

APPENDIX C

OSPL Nederland B.V. TERMS AND CONDITIONS FOR THE SUPPLY OF COMPUTER HARDWARE AND SOFTWARE

1. Definitions and Interpretation

1.1 The following are the standard terms and conditions under which **OSPL Nederland B.V.** ("the Company") having a registered office at: **Lage Zijde 5, 5626 DL Eindhoven, The Netherlands**, sells computer hardware, licences computer software and supplies related services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.2 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Acceptance Certificate" means a document to be used in conjunction with the supply of Products to be signed by the Customer on delivery indicating their acceptance of that delivery;

"Agreement" means any agreements entered into between the Company and a Customer to which these standard Terms and Conditions apply;

"Customer" means the individual, business, or other organisation with whom the Company contracts;

"Supplier" means any supplier of Products or Services to the Company;

"Products" means computer hardware, software and associated equipment that may be supplied by the Company; and

"Services" means any service supplied by the Company.

1.3 Any reference to a day or days refers to business days - that is any day which is not a weekend or public or National holiday in the Netherlands or in the UK.

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

2. Customer Orders

2.1 Customer orders, if accepted by the Company, shall be subject to these Terms and Conditions and to the availability of all relevant Products and Services.

3. Price Lists

3.1 Price lists, catalogues and any other promotional material supplied by the Company do not constitute contractual offers capable of acceptance. Subject to sub-clause 4.3 of these Terms and Conditions, prices shown in any such materials may be subject to change at any time prior to the entry by the Company and the Customer into a binding Agreement.

4. **Quotations**

- 4.1 All quotations are deemed to be subject to these Terms and Conditions and shall be valid for **30 days** unless otherwise stated on the quotation.
- 4.2 The Company reserves the right to withdraw or amend any quotation prior to an agreement being placed against it.
- 4.3 The Company reserves the right to withdraw or amend any quotation following the Agreement where:
 - 4.3.1 Products or Services are withdrawn by the Supplier;
 - 4.3.2 the Supplier increases the charges for Products or Services to the Company; or
 - 4.3.3 Specifications of Products or Services are varied by the Supplier.

5. **Product Specifications**

- 5.1 The Company shall promptly advise the Customer of variations to Product specifications following formal notification to the Company of such variations by the Supplier.
- 5.2 Where changes to Product specifications significantly alter the price or fitness for purpose of the Products the Company shall notify the Customer immediately and the Customer will either agree to take alternative Products of the same/similar specification, functionality and industry standards or will be entitled to cancel the Agreement without incurring any financial costs to the Company.

6. **Hardware and Software Products**

- 6.1 Products shall be supplied by the Company to performance specifications for such Products as defined by the Suppliers.
- 6.2 The Company provides, as standard, **a 1-year** Return to Factory warranty on all its hardware products. Whereas the Company, subject always to the provisions of clause 18, gives no warranty to the Customer in respect of software that is purchased by the Company from a Supplier for resale to the Customer but shall take reasonable steps to assign to the Customer any warranties and guarantees that it has been granted by the relevant Supplier.
- 6.3 Unless otherwise specified in the Agreement, the Company shall only deliver non-modifiable and executable run-time versions of Software. The Customer must comply with the terms of the Supplier's software licenses and the Company will ensure that these are made available to the Customer at the time of quotation.

7. **Delivery and Acceptance**

- 7.1 Unless it is agreed otherwise delivery shall be to the Customer's address as specified in the Agreement.
- 7.2 The Company shall not be liable for any shortfalls in delivery unless a claim in

writing is made by the Customer within **20-days** of delivery. Subject to clause 18, in circumstances where the Company has attempted to physically deliver Products to the Customer and the Customer is unable or unwilling to accept such delivery, the Customer will be charged for the cost of the failed delivery in addition to any and all subsequent attempts. If the Customer is unable to accept delivery, a new date shall be set by mutual agreement of the parties. If the Customer is unwilling to accept delivery, the parties shall seek to vary the Agreement as appropriate by mutual agreement or the Customer shall seek to terminate the Agreement in accordance with Clause 19 of these Terms and Conditions.

- 7.3 The Customer shall have the right to inspect the Products within a reasonable time after delivery and if, in the reasonable opinion of the Customer the Products are unlikely to conform to the requirements or specifications that it has requested, the Customer shall inform the Company who will at its own expense, take action to ensure conformity to the reasonable satisfaction of the Customer. The omission of the Customer to show any defects or exclusions on the Company's Acceptance Certificate will not waive the Customer's rights to the remedies in respect of the Products.
- 7.4 Acceptance of a delivery requiring an Acceptance Certificate is deemed to occur on the signing of the Certificate on the date of delivery, which date shall be recorded on the Certificate.
- 7.5 The Company shall on the signing of the Acceptance Certificate be entitled to invoice the Customer.
- 7.6 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Customer has the right to reject the Products and Services the Company shall undertake to remedy the defects and exclusions at its own cost without delay.

8. **Warranty**

- 8.1 Subject to Clause 6.2 of these Terms and Conditions and in respect of Product which is directly produced by the Company or Services provided directly by the Company. The Company shall in accordance with normally accepted professional standards make good as quickly as is reasonably possible and at its own expense any defects identified on any relevant Acceptance Certificate or which develops during a period of **1-year** after delivery of the Product or performance of the Services. [Further extended warranties can be purchased for an up-front fee].
- 8.2 In addition to the Product warranty, where applicable, the Company provides a Lifetime warranty with respect to the TEMPEST integrity of the TEMPEST product given that the product has been maintained by an OSPL trained engineer using OSPL approved spare parts and finally, that the tamper-evident seals remain intact.
- 8.3 All warranties exclude, misuse, abuse and damage, [MAD]. Should any defect be deemed to be the result of MAD, then the rectification will be chargeable.
- 8.4 The Company does not warrant that the Products are free from minor errors not materially affecting performance. Such errors shall not be rectified in the absence of a prior written agreement to the contrary.
- 8.5 The undertaking given in this Clause shall not apply if the Product has been altered by any party other than the Company or has been operated or run on

any platform or in any environment inappropriate for the Product.

9. Return of Products

- 9.1 In any circumstance where the Company agrees to accept return of Products for any reason then the Customer shall:
 - 9.1.1 advise the Company of the reason(s) for the return of Products.
 - 9.1.2 obtain a **Returns form and Returns Code** from the Company prior to any return of Products.
 - 9.1.3 complete and return to the Company the returns form to arrive at the Company within **7-days of having received it**.
 - 9.1.4 properly pack the Products in the original packing where possible and include a detailed packing list.
 - 9.1.5 take no action to affect any warranties that may cover the Products.
- 9.2 The Company shall be entitled to levy to the Customer a reasonable administration charge amounting to no more than the cost of return delivery and the staff time spend on handling the return of Products, [Charged at €10.00 per item].

10. Title and Risk

- 10.1 Risk of loss or damage in respect of any tangible item shall pass to the Customer on delivery or collection of the item by the Customer or his agent.
- 10.2 The legal and beneficial ownership of Products and/or associated material supplied as part of Products and/or Services shall remain with the Company until payment in full in respect of all such Products and associated material supplied as part of Products and/or Services has been received by the Company in accordance with the terms of the Agreement.
- 10.3 Until such payment is received in full the Company may without prejudice to any of its rights recover or resell any of the Products and/or associated material and may enter upon the Customer's premises by its servants or agents for that purpose.
- 10.4 Where a licence shall be granted by a Supplier and/or the Company to the Customer then the Customer shall not have the benefit of the licence until payment in full has been received by the Company.

11. Charges

- 11.1 The Company shall render to the Customer an invoice or series of invoices in **Euros €** pursuant to the supply of Products and Services.
- 11.2 Charges specified in the Agreement do not include Value Added Tax which, if applicable, shall be added at the rate in force at the time of supply.
- 11.3 Unless specified in the Agreement and subject to Clause 7 of these Terms and Conditions:
 - 11.3.1 all Products shall be invoiced on the date of delivery to the Customer or collection of Products by the Customer or his agent; and
 - 11.3.2 all Services shall be invoiced in full on completion.

- 11.4 Without prejudice to any other rights the Company may have in respect of any failure by the Customer to pay the charges or other monies payable pursuant to the Agreement, with the exception of invoices which are the subject of a bona fide dispute, the Company may charge interest at the rate **1.5%** above the base rate of the Bank of England from time to time in force, after as well as before judgement on any amount due from the Customer to the Company from the date due for payment until payment is received.
- 11.5 In the case of supply to a Customer outside the UK the Customer shall be responsible for all import levies, customs duties or other similar taxes of whatever nature.

12. **Payment**

- 12.1 The time stipulated for payment shall be of the essence of the Agreement and failure to pay undisputed invoices within the period specified shall, render the Customer in material breach of the Agreement.
- 12.2 Invoices shall be payable in Euros as agreed within any other period stated for a particular charge or invoice but in any event no later than **30-days** of the invoice date.
- 12.3 If payment of any invoice is otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved.

13. **Customer's Obligations**

- 13.1 During the continuance of the Agreement the Customer shall:
- 13.1.1 provide, free of charge, reasonable usage of machine time, communications, stationery, media, suitable working accommodation and access deemed necessary by the Company to fulfil the Agreement and shall provide an appropriate environment or platform to enable the Company to provide the Services or test run any Product and, in particular, the Customer warrants to the Company that the Customer shall provide an environment capable of receiving the Services or Products;
 - 13.1.2 furnish the Company promptly upon receipt of a request such information as the Company may reasonably require for the provision of the Services.
 - 13.1.3 nominate prior to the provision of any of the Services under the Agreement an authorised representative to be its prime point of contact with the Company during the continuance of the Agreement.
 - 13.1.4 ensure the accuracy and validity of all data and technical information provided to the Company.
 - 13.1.5 allow the Company reasonable access to its employees for the purpose of discussion in connection with the Agreement and ensure that its employees cooperate fully with the Company in relation to the provision of the Services.
 - 13.1.6 provide free and safe access to the Location [undefined] as is necessary by the Company to comply with its obligations under the Agreement; and

13.1.7 ensure that equipment provided by the Company for the purpose and provision of the Agreement shall not be modified, changed or removed without prior written permission of the Company. Where such equipment is modified, changed or removed then the cost of restoring or replacing the equipment shall be recovered from the Customer.

14. Performance

14.1 The Company shall comply with any day or dates for despatch or delivery of Products and for the supply of Services as stated in the Agreement. When expedited delivery is agreed to by the Company and the Customer and necessitates overtime or other additional costs, the Customer will be given prior notification of these costs and once this has been agreed by the Customer, work can progress and the Customer shall reimburse the Company for the amount of such overtime payment or other costs and shall pay the same within 30-days of invoice.

14.2 Subject to clause 18, if performance of the Agreement is suspended at the request of or delayed through default of the Customer including, but without prejudice to the generality of the foregoing, incomplete or incorrect instructions, or refusal to accept delivery of the Products or Services for a period of 30-days, the Company shall be entitled to payment at the then prevailing rates for the Services already performed, Products supplied and any other additional costs thereby incurred and the Customer shall pay such sums within 30-days of invoice.

14.3 If laws and regulations, or decisions of any government or governmental agency prohibits the Company from fulfilling its obligations under the agreement, then the Company shall be relieved from the performance of its obligations under the agreement without penalty or liability of any kind.

14.4 When an Export Authorisation is required, Customer shall provide the Company within thirty (30) calendar days after the date of the purchase order or the date of the contract signature (whichever is first), an import license and/or an end-use statement legalised by the competent authorities, as required for obtaining the export authorisation. Furthermore Customer commits to supply all necessary information and documents necessary for the export of the products to the customer.

The company's receipt of such Export Authorisation from the competent authorities is a suspensive condition for commencement of delivery. Delays due to export control assessments or export control authorisation procedures invalidate terms of delivery and dates of delivery.

14.5 The sale & delivery of products by the Company is subject to all decrees, statutes, laws, legislation, rules, and regulations of the European Union which govern export, re-export, or otherwise pertain to the export controls of the European Union or of its individual Member States. Customer hereby agrees to indemnify the Company for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by the Company in connection with any violations of such laws and regulations by the Customer.

14.6 Trade Law Compliance and End-Use. (a) Customer shall comply with all applicable export control, customs, and economic sanctions laws and regulations of the European Union, its Member States, and any other applicable jurisdiction. (b) Customer warrants that the products will be used solely for the stated end-use and will not be used, resold, or re-exported for any illicit or prohibited purpose, including any use connected with weapons of mass destruction, a prohibited military end-use, or any party or destination subject to EU, UN, or other applicable sanctions or embargoes. (c) Customer shall impose

obligations equivalent to this clause on any onward purchaser, recipient, or third party to whom it sells, transfers, or re-exports the products, and shall remain responsible for their compliance. Any breach entitles the Company to suspend or terminate delivery with immediate effect, and Customer shall indemnify the Company for all liabilities, penalties, losses, damages, costs, and expenses arising from such breach.

15. Business Associates and Delegation

- 15.1 The Company may, after first informing the customer, delegate any of its obligations or responsibilities arising out of the Agreement to any of its business associates. Performance or non-performance by such associates shall be deemed to be the responsibility of the Company.
- 15.2 The Customer may not assign the benefit or burden of the Agreement in any way.
- 15.3 At the written request of the Customer the Company may, at its sole discretion, agree to novation of the Agreement. Such agreement must be evidenced in writing.

16. Proprietary Rights

- 16.1 Unless otherwise specified in the Agreement, copyright and all other proprietary rights in the Products and associated documentation and any documentation supplied in respect of the Services and all parts and copies thereof shall remain vested in the Company or, for third party Products, in the Supplier.
- 16.2 In respect of software where the proprietary rights are vested in the Company only a non-exclusive, non-transferable licence with rights to sub-licence to its customers for the purpose for which the software has been made available to the Customer is deemed to be granted by the Company and only then on condition that the Customer fulfils all of their relevant obligations arising out of the Agreement.

17. Liability

- 17.1 The Company shall keep the Customer indemnified in full against all liability, actions, suits, claims, demands, losses, professional fees and expenses) arising out of its acts or omissions and incurred by the Customer as a result of or in connection with:
 - 17.1.1 Any breach of any condition of this Agreement.
 - 17.1.2 Any loss, destruction of or damage to property caused by, relating to or arising from the Products or Services.
 - 17.1.3 Any defect in the Products or Services: any act or omission of the Company or any of the Company's subcontractors occurring as a result of this Agreement except to the extent that the liability arises as a result of the negligent act or omission of the Customer.
- 17.2 Nothing in this Agreement shall exclude or limit liability of either party for death or personal injury caused by its negligence.
- 17.3 Subject to clause 17.2, the Customer's aggregate liability in contract, tort, (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total amount of payments paid by it to the Company in the 12 months immediately pre ceding the cause of action.
- 17.4 Subject to Clause 17.2, neither party will be liable for any indirect, special or

consequential loss, damage, costs, expenses or other claims arising out of or in connection to this Agreement.

18. Cancellation of Order:

- 18.1 The Customer shall not be entitled to cancel any order for Product(s) and/or Service(s) or any part thereof except when Goods and Services are not supplied in accordance with specifications or Agreement provisions and in this event, the Customer may at its discretion and without prejudice to any other rights and remedies available to it, either:
 - 18.1.1 Cancel the Agreement in whole or part and recover any payments made by the Customer.
 - 18.1.2 Reject the Products or Services and return them to the Company at the risk and cost of the Company on the basis that a full refund for the Products or Services so returned shall be paid forthwith by the Company.
 - 18.1.3 Provide the Company with the option to remedy any defect in the Products or Services or to supply replacement Products/Services and carry out any other work to ensure that the Agreement provisions are fulfilled.
 - 18.1.4 Refuse to accept any further deliveries of the Products or Services but without liability to the Customer.

19. Termination

- 19.1 Without prejudice to any other provision contained within these Terms and Conditions or of any Agreement either party may terminate the Agreement by notice in writing in any of the following events:
 - 19.1.1 the other party commits a material breach of the Agreement which is incapable of remedy; or
 - 19.1.2 the other party commits a material breach which is capable of remedy but which the Customer fails to remedy within **14-days** of written notice by the Company specifying the event of default and requiring its remedy.
- 19.2 Either party may by notice in writing to the other terminate the Agreement if the other shall have a receiver or liquidator appointed, shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction), if a Court shall make an order to that effect, if the other party shall enter into composition or arrangement with its creditor(s) or shall become insolvent. Such an event shall be deemed to be a material breach incapable of remedy.

20. Consequences of Termination

- 20.1 Any termination of the Agreement howsoever caused shall not affect any accrued rights or liabilities of either the Company or the Customer arising out of the Agreement;
- 20.2 On termination of the Agreement for any reason, the Customer shall return forthwith to the Company the Products which have not been paid for by the Customer and all copies thereof, the documentation and the media supplied therewith and other items in the possession of the Customer which are the property of the Company.

- 20.3 The Company shall have the option to buy back from the Customer any stocks of Products or parts contained within Products ("Parts") at the same price as the Customer paid for them. To exercise this right the Company must give notice to the Customer of 30 days of termination stating the quantities of Parts that it wishes to buy back. The Customer shall deliver the Parts within 30 days of receiving the Company's notification and the Company shall pay all costs incurred for this including but not limited to, packaging, insurance and carriage of the Parts.
- 20.4 If the Company chooses not to exercise its option to buy back the Products/Parts under the pre-ceding clause, the Customer shall for a period of 12 months following termination of this Agreement, sell and distribute any stocks of the Products/Parts that it may have in store or under its control at that time.

21. Intellectual Property Indemnity

- 21.1 The Company shall indemnify and hold the Customer and its employees from and against all loss and damage and cost and expense resulting from or arising out of any threatened or actual infringement of patents, copyright, registered designs or other intellectual property rights belonging to any party provided that the Customer shall:
 - 21.1.1 notify the Company in writing of any allegation or infringement;
 - 21.1.2 make no admission without the Company's consent; and
 - 21.1.3 at the Company's request allow the Company to conduct and/or settle all negotiations in or prior to litigation and give the Company all reasonable assistance in respect thereof.

22. Confidentiality

- 22.1 The Company and the Customer shall keep confidential the following:
 - 22.1.1 the Agreement and all other information of the other party obtained under, or in connection with, the Agreement; and
 - 22.1.2 all oral communications, representations and information of any kind made by either party or their representatives or advisors pursuant to the conclusion or fulfilment of the Agreement.
- 22.2 The provisions of this Clause 22 shall not apply to:
 - 22.2.1 any disclosure of the information contained in Clauses 22.1.1 and 22.1.2 for which the written agreement of both parties has been obtained;
 - 22.2.2 any information in the public domain otherwise than as a result of a breach of the Agreement;
 - 22.2.3 information that was already in the possession of the receiving party prior to disclosure by the other party; and
 - 22.2.4 information obtained from a third party who is free to divulge the same.
- 22.3 The Company and the Customer shall divulge confidential information only to those employees or its customers who are directly involved in the use or potential use of the Product(s) and shall ensure that such employees are

aware of and comply with these obligations as to confidentiality.

- 22.4 The obligations of the parties as to disclosure and confidentiality shall come into effect on the signing of the Agreement and shall continue in force notwithstanding the termination of the Agreement.

23. Health and Safety

- 23.1 The Customer shall take all reasonable precautions to ensure the health and safety of the Company's employees while on the Customer's premises.
- 23.2 The Company shall not be liable to the Customer in any civil proceeding brought by the Customer against the Company under any Health and Safety Regulations, except where such exclusion of liability is prohibited by law.

24. Notices

- 24.1 Any notice pursuant to the Agreement shall be in writing signed by a Director of the Company or by some person duly authorised by a Director of the Company and shall be delivered personally, sent by prepaid recorded delivery (airmail if overseas) or by facsimile transmission to the party due to receive such notice at the address of the party as shown in the Agreement or to such other address as shall be notified in writing to the other party to the Agreement from time to time.
- 24.2 Any notice delivered personally shall be deemed to be received when delivered. Any notice sent by prepaid recorded delivery shall be deemed (in the absence of evidence of earlier receipt) to be received 48 hours after posting (6 days if sent by airmail). In proving the time of despatch, it shall be sufficient to show that the envelope containing such notice was properly posted.
- 24.3 Any notice sent by facsimile transmission shall be deemed to have been received upon receipt by the sender of the correct transmission report.

25. Arbitration

- 25.1 Subject to the agreement of the parties, if any dispute or difference arises between the parties on any matter relating to or arising out of the Agreement, such a dispute shall be referred in the first instance to the CEO/President of each party respectively for resolution; if resolution does not occur within 60 days, then the parties may agree to refer the dispute to the arbitration of a single Arbitrator to be agreed upon by the parties.

26. Waiver

- 26.1 The rights and remedies of either party under the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the other party nor any failure or delay by the other party in asserting or exercising any such rights or remedies.

27. Severance

27.1 If at any time any one or more clause, sub-clause, paragraph, subparagraph or any other part of the Agreement or these Terms and Conditions is held to be, or becomes, void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted and the validity and/or enforceability of the remaining provisions of the Agreement or these Terms and Conditions shall not in any way be affected or impaired thereby.

28. Variation

28.1 No variation in the provisions of the Agreement shall be of any effect unless made in writing and signed on behalf of the Customer and the Company.

29. Set-Off

29.1 Neither the Company nor the Customer is entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

30. Force Majeure

30.1 In the event that either party is prevented from fulfilling its obligations under the Agreement by reason of any supervening event beyond its control including but not limited to war, pandemic, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 30.2) the party shall not be deemed to be in breach of its obligations under the Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

30.2 Sub-clause 30.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

30.3 Each party shall be liable to pay to the other any sums due at the time of the Force Majeure event or return any sums paid for Products or Services which have not been delivered.

30.4 If and when the period of such incapacity exceeds 3-months, then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

31. Non-Solicitation

31.1 Neither the Customer nor the Company shall during the term of the Agreement and for a period of 6 months thereafter solicit or entice away or endeavour to solicit or entice away from the other any employee who has worked under the Agreement without written consent of the other.

32. Law and Jurisdiction

32.1 The Agreement shall be governed by and construed in accordance with the laws of The Netherlands. Any dispute concerning the agreement, or its interpretation shall be referred to the courts of The Netherlands.