

**PRO DRIVE IT LIMITED**  
**Headley House, Parklands**  
**Railton Road**  
**Guildford, GU2 9JX**

**TERMS AND CONDITIONS OF SUPPLY**

**March 2008**

These are the standard terms on which hardware ("Hardware") and third party software ("Software") ("Products") and services ("Services") are supplied by Pro Drive iT to the customer ("Customer") at the Site for the prices and/or licence fees ("Charges") as further specified in these terms and conditions and associated Schedule.

**1. Order Acceptance**

- 1.1 Unless otherwise expressly agreed by Pro Drive iT in writing, these terms and conditions will apply to any orders from the Customer for Products or Services, and will supersede any other terms and conditions referred to, offered, or relied on by the Customer. Specific terms and conditions of Pro Drive iT relating to Products or Services will prevail over these conditions in the event of any conflict and also, in respect of the Software to the conditions of its third party licence agreement. Subject to this, no variation to these terms will be binding unless signed by a director of Pro Drive iT.
- 1.2 Any order placed with Pro Drive iT by the Customer will constitute an offer to Pro Drive iT subject to these terms and conditions and will be subject to acceptance by Pro Drive iT at its above address.

**2. Delivery and Risk of Loss**

- 2.1 Each delivery of Products under this Agreement will be deemed to constitute a separate agreement to which these terms and conditions will apply, except that failure or defect in any delivery will not entitle the Customer to repudiate the Agreement nor to cancel any subsequent deliveries.
- 2.2 Pro Drive iT will schedule delivery for the date notified to the Customer, but delivery may be postponed because of conditions beyond Pro Drive iT's reasonable control, and in no event will Pro Drive iT be liable for any damages for delay in delivery. Time shall not be of the essence.
- 2.3 The Customer will make the site in the UK at which Products are to be delivered ("the Site") available for inspection by appropriate Pro Drive iT staff at an agreed time during a period of 30 days before the scheduled delivery date, if so required by Pro Drive iT.

- 2.4 Delivery will be made during normal working hours to the Site as agreed with the Customer.
- 2.5 If the Customer refuses or fails to take delivery of Products, delivery shall nevertheless be deemed to have taken place for the purposes of Pro Drive iT's rights to payment, and Pro Drive iT will be entitled to store Products at the Customer's risk and expense, including all transportation charges.
- 2.6 Risk will pass to the Customer at the time of delivery. Responsibility for insuring the Products is therefore the Customer's from the time of delivery. Title to Hardware only will pass to the Customer when all invoiced Charges due to Pro Drive iT have been paid in full. Software supplied by Pro Drive iT is not sold but supplied on the basis of its licensor's terms and conditions of use, with which the Customer must agree and comply.
- 2.7 The Customer must notify Pro Drive iT of any claim for shortages or for damaged Products within 7 days of delivery.

### **3. Hardware**

- 3.1 The Customer will be solely responsible for installation and training not included in the Charges and not ordered by the Customer, in which case Pro Drive iT disclaims any liability in this connection.
- 3.2 Where the Hardware includes data communications equipment, and data transmission speeds are given, these are at all times subject to any conditions of the applicable telecommunications utility supplier relating to the capability of any of that supplier's equipment to which the Hardware is linked.
- 3.3 Acceptance will take place at the Site when Pro Drive iT demonstrates that the test procedures, diagnostic and/or verification programs applicable to the Products work properly. If Pro Drive iT's demonstration of the test procedure and/or programs at the Site is delayed for more than 7 working days other than through any fault of Pro Drive iT, the Products will be deemed to be accepted. In the event that any Hardware item should fail acceptance procedures, Pro Drive iT will at its option, replace or repair that item.
- 3.4 All proprietary rights in all patents, designs, copyrights engineering details, schematics, drawings and other similar data relating to the Hardware are and shall at all times remain vested in the manufacturer of the Hardware. The sale of Hardware to the Customer does not convey any ownership or licence to exploit any of the proprietary rights in the Hardware. All operating instructions, manuals and other documentation referencing the Hardware and supplied by Pro Drive iT or the manufacturer of the

Hardware may not be copied or disclosed to any third party without the prior written consent of Pro Drive iT.

**4. Software**

4.1 Pro Drive iT will run such commissioning tests as it considers necessary to ensure that the Software is installed correctly. Upon completion of these tests, the Software will be deemed to be accepted.

4.2 Copyright subsists in all Software including its documentation. No rights in intellectual property in the Software, including its documentation and any updates or enhancements are granted to the Customer. TITLE TO SOFTWARE DOES NOT TRANSFER TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

4.3 Pro Drive iT does not directly license the Customer for third party Software. The Customer undertakes to comply with any third party Software conditions notified to it on or before delivery of any Software, including entering into and complying with licence agreements and other agreements with the third party prior to the Customer using the Software concerned, and to indemnify Pro Drive iT at the suit of a third party Software owner as a result of any breach by the Customer of such conditions.

**5. Charges**

5.1 The Charges for Products and/or Services supplied under these terms and conditions will be as agreed between the parties, and are exclusive of Value Added Tax, which will be added in accordance with prevailing legislation. Pro Drive iT reserves the right to increase the Charges from time to time.

5.2 Pro Drive iT reserves the right by giving notice to the Customer at any time before delivery to increase the Charges to reflect any increase in the cost to Pro Drive iT which is due to any fact beyond its control such as, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other cost of manufacture, any change in delivery dates, quantities or specifications requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give adequate information or instructions.

**6. Payment**

6.1 Following acceptance of the Customer's order by Pro Drive iT, Pro Drive iT will invoice the Customer for the Products and/or Services. The total Charges invoiced will be due

and payable by the Customer to Pro Drive iT 14 days from the invoice date, unless otherwise agreed in writing.

- 6.2 All Charges are exclusive of expenses reasonably incurred which will be chargeable in addition.
- 6.3 All Charges, including expenses where applicable, are exclusive of Value Added Tax and any similar taxes, which will be applied in accordance with prevailing legislation in force at the tax point date.
- 6.4 All invoices are payable net 14 days from receipt. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the statutory rate applicable as well after as before any judgment, and independent of such judgment. This interest will accrue on a daily basis and be payable on demand.
- 6.5 Notwithstanding the above provision for late payment, in this event Pro Drive iT may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.
- 6.6 If Pro Drive iT becomes entitled to terminate this Agreement for any reason, any sums then due to Pro Drive iT will immediately become payable in full.

**7. Rescheduling or Cancellation**

- 7.1 If the Customer cancels all or any part of an order, or requests changes to the date of shipment or the configuration ordered at least 60 days or more before the scheduled ex-factory shipment date or requested delivery date, whichever is the later, the Charges for the Products will be limited to charges for re-stocking or otherwise as incurred by Pro Drive iT. If the cancellation, rescheduling or change or configuration request is less than 60 days, the Customer agrees to pay a cancellation or rescheduling charge of 5% of the Charges. If the cancellation is less than 40 days, the cancellation charge will be 10% of the Charges. No order changes or rescheduling may be made less than 7 days from the scheduled date of shipment. If orders for Products which have been rescheduled are subsequently cancelled, the cancellation charges will be based on the amount of notice provided in the initial rescheduling of the order or in the cancellation of the order, whichever is less.
- 7.2 In the event of any configuration changes to Hardware, Pro Drive iT reserves the right to revise the scheduled shipment date.
- 7.3 Where delivery is postponed by Pro Drive iT pursuant to clause 7.2, the Customer will be entitled to cancel all or part of the affected Hardware delivery within 7 days of notification by Pro Drive iT of a revised delivery date.

7.4 The parties agree that the charge set out in this clause is reasonable and is intended as liquidated damages and not as a penalty.

**8. Substitution & Modification**

Pro Drive iT reserves the right to supply Products to which improvements, substitutions, modifications or enhancements may have been made.

**9. Warranty**

9.1 Pro Drive iT warrants that it has good title to or right to supply Products.

9.2 If any part of the Hardware proves defective in material or workmanship under normal operation or service, such Hardware will be repaired or replaced only in accordance with the warranty cover provided by the original manufacturer of the Hardware. This warranty does not apply to Hardware to which unauthorised repair or modification has taken place or to Hardware damaged by accident, misuse or misapplication.

9.3 EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE PRO DRIVE IT DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED IN LAW OR OTHERWISE, AND THE ABOVE WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF PRO DRIVE IT FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10. Indemnities and Limits of Liability**

10.1 The Customer agrees that it has accepted these terms and conditions in the knowledge that Pro Drive iT's liability is limited and that the Charges have been calculated accordingly. The Customer is advised to make its own insurance arrangements if it desires to limit further its exposure to risk or if it requires further or different cover. Pro Drive iT will be willing to provide reasonable assistance to the Customer if the Customer requests Pro Drive iT to make enquiries about increasing cover on the Customer's behalf provided that the Customer recognises that this will result in increased charges being passed on to the Customer.

10.2 Pro Drive iT will indemnify the Customer for direct physical injury or death caused by the negligence of its employees acting within the course of their employment and the scope of their authority.

10.3 Pro Drive iT will indemnify the Customer for direct damage to property caused by the negligence of its employees acting within the course of their employment and the

scope of their authority. The total liability of Pro Drive iT under this sub-clause will be limited to £100,000 for any one event or series of connected events.

- 10.4 Subject to clauses 10.2 and 10.3, Pro Drive iT's liability for any breach of this Agreement will be limited in the aggregate of damages, costs, fees and expenses capable of being awarded to the Customer to a refund of the Charges paid by the Customer to Pro Drive iT for the Products concerned. In no event will Pro Drive iT be liable for any costs of procurement of substitute Products.
- 10.5 Except as expressly stated in this Agreement, Pro Drive iT disclaims all liability in contract or in tort (including negligence or breach of statutory duty) to the Customer in connection with these terms and conditions including but not limited to liability for loss of profits whether in the course of the Customer's business or otherwise, or arising from loss of data, and in no event will Pro Drive iT be liable to the Customer for special, indirect, incidental or consequential damages.
- 10.6 The Customer shall indemnify and defend Pro Drive iT and its employees in respect of any liability, claim, loss, damage, cost or expense of any kind caused directly or indirectly, by any negligent act or omission by the Customer, or by any claims arising from loss of data for any reason or any failure by the Customer to maintain adequate current licences for the Software..
- 10.7 The Customer will indemnify Pro Drive iT for any costs, fines or expenses incurred by Pro Drive iT as a result of connection of any Product or apparatus of any telecommunications utility Pro Drive iT in breach of any statutory regulations through no fault of Pro Drive iT.
- 10.8 The parties agree that the Customer is the best judge of the value and importance of the data held on the Customer's computer systems, and the Customer will be solely responsible for:
- (a) Instituting and operating all necessary back-up procedures, for its own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason;
  - (b) Taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.

## **11. DISPUTE RESOLUTION**

- 11.1 Any dispute arising in connection with this Agreement shall in the first instance be referred to a Board level director of each party for discussion and potential resolution within 7 days of the date of referral. Neither party may initiate any legal action until this action has been carried out unless one party has reasonable cause to do so in

order to avoid immediate damage to its business or to preserve any right of action it might have. This clause will not apply in respect of any application to a court having jurisdiction in respect of a preliminary injunction in order to protect its interests.

- 11.2 Subject to clause 11.1 any dispute between the parties about any matter relating to the performance of this Agreement (other than in relation to the payment of any money) which cannot be resolved by the parties within 20 days of the date of referral referred to above, will first be referred to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith. If the parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre for Effective Dispute Resolution ([www.cedr.co.uk](http://www.cedr.co.uk)). Unless otherwise agreed, the parties will share equally the costs of mediation, and the use of mediation will be without prejudice to the rights of the parties in all respects if the mediation does not achieve an agreed resolution of the dispute.

## **12. Confidentiality**

The Customer will keep confidential and not disclose without Pro Drive iT's written consent any confidential information which it may obtain. The Customer will take all reasonable steps to ensure that its employees and ex-employees are bound by the same obligation.

## **13. Termination**

- 13.1 This Agreement may be terminated immediately by notice in writing:
- (a) By Pro Drive iT if the Customer fails to pay any sums due under this Agreement by the due date notwithstanding any other provisions for late payment in this Agreement;
  - (b) By either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the same (if capable of remedy) for a period of 30 days after written notice of the breach by the other party;
  - (c) By either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over

all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

13.2 Any termination of this Agreement under this clause will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

13.3 Such termination under this clause 13 will be without prejudice to any accrued rights and outstanding obligations of the parties to each other at the date of termination.

**14. Export and Re-Export Limitation**

Having regard to the current statutory or other United Kingdom Government regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the United States Department of Commerce export regulations in force from time to time, and regardless of any disclosure made by the Customer to Pro Drive iT of an ultimate destination for any Products, the Customer will not export or re-export directly or indirectly any Products without first obtaining all such written consents or authorisation as may be required by any applicable Government regulations.

**15. GENERAL CONTRACT PROVISIONS**

**15.1 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement. Each of the parties acknowledges that in entering into this Agreement, it does not rely on and will have no remedy in respect of any statement of fact or opinion not recorded in this Agreement (whether negligently or innocently made), except for any representation made fraudulently.

**15.2 Variations**

No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement.

**15.3 Force Majeure**

Neither party will be liable to the other party for any delay in or failure to perform its obligations (other than a payment of money) as a result of any cause beyond its reasonable control, including but not limited to any industrial dispute. If such delay or failure continues for at least 90 days, either party will be entitled to terminate the Agreement by notice in writing.

#### **15.4 Severability**

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced unless the substantive purpose of this Agreement is thereby frustrated, in which case either party may terminate this Agreement forthwith on written notice.

#### **15.5 Waiver**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

#### **15.6 Rights of Third Parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit under or to enforce any term of this Agreement.

#### **15.7 Assignment**

Neither party shall assign, sub-contract or otherwise deal with this Agreement or any rights and obligations under this Agreement without the prior consent of the other party.

#### **15.8 Notices**

Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally or by first class post, and in the case of post will be deemed to have been given 2 working days after the date of posting. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement, and must be backed up by email addressed to the Customer Representative at the email address set out in the Services Schedule or to the Managing Director of Pro Drive iT at [support@prodriveit.co.uk](mailto:support@prodriveit.co.uk) respectively.

#### **15.9 Governing Law and Jurisdiction**

This Agreement is governed by and construed according to English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.