



## Terms and conditions of trade

## 1. Definitions

### **Triscan Systems Limited**

Triscan Systems Limited, a company incorporated in England with registered number 6369088 whose registered office is at 4 Petre Court, Clayton Business Park, Accrington, BB5 5HY and its successors in title.

### **Customer**

A person to whom Triscan Systems Limited supplies goods or services and its successors in title.

### **Software**

Any software products supplied by Triscan Systems Limited and any copy or copies thereof and this definition shall include any disk or disks as supplied in connection or association with any such software products or any copy or copies thereof and shall also include any modifications, additions or enhancements to any such software products made, supplied or added by Triscan Systems Limited.

### **Equipment**

Any hardware or other items not including Software, supplied by Triscan Systems Limited and including any modifications, additions or enhancements to any such hardware or other items, made, supplied or added by Triscan Systems Limited.

### **Services**

Any services supplied by Triscan Systems Limited.

### **Products**

Equipment and Software.

### **Conditions**

These terms and conditions.

### **Representative**

An officer or authorised employee of Triscan Systems Limited or the Customer.

### **Agreement**

A written agreement between Triscan Systems Limited and the Customer for the supply of Equipment, Software or Services signed by a Representative of Triscan Systems Limited and the Customer, and this term shall include a variation made in accordance with the terms of the Conditions.

### **Licence**

The licence to use the software granted by the Conditions.

### **Manuals**

The manuals and instructions and other materials supplied by Triscan Systems Limited to aid the Customer in the use of the Products.

## 2. References

The references in the Conditions to clauses or subclauses shall be to those in the Conditions, unless the contrary is stated.

## 3. Contractual Terms

4. An enquiry or prospective order from a prospective customer shall not constitute an offer capable of acceptance by Triscan Systems Limited.

5. A draft Agreement submitted by Triscan Systems Limited to a Customer or prospective customer shall constitute an offer made on the terms and conditions in the draft Agreement and the Conditions.

6. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of any Agreement simply as a result of such documentation being referred to in such Agreement.

7. If the terms of the Agreement and the Conditions are inconsistent, the terms of the Agreement shall prevail.

a) No variation of the Agreement or of the Conditions shall apply unless in writing and signed by a Representative of both Triscan Systems Limited and the Customer.

b) The terms contained in the Agreement and the Conditions shall constitute the entire agreement between the parties. However, nothing in the Agreement or the Conditions shall exclude liability for fraud or fraudulent misrepresentation.

c) Triscan Systems Limited shall be entitled to sub-contract the performance of all or any part of its obligations under the Agreement or the Conditions.

## 8. Delivery

a) Time shall not be of the essence in relation to the delivery and any delivery date specified by Triscan Systems Limited for delivery of Products shall be an estimate only. In the event of any delay in delivery the provisions of clause 16 (Delay and Force Majeure) shall apply.

b) Delivery shall be at the Customer's expense.

## 9. Ownership/Risk

a) Ownership and property of the Equipment shall not pass to the Customer until Triscan Systems Limited has received in full (in cash or cleared funds) all sums due to it in respect of both the Equipment and all other sums which are or which become due to Triscan Systems Limited from the Customer on any account.

b) Until such time as the property in Products passes to the Customer, the Customer shall;

i) hold the Products as fiduciary agent of Triscan Systems Limited and bailee;

ii) keep the Products (at no cost to Triscan Systems Limited) properly stored, protected and insured (for their full price against all risks) and identified as Triscan Systems Limited's property;

iii) not destroy, deface or obscure any identifying mark or packaging on correlating to the Projects; and

iv) be entitled to resell at full market value or use the Products in the ordinary course of its business provided it holds the proceeds from the insurance referred to above or any sale on trust for Triscan Systems Limited and does not mix such funds with any other money nor pay the proceeds into an overdrawn bank account.

c) Until such time as the property in the Products passes to the Customer, the Customer shall deliver up the Products to Triscan Systems Limited on demand and if the Customer fails to do so immediately, Triscan Systems Limited, its agents and employees may enter any premises of the Customer or any third party where the Products are or may be stored and repossess the Products.

d) The Customer may not pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Triscan System Limited, but if the Customer does so all monies owing by the Customer to Triscan Systems Limited shall immediately become due and payable.

## 10. Payment

a) The Customer shall pay for Products delivered or Services rendered within 28 days of the date of Triscan Systems Limited's invoice.

b) The Customer shall make all payments due under in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Triscan Systems Limited has a valid court order requiring an amount equal to such deduction to be paid by Triscan Systems Limited to the Customer.

- c) Triscan Systems Limited may at its discretion charge interest (both before and after any judgement) on a daily basis on any sum or part
- d) thereof outstanding in respect of any invoice in relation to which payment is overdue at a rate of 4% per annum above base rate for the time being in force of Barclays Bank Plc.

## 11. Price Variation

- a) Any price comprised in the Agreement or otherwise quoted by Triscan Systems Limited shall be provisional only and shall be subject to the provisions of this clause.
- b) If Products are ordered to be delivered within 6 months of the date of the Agreement then, subject to the remaining provisions of this clause, the price may be varied if Triscan Systems Limited was unable, at the date of the Agreement, to obtain any of the Products comprised in the Agreement or any part or parts thereof at a firm figure, in which event Triscan Systems Limited shall be entitled to vary the price in accordance with the figure at which it purchases or is to purchase the items concerned.
- c) If Products are ordered to be delivered beyond six months of the date of the Agreement the price is subject to variation to the price ruling at the time the Products are delivered.
- d) The price of any Products may be varied in consequence of the imposition of any tax or levy on sales or of any other similar fiscal obligation.
- e) Where Triscan Systems Limited obtains any products or any parts thereof from outside the United Kingdom the price may be varied to take account of fluctuations in any relevant rate of exchange.
- f) The price for Services shall be that ruling at the time the Services are supplied.

## 12. Conditions and Warranties

- a) No condition or warranty is given that the Products are fit for any purpose (whether made known to Triscan Systems Limited or not) other than as a fuel management system, kiosk control system or part thereof for use in accordance with the authorised operating procedure for the particular Products concerned.
- b) No condition or warranty is given that the operation of the Products of any part thereof will be uninterrupted or error free.
- c) No condition or warranty is given that the Products conform to any specific performance criteria, technical or otherwise, including (without prejudice to the generality of the foregoing), that they operate in any particular manner, that any particular functions are available, that any particular data storage or processing capacity exists or that there is any particular speed with which any function or functions are performed.
- d) No condition or warranty is given that the Products or any part thereof are compatible in any way whatsoever with any other products, Software, Equipment or other items.
- e) Save as set out in these Terms and Conditions all warranties, conditions, and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement and these Terms and Conditions.
- f) Triscan Systems Limited shall not be liable in respect of any indirect or consequential loss, or any loss of income or profits, turnover, goodwill, data, contracts, use of money or damages howsoever arising, due to any use of or defect in the Products.

13. Triscan Systems shall not be liable for any error or omission in the Manuals or for any loss or damage arising there from.

14. Triscan Systems Limited shall not be liable if the Products or any part thereof shall be altered or modified in any way by any person other than a Representative of Triscan Systems Limited or otherwise dealt within any resulting from or attributable in any way to those alterations, modifications or dealings.

15. The Conditions or terms of any Agreement shall not exclude or limit any liability that Triscan Systems Limited may have in law for any death or personal injury and/or any liability under Part 1 of the Consumer Protection Act 1987 to the persons referred to in Section 7 of that act.

16. Subject to any other terms contained in these Conditions or terms of any Agreement, Triscan Systems Limited's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance shall be limited to the price paid for the Products and Services; and Triscan Systems Limited shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Conditions and/or any Agreement.

a) Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data by Triscan Systems Limited on behalf of the Customer and against accidental loss or destruction of, or damage to such personal data,

## 17. Obligations of Customer

a) Where any specifications are to be supplied by the Customer in relation to any Products then such specifications shall be supplied to Triscan Systems Limited in accordance with any time limit specified by Triscan Systems Limited and in any event a reasonable time before the proposed delivery date of the Products concerned.

b) Where any preparation of whatsoever nature at or of the site or location at which any installation may take place, Triscan Systems Limited shall inform the Customer of the preparation necessary and the Customer shall make such preparations accordingly and at its own expense within a reasonable time before the proposed delivery or installation date of the Products concerned.

c) If Triscan Systems Limited is ready, willing and able to deliver or install any Products but any of the necessary preparations or specifications referred to above have not been completed or supplied by the Customer, Triscan Systems Limited may at its discretion:

- i) Retain the Products or any part thereof until the necessary preparation is complete or specifications are supplied; or
  - ii) Deliver the Products to the Customer to await installation once the necessary preparation is complete or specifications are supplied; and
  - iii) In either case invoice the Customer for the Products at the date when delivery or installation would have taken place but for failure of the Customer to complete the necessary preparation or supply the relevant specifications.
- d) The Customer shall permit Triscan Systems Limited to check the use of the Software or Equipment at all times and for that purpose the Customer hereby irrevocably licenses Triscan Systems Limited and/or any of its employees or agents to enter any of the Customer's premises.

## 18. Termination

a) Triscan Systems Limited may terminate any contract subject to all or any of the Conditions and/or Agreement forthwith by notice in any of the following circumstances:

i) If the Customer breaches any term of the Agreement or the Conditions; or

ii) If any distress or execution be levied on any of the Customer's property or assets; or

iii) If the Customer makes or offers to make any agreement or composition with creditors; or

iv) If the Customer being an individual dies or applies for an interim order within the meaning of the Insolvency Act 1986 or has an interim order made against him or being a firm is dissolved or in any case becomes or threatens to become bankrupt or if a receiver is appointed to manage his or their assets or affairs; or

v) If the Customer is a limited company and any resolution or petition to wind up the company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a received administrative receiver of such a company's undertaking, property or assets shall be appointed or a petition presented for the appointment of an administrator.

b) Triscan Systems Limited's right of termination shall be without prejudice to any of its other rights whether subsisting by virtue of the Agreement, the Conditions or otherwise and such termination shall not be taken to waive the right to assert or exercise any such rights.

c) The following provisions shall survive termination of the Conditions and/or the Agreement: clause 1 (Definitions), clause 8 (Conditions and Warranties), clause 12 (Indemnity), clause 14 (Confidentiality), clause 15 (Modifications and Enhancements), clause 18 (Customer's Warranty), clause 19 (Waiver or Remedies), clause 21 (Miscellaneous) and clause 23 (Rights of Third Parties).

## 19. Licence

a) The Software is a proprietary product of Triscan Systems Limited's and contains information confidential to Triscan Systems Limited and is licensed but not sold to the Customer. Ownership of the Software remains with Triscan Systems Limited and save as expressly provided by the Conditions all rights of whatsoever nature in relation to the Software remain with Triscan Systems Limited at all times.

b) The Software may not be used or dealt with by the Customer in any way not authorised by the Conditions or otherwise expressly authorised in writing by a Representative of Triscan Systems Limited.

c) The Software may only be used by the Customer on a machine in which it has been installed by Triscan Systems Limited or an authorised agent.

d) The Customer may copy the Software onto any machine readable or paper form only for backup purposes or to support the use of the Software on a machine in which it was installed by Triscan Systems Limited. The Customer may only make as many such copies as are reasonably necessary for operational security and use.

e) The Customer may not decompile, disassemble or in any way reverse engineer the Software except to the extent permitted by applicable law.

f) The Customer may not alter or modify the Software in any way.

g) No third party may use the Software nor may the Customer use the Software on behalf of any third party.

h) Triscan Systems Limited may by written notice to the Customer and upon breach any term of the Agreement or the Conditions or otherwise in

accordance with the Agreement or the Conditions terminate the Customer's right to use or deal with the Software in any way whatsoever.

i) Upon termination for whatever reason of the Customer's right to use or deal with the Software the Customer will immediately return the Software and the Manuals to Triscan Systems Limited and all the restrictions imposed on the Customer in relation to the Software and the Manuals by the Conditions will continue to apply until the Software and Manuals are received by Triscan Systems Limited.

j) The Customer may terminate the Licence at any time by returning the Software and Manuals to Triscan Systems Limited.

k) Triscan Systems Limited may replace or change the Software or the Manuals or any part thereof at any time provided that any such changes or replaced Software or Manuals shall be of equivalent standard to that previously installed or supplied by Triscan Systems Limited.

## 20. Indemnity

a) Triscan Systems Limited will indemnify the Customer against any claim made by a third party that the authorised use or possession of the Software infringes the intellectual property rights of any third party provided that Triscan Systems Limited is given immediate and complete control of such claims that the Customer makes no admission and does not prejudice any defence to such claims, that the Customer gives all reasonable assistance to Triscan Systems Limited in respect of that claim and any counterclaim.

b) If the Software is modified, amended or enhanced in any way by anyone other than Triscan Systems Limited then the Customer will indemnify Triscan Systems Limited against any claim that such modifications, amendments or enhancements infringe the intellectual property rights of any third party.

c) The indemnity outlined in clause 12 (a) above is subject to and will not extend to a claim made by a third party that the authorised use or possession of the Software infringes the intellectual property rights of any third party whereby such intellectual property rights have been infringed as a result of any modification, amendment or enhancement made by Triscan Systems Limited following specification requested by the Customer, in relation to the Products in accordance with clause 9 (a). Furthermore, the Customer will indemnify Triscan Systems Limited against any claim that such modifications, amendments or enhancements infringe the intellectual property rights of any third party.

## 21. Manuals

a) Ownership of the Manuals and any copies thereof is in or remains with Triscan Systems Limited at all times.

b) Triscan Systems Limited will supply the Customer with one copy of the appropriate Manual which will contain sufficient information to enable authorised use of the facilities and functions of any Products.

## 22. Confidentiality

a) Subject to the following provisions of this clause the Customer will keep the Software and the Manuals confidential.

b) The Customer will not disclose the Software or the Manuals, or allow the Software or Manuals to be disclosed, to any persons save:

i) The Customer's own employees and then only those employed who need to have the Software or Manuals disclosed to them for the purpose of the operation of the Triscan Systems Limited system, and

ii) Any person expressly authorised by Triscan Systems Limited.

c) The Customer will make known to any of its employees or any other

person to whom the Software or Manuals is or are disclosed that they are confidential and that they owe a duty of confidence to Triscan Systems Limited.

d) The Customer will notify Triscan Systems Limited immediately in writing of any breach of confidence in relation to the Software or Manuals of which it becomes aware.

e) This obligation of confidentiality will not apply to any material which the Customer can show by credible evidence entered the public domain prior to any disclosure by the Customer and otherwise than as a result of breach of any duty.

f) The Customer will at times retain the Software and Manuals under its full and effective control and to take security measures to safeguard the Software and Manuals from disclosure to or use by unauthorised person.

### **23. Modifications and Enhancements**

Save as expressly provided by the Conditions or by the Agreement, Triscan Systems Limited shall be under no obligation to provide modifications, amendments or enhancements to the Products.

### **24. Delay and Force Majeure**

a) Notwithstanding any other term in the Agreement or the Conditions, Triscan Systems Limited shall not be liable for the delay in performing its obligations if such delay is caused by circumstances outside its reasonable control (including without limitation any delay caused by any act or default of the Customer).

b) Delay by a sub-contractor of Triscan Systems Limited shall not relieve Triscan Systems from liability for the delay, save where the delay is beyond the reasonable control of both Triscan Systems Limited and the sub-contractor.

c) Provided that Triscan Systems Limited promptly notifies the Customer in writing of the delay, the reason for it and its likely duration, the performance of Triscan System's Limited's obligations shall be suspended whilst the reason for the delay persists.

d) Triscan Systems Limited shall in any event not be liable for any indirect or consequential loss of income or profits, turnover, good will, data, contracts, use of money or damages caused by or attributable to any delay.

e) Either party may, if the delay persists for 28 days, terminate the Conditions by giving reasonable notice in writing to the other.

f) If termination occurs under the provisions of this clause, neither party shall be liable to the other by reason of such termination save that the Customer shall pay Triscan Systems Limited a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose Triscan Systems Limited may deduct such sum from any amounts previously paid by the Customer under the Conditions and/or the relevant Agreement (the balance of which (if any) shall be refunded to the Customer).

### **25. Cancellation**

a) If the Customer at any time, cancels the Conditions and/or Agreement otherwise than as expressly provided by the Agreement and/or the Conditions, then the Customer shall be liable to pay Triscan Systems Limited for any work done or Products installed up to the date upon which Triscan Systems Limited received notification of the cancellation, together with an additional sum amounting to 25% of the total sum that would have been payable to Triscan Systems Limited under the terms of the Agreement and/or Conditions had Triscan

Systems Limited fulfilled all of its obligations there under.

b) Triscan Systems Limited shall be entitled to invoice the Customer for such sums as soon as it receives notice (in whatever manner) of such cancellation.

### **26. Customer's Warranty**

The Customer warrants that it has not relied upon any oral representation made by or on behalf of Triscan Systems Limited or upon any description, illustration or specification contained in any catalogue or publicity material produced by Triscan Systems Limited which are only intended to convey a general idea of the Products and services mentioned therein.

### **27. Waiver of Remedies**

No forbearance, delay or indulgence by either party in enforcing the provisions of the Agreement or the Conditions shall prejudice or restrict the rights of that party nor shall a waiver of any rights to operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

### **28. Notices**

All notices shall be in writing and shall be sent to the address of the recipient set out in the Agreement or to such other address as either party shall notify to the other in writing in accordance with this clause. Any letter may be delivered by hand, first class pre-paid letter, fax or telex and shall be deemed to be delivered if sent by hand when delivered, if by first class post 48 hours after posting and if by fax or telex when despatched provided that in the case of fax or telex a confirmatory copy is immediately dispatched by first class post.

### **29. Miscellaneous**

a) The Conditions and the Agreement shall be governed by and construed in accordance with the laws of England.

b) The headings to the clauses in the Conditions are for convenience only and do not effect the construction or interpretation of the Conditions or the Agreement.

c) Any dispute that arises between the parties concerning any Agreement or the Conditions shall be determined by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that Court for such purposes.

### **30. Assignment**

Neither party shall assign, transfer or otherwise dispose the Conditions and/or the Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any assignment in violation of this clause is void. Notwithstanding the foregoing, the Customer acknowledges and confirms that Triscan Systems Limited shall be free at any time to sub-contract or delegate all or any part of the Services to any other party.

### **31. Right of Third Parties**

A person who is not a party to the Agreement or the Conditions is not entitled to enforce any of its terms under the Contracts (Right of Third Parties) Act 1999 except where the Agreement or the Conditions expressly provide that such a person is entitled to enforce any of its terms.