

SOTER ANALYTICS INTERNATIONAL LTD SALES T&C'S

1. INTERPRETATION

1.1 DEFINITIONS:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date the Contract commences, as set out in the Contract Details.

Conditions: these terms and conditions set out in clause 0 to clause 11 (inclusive).

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with the Contract Details, the EULA and these Conditions.

Delivery Date: the date specified for delivery of an Order in accordance with clause 5.

Delivery Location: the address for delivery of the Goods, as set out in the Contract Details.

EULA: the end user licence agreement which governs use of the Software as appended to these Conditions as Schedule 1 (as updated from time to time).

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.

Goods: the goods (or any part of them), as set out in the Contract Details.

Price: the price for the Goods, as set out in the Contract Details.

Software: the supporting software that allows the user of the Goods to monitor performance.

1.2 INTERPRETATION:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes emails.

2. COMMENCEMENT AND TERM

This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms for an initial term of 12 months and thereafter until terminated by either party by giving no less than one month's written notice.

3. PURCHASE OF THE GOODS

- 3.1 The Customer hereby orders the number of Goods set out in the Contract Details. The Customer acknowledges that each unit of SoterSpine requires one subscription for the Software which can be used by one worker per calendar month.

- 3.2 The Customer undertakes to comply with the EULA in all respects when using the Software.
- 3.3 The Customer may order additional Goods and Software subscriptions from time to time by notifying the Supplier in writing. On acceptance of any order for additional Goods and Software, the Contract Details shall be deemed amended to reflect the changes.

4. THE GOODS

- 4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

5. DELIVERY

- 5.1 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows the contract number and the type and quantity of Goods.
- 5.2 The Supplier shall endeavour to deliver Goods to the Delivery Location on the relevant Delivery Date.
- 5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
- (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6. QUALITY AND FITNESS FOR PURPOSE

- 6.1 The Supplier warrants that, for a period of 12 months from the date of delivery (the "**warranty period**"), the Goods shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be fit for any purpose held out by the Supplier.
- 6.2 Subject to clause 6.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period, to the effect that some or all of the Goods do not comply with the warranties set out in clause 6.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE AND RISK

7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location.

7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

8. PRICE AND PAYMENT

8.1 The Customer shall pay for Goods in accordance with this clause 8.

8.2 The Price excludes:

- (a) the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and
- (b) amounts in respect of value added tax or other applicable sales taxes ("**VAT**"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

- 8.3 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after it confirms the relevant Order to the Customer. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, and any supporting documentation that the Customer may reasonably require.
- 8.4 The Customer shall pay invoices in full in cleared funds prior to delivery of the Goods. Payment shall be made to the bank account nominated in writing by the Supplier. The Supplier shall have no obligation to deliver the Goods unless full payment has been received.
- 8.5 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £1,000.
- 9.3 Subject to clause 9.1, neither Soter Analytics International Ltd nor the Supplier shall in any circumstances be liable for any injury caused to or sustained by a Customer as a result of their use of the Goods. It is the responsibility of the Customer to use the Goods in accordance with any instructions provided by the Supplier to the Customer on safe usage, and to use the Goods under appropriate supervision of the Supplier.

10. TERMINATION

- 10.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a

solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 10.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 10.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. DATA PROTECTION

- 11.1 The Supplier will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 The Customer acknowledges that the Supplier shall disclose personal data on the Customer to the manufacturer of the Goods, Soter Analytics International Ltd, to enable it to provide the Customer with access to the Software. Soter Analytics International Ltd's use of the Customer's personal data shall be governed by its privacy policy which can be found on its website as set out in the EULA.
- 11.3 The Customer's attention is drawn to the Supplier's privacy policy which can be found at the URL set out in the Contract Details.

12. GENERAL

12.1 ASSIGNMENT AND OTHER DEALINGS.

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

12.2 ENTIRE AGREEMENT.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

12.3 VARIATION. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4 WAIVER. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 SEVERANCE. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.6 NOTICES.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.6(a); if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.7 THIRD PARTY RIGHTS. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.8 GOVERNING LAW. This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

12.9 JURISDICTION. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.