**

2.1 List prices are in pounds sterling and do not include UK carriage charges or VAT, which are solely for the account of the Customer. Any requests for software development services are subject to separate negotiations between the Customer and the Seller.

2.2 We reserve the right to change listed prices without notice.

2.3 Written quotations secure prices for 30 days only.

2.4 Discounts may be given at the sole option of the Seller for quantity purchases, or purchases which have a firm delivery schedule over an extended period.

2.5 Catalogues, price lists, advertisements and other published information are only indications of the type of products available and shall not form part of this Contract or any other contract with the Customer nor be considered a collateral warranty or a representation resulting in the same.

### **3. ORDERING**

3.1 Orders may be placed by any means of communication but will only be accepted as valid by the Seller on receipt of an authorized written confirmation from the Customer and no order is binding on the Seller until accepted by the Seller's issue of a Goods invoice or order acknowledgement, notwithstanding any act or statement of the Seller prior to such issue. The Seller may deliver Orders by instalments, which may be invoiced and paid for separately. References in these Conditions to Orders shall, where applicable, be read as references to instalments. Each Delivery or part Delivery of an Order is to be considered a separate Contract and failure on the part of the Seller to make any Delivery or part Delivery shall not affect or void the Contract as to other Deliveries.

3.2 Goods ordered in error may be replaced with corrected items but **may** incur a re-stocking charge of 20% of their value if the replacement is ordered after 7 days of Delivery.

3.3 Goods ordered in excess of the Customer's requirements may not automatically be returned for credit.

3.4 Any Goods returned must be complete and in "as new" condition. Goods returned which are not in this condition may not be credited and may also incur some replacement or repair charges.

3.5 Notwithstanding the above, all software Goods Orders are final. Software Goods may not be returned.

3.6 Unless expressly agreed, installation and training are not covered by the Contract and shall be the subject of a separate contract.

### **4. ACCOUNTS**

At the sole discretion of the Seller, a limited value 30-day credit account may be set up between the Seller and a business customer upon provision of two satisfactory trading references and a satisfactory bank reference together with the

Customer's Company Registration Number. We regret that we are unable to grant credit accounts to consumer Customers.

## **5. PAYMENT**

5.1 Time shall be of the essence of the Contract in relation to the payment of the purchase price. Payment terms are strictly 30 days from the date of the invoice. All discounts are subject to these terms. Failure to comply with the terms may result in any discounts being withdrawn for current and future purchases.

5.2 In addition the Seller will be entitled to charge interest as provided under the Late Payment of Commercial Debts (Interest) Act 1998 on any unpaid sums due under the Contract from the due date for payment thereof, such interest to accrue from day to day until receipt by the Seller of the full amount whether before or after judgement.

5.3 The Seller may consider extended payment terms but price differences may apply in such circumstances.

5.4 The Customer undertakes to make any payment due hereunder in full without any deduction, off-set or counterclaim whatsoever.

## **6. TAXES**

All HM Revenue & Customs duties import and/or export duties and all other taxes (VAT or otherwise) tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods or payments for them or upon freight or other charges shall be borne by the Customer and are additional to the price for the Goods.

## **7. DELIVERY**

7.1 We will always endeavour to deliver the Goods within the quoted period. However, the Seller cannot be held responsible should the Goods be held up for reasons beyond our control. For this reason, the Customer and the Seller agree that time is not of the essence concerning delivery.

7.2 The Goods are delivered on an Ex-Works basis (Incoterms 2000), our premises in Worcester ("Delivery"). Acceptance of Delivery by the Customer shall be deemed to constitute acceptance of these conditions to the exclusion of all other terms and conditions whatsoever.

7.3 The Seller uses an external shipping agent who will provide a traceable next working day delivery at the Customer's cost. Saturday, express and/or courier receipt by the Customer can also be arranged at extra cost. Export deliveries will be charged at cost. If the Seller (at its discretion) agrees with the Customer to arrange transport of the Goods the Seller shall be deemed to do so as agent for the Customer and in the absence of express agreement with the Customer the Seller shall be entitled to make such arrangements as it considers appropriate. The Customer shall indemnify the Seller against all costs and expenses the Seller may incur in connection with such transport. Section 32 (2) of the Sale of Goods Act 1979 shall not apply to the Contract.

7.4 The Seller shall store the Order until Delivery occurs, and shall charge the Customer for all related costs and expenses (including but not limited to storage and insurance), provided always that the Seller shall have no liability in the event of Customer's failure to take Delivery or to make arrangements for transportation of the Goods to the Customer's desired receiving location.

## **8. DELIVERY DAMAGE OR LOSS**

8.1 As transportation is Goods that are mislaid or damaged in transit are covered by the Customer's insurance. The Seller will make every reasonable effort to trace lost goods after two days from the anticipated date of arrival, upon notification from the Customer that the Goods have not arrived.

8.2 Goods damaged in transit must be reported to the Seller immediately upon receipt. The Seller will not accept a damaged goods report received beyond 48 hours after the Customer's receipt of the Goods.

8.3 We reserve the right to carry out inspection and repairs to damaged Goods.

## **9. TITLE; RISK**

9.1 The Goods (whether separate and identifiable or incorporated in or mixed with other goods) shall remain the property of the Seller as legal and beneficial owner and the property in the Goods shall not pass to the Customer until payment in full has been made of the purchase price for the Goods and for all other items sold or agreed to be sold under any other contract of sale between the Customer and the Seller or any associated Seller of the Seller together with any interest thereon.

9.2 Until title to the Goods has passed to the Customer, the Customer shall: (a) hold such Goods on a fiduciary basis as the Seller's bailee; (b) store such Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to

such Goods; and; (d) maintain such Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Seller. On request the Customer shall allow the Seller to inspect such Goods and the insurance policy, but the Customer may use Goods in the ordinary course of its business.

9.3 The risk in the Goods shall pass to the Customer on Delivery. If the Customer requires postponement of the Delivery beyond the agreed Delivery date the Seller may at its option exercisable by notice in writing to the Customer treat the risk in the Goods as having passed to the Customer and store the Goods at the Customer's expense (but without liability).

## **10. SIM CARD AND WEB SERVICES**

10.1 The Seller will directly or through its contracted services providers provide the cellular services and the internet services (individually and collectively, the "Services") to the Customer for the service period specified in the written agreement with the Customer, with a minimum service period of 12 months.

10.2 The unit contains a SIM card that enables the Customer to access the Services. The Customer :

- a) acknowledges and agrees that the SIM card remains the property of the Seller or its service providers;
- b) will only use the SIM card within the unit;
- c) will, at the Seller's request, return the SIM card to the Seller on termination of the Services;
- d) will keep the SIM card secure and notify the Seller immediately if it is aware that the SIM card is lost, stolen or damaged; and
- e) will, subject to clause d), be responsible for the replacement costs of any lost or stolen SIM cards and for any charges incurred related to use of the lost or stolen SIM card.

10.3 The Seller will use reasonable endeavours to ensure that the Services are available but due to the nature of such services and subject to the Service Levels as agreed to and defined in the Seller's agreement with the Customer, it may not be possible to provide a fault-free service. The Services may be adversely affected by matters beyond the control of the Seller or its service providers by geographical and physical features such as buildings, underpasses, or other causes of interference (including electrical interference). Neither the Seller nor its service providers will be liable for a failure to provide a fault-free service.

## **11. INTELLECTUAL PROPERTY**

11.1 The Customer acknowledges that the intellectual property rights (including but not limited to copyrights, design rights, trade dress, trade names, patents or other intellectual property rights (the "IP Rights") in the Goods and the related documentation (including but not limited to manuals, user guides, specification sheets, and warranties (the "Documentation") belong to the Seller.

11.2 The Customer, employees of the customer and agents will not reproduce, translate, reverse engineer, vary or modify the Goods or the Documentation.

11.3 The Customer will:

- a) take all reasonable steps to ensure the non-disclosure and confidentiality of the information and IP Rights incorporated in the Goods, and the Documentation until the same is in the public domain through no fault of the Customer;
- b) ensure that its officers and employees and agents do not disclose or copy any part of the Goods or Documentation except as permitted by this clause;and
- c) not infringe any IP Rights incorporated in, arising out of or relating to the Goods and the Documentation.

## **12. PRODUCT SUPPORT, WARRANTIES AND REPAIRS**

12.1 The Seller warrants the Goods to the first user thereof against defects in design, material and workmanship which render the Goods of unmerchantable quality and which become apparent within the Warranty Period. All Goods supplied carry a one-year Warranty starting from the date of Delivery (the "Warranty Period"). Notwithstanding the foregoing where it is apparent from the Contract or any specification or other documents supplied by the Seller to the Customer prior to the date of the Contract that any item or component was not manufactured by the Seller, the Warranty Period for such item or component shall expire at the end of the period of the express warranty given to the Seller in respect thereof by the relevant supplier

12.2 The Seller's obligation under this Warranty is limited to repairing and/or replacing on an exchange basis any defective Goods or part or parts thereof or at the Seller's option to refunding the purchase price paid by the Customer against return of the Goods.

12.3 If the Customer suspects a fault with the Goods and has made reasonable investigation to locate the problem without success, the Seller will give some guidance via telephone support.

12.4 If the Goods need repair they should be sent back to the Seller together with a detailed report of the problem incurred. The Seller will bear the cost of the return shipping for all repairs covered by the Warranty. The Seller will try to

turn the repair around in five to seven working days unless the Goods have to be returned to the original manufacturer, consequently prolonging the return time. The Seller will advise the Customer when this is the case.

12.5 The return of Goods to the Seller for inspection does not indicate the acceptance of the Warranty claim by the Seller. The Seller shall inspect and test any Goods returned under Warranty and is the sole arbiter of liability for Warranty claims from the Customer or any other party.

12.6 The Seller shall be entitled to require the Customer by written notice to cease immediately the use of any Goods in respect of which any defect has been notified to the Seller and if the Customer fails to comply with such requirement the Seller shall have no liability to the Customer either under this condition or otherwise in relation to such Goods. Where for any reason no such notice has been given by the Seller, the Seller shall not be liable for any loss or damage whatsoever suffered by the Customer to the extent that it is caused by continued use of the Goods after a defect became apparent.

12.7 The Warranty shall not apply to any defect in the Goods where such defect is caused in whole or in part by the installation operation or use of the Goods in an improper or abnormal manner or the modification of the Goods without the express written permission of the Seller.

### **13. LIMITATIONS OF LIABILITY**

13.1 The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information supplied by the Customer as to the Customer's requirements in relation to the specification or use of the Goods or which results from defects or deterioration caused by wear and tear, accidents, neglect, misuse, [dampness,] abnormal conditions or circumstances beyond the Seller's control as stipulated in Condition 15 below.

13.2 The Warranty contained in Condition 13.1 above is given in lieu of and replaces, excludes and extinguishes all and every condition or warranty and any other obligation or liability of the Seller or right or remedy of the Customer whatsoever whether express or implied and whether in contract or in tort or otherwise howsoever in respect of quality or fitness for purpose, merchantability, description of the Goods or otherwise.

13.3 Without prejudice to the foregoing the Seller shall have no liability to the Customer for any damage to physical property or any economic loss including (without limitation) any loss of anticipated profits or receipts or any expenses incurred or any indirect or consequential loss whatsoever. The maximum liability of the Seller shall be limited to the value of the Goods, and for Services, to the amount of the annual Service fees charged to the Customer.

13.4 Notwithstanding anything to the contrary contained in these conditions nothing in Conditions 13.1, 14.1 and 14.3 shall exclude or restrict the Seller's obligations under Section 12 of the Sale of Goods Act 1979, the Consumer Protection Act 1987 or the Seller's liability for any death or personal injury caused by negligence.

### **14. FORCE MAJEURE**

The Seller shall not be under any liability whatsoever to the Customer if and to the extent to which the fulfilment of the Seller's obligations is prevented or delayed directly or indirectly as a consequence of an act of God, out-break of hostilities (whether or not war is declared), insurrection, riot, civil disturbance, government act or regulation, fire, flood, explosion, accident, theft, climatic conditions, shortage of material, shortage of transport facilities, failure in whole or in part of power supplies, failure of a delay by suppliers, strike, lockout or trade dispute (whether of the employees of the Seller or of other parties) or caused by or resulting from any other event or circumstances whatsoever (whether or not of the same or similar kind to those enumerated) beyond the Seller's control.

### **15. SEVERABILITY**

If any provision of these conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, such provision shall to that extent be deemed not to form part of these conditions and the other provisions shall remain in force.

### **16. COMPLAINTS**

Any complaints of the Customer relating to the conditions of the Contract or performance of it by the Seller must be addressed to the Seller in writing and delivered to its address specified above, and any such complaint received shall be reviewed and considered by the Seller.

### **17. GOVERNING LAW**

The Contract shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction in respect of all disputes or all disputes or other matters which may arise under or in connection with the Contract and/or the Goods save that having regard to the fact that this Condition conferring jurisdiction is for the benefit of the Seller only, the Seller shall retain the right to bring proceedings against the Customer in any other court which has jurisdiction.

**18. NOTICES**

Any notice hereunder shall be deemed to have been given if delivered by hand or sent by prepaid first class post or facsimile (confirmed by telephone and followed by notice by post) to the party concerned at its last known address, and deemed to have been received on the date of despatch, if delivered by hand or sent by facsimile to the correct number (and confirmed with a hard copy sent by post), and on the third day after posting, if sent by post.

**19. ENTIRE AGREEMENT**

The Contract shall be deemed to incorporate these conditions which represent the complete agreement of the Seller and Customer with regard to the Goods except as otherwise specifically agreed in writing by the Seller. These conditions shall override any terms and conditions stipulated, incorporated, or referred to by the Customer in any order, correspondence, negotiations or any other way.