

# ProMaster Software - Terms of Business

## 1. Definitions

- 1.1 "We" "Us" and "Our" shall hereinafter mean ProMaster Limited a company registered in England and Wales number 04260812 trading as ProMaster Software.
- 1.2 "You" and "Your" shall hereinafter mean in each case the business or organisation to whom We supply or offer to supply goods or services or from whom We accept an order to supply goods or services.
- 1.3 "Working Day" shall hereinafter mean any Monday, Tuesday, Wednesday, Thursday or Friday but excluding all commonly-observed public holidays.
- 1.4 "Normal Working Hours" shall hereinafter mean 9.00 a.m. to 5.00 p.m. on Working Days.
- 1.5 "In Writing" shall hereinafter mean any form of written, facsimile or electronic communication that can reasonably be deemed to have been sent by an authorised representative of the first party and received by the second party.

## 2. General

- 2.1 These terms shall apply whenever We supply or offer to supply goods or services to You and whenever We accept an order from You to supply goods or services.
- 2.2 If We have a contract with You for the supply of goods or services then these terms shall apply wherever they clarify or extend the terms of the contract.
- 2.3 These terms can only be modified with Our consent In Writing in which case any of these terms not expressly modified shall continue with full force and effect.
- 2.4 These terms cannot be modified or overridden by any conditions or terms of Your order or by Your terms of business except as provided for in clause 2.3.
- 2.5 These terms may be varied from time to time by Us notifying You of the new or altered terms In Writing. The new or altered terms shall apply from the date of such notification unless We specify a later date.
- 2.6 We never supply goods or services to individual consumers.

## 3. Offers

- 3.1 An offer by Us to supply goods or services to You is either a Quotation or an Estimate or both. Only offers made In Writing that are entitled "Quote" or "Quotation" are Quotations. All other offers by Us to supply goods or services are Estimates.
- 3.2 Quotations are provided in good faith and according to information known to Us at the time. We shall not be responsible for any errors or omissions therein provided that We notify You of each such error or omission within a reasonable time of it becoming apparent to Us. We shall not be responsible for any changes due to circumstances beyond Our direct control including but not limited to changes in Our suppliers' prices or discounts or changes in item availability or delivery dates.
- 3.3 Quotations are "fixed price" only in the sense that We will not exceed the prices stated in a valid Quotation without reasonable cause.
- 3.4 Quotations are valid for thirty days from their first date of issue unless specified otherwise on the Quotation.
- 3.5 Quotations may include elements that are estimated in which case such elements shall not be considered to be part of the Quotation. If a fee rate only is given or if no detailed specification of the work required exists then the consultants' time element shall not be considered part of the Quotation. It is possible for a Quotation to contain only prices or fee rates and not quantities in which case the Quotation shall be a Price Quotation only and any totals given shall be Estimates.
- 3.6 Estimates are provided for budgetary purposes only and do not constitute a formal offer to supply goods or services either at the prices given in the Estimate or at all.
- 3.7 Offers for software development work normally include programming and program testing time only and exclude specification writing, installing, system testing, documenting and user training time unless specified otherwise in Our offer.
- 3.8 Prices and totals normally exclude VAT and additional charges such as delivery charges, collection charges, fulfilment charges, handling charges, insurance charges, duties, taxes, suppliers' expenses, consultants' expenses, travelling costs, communication costs, administration fees and the like unless specified otherwise in Our offer.
- 3.9 Any totals shown in an offer are for mathematical convenience only and do not represent the total of all charges related to the offer.

- 3.10 If a particular consultant is named in Our offer then this is to give You an indication of the skill level of the consultant likely to do the work and for no other purpose.

## 4. Orders

- 4.1 We will accept as Your valid order any instruction or request whether verbal or otherwise made by You or by any person who We might reasonably assume to have Your authority to make such an order. If You prefer We will only accept orders in certain forms or authorised by certain persons provided always that You inform Us In Writing of Your requirements regarding order validity.
- 4.2 Any order that You place with Us is accepted only on the basis that We may increase the total price for any of the reasons given herein and that You shall accept all such increases.
- 4.3 Any order for consulting services that You place with Us is accepted on a time and materials basis only and not on the basis of achieving a particular result unless a detailed specification of the work required is agreed with Us in advance of work commencing.
- 4.4 If You cancel or modify Your order for any reason then You shall be liable to Us for the full price of all goods and services supplied to You or in progress prior to Us receiving Your written cancellation or modification plus any and all other direct costs incurred by Us in relation to Your order plus an administration fee.

## 5. Supply of Goods

- 5.1 All goods are supplied without warranty either express or implied unless covered by the manufacturer's warranty.
- 5.2 If a particular item is not readily available then We reserve the right to supply You with a similar item instead.
- 5.3 Goods supplied to You by Us shall remain Our property until fully paid for. You shall nevertheless be liable for all such goods as soon as they come into Your possession or under Your control.
- 5.4 Goods are supplied "ex-works" unless other delivery terms are specified in Our offer. This means that You are liable for all delivery charges, insurance charges, fulfilment charges, handling charges, duties, taxes, suppliers' expenses and the like.
- 5.5 Services such as installation, configuration and maintenance are available separately and are not normally included in the price of goods supplied by Us.
- 5.6 Goods not normally supplied by Us may be supplied to You on a "cost plus" basis if You request Us to do so. This means that We will charge You the full cost of the goods to Us plus any and all extra charges plus a percentage of the total as a handling and administration fee.
- 5.7 You must notify Us In Writing of any damage, errors or shortages in any delivery as soon as possible and always within three days of the delivery date. Failure to notify Us promptly shall invalidate any claim You may make against Us relating to such delivery.
- 5.8 We reserve the right to charge You a reasonable handling and administration fee if You return goods to Us for any reason. You must obtain a Returns Number from Us before You return any goods.

## 6. Supply of Software

- 6.1 Software is supplied under the same terms as for the supply of goods together with the following additional terms.
- 6.2 All software is supplied under a Software Licence from the author or distributor of the software. This permits and restricts Your use of the software as described in the Software Licence. All proprietary rights and intellectual property rights relating to the software shall remain vested with the author of the software.
- 6.3 We are the sole author of all software that We write including software that We write specifically for You.
- 6.4 Software supplied by Us is generally of three types: Our own software or third party software or trial software. All software supplied without payment by You to Us of a licence fee or on a "trial" basis or on a "loan" basis or on an "as is" basis or any similar arrangement is supplied without warranty either express or implied but otherwise according to the terms of the applicable Software Licence. All other software is deemed to be third party software unless the author is identified as Us when it is deemed to be Our own software.
- 6.5 Our own software is supplied according to the terms of Our Standard Software Licence which is available on request. Third party software is supplied according to the terms of the applicable Software Licence issued by the author or distributor.

# ProMaster Software - Terms of Business

6.6 You may be required to return to Us a Licence Agreement signed by a person authorised by You to obtain Your rights and benefits under the Software Licence. The Software Licence restrictions and obligations shall apply to You whether or not You have signed and returned the Licence Agreement. By loading, copying, running or otherwise using the software You agree to be bound by the Software Licence terms.

6.7 Regardless of whether source code is present in the software You must not modify any software supplied to You except as directed by Us or as described in the software's standard documentation unless You also purchase from Us a separate Source Code Access Licence prior to starting any such modification.

6.8 If You use any software in a way that is beyond the scope of the applicable Software Licence then You must promptly inform Us about each such use and accept all reasonable charges that We may make relating to Your unlicensed use of the software.

6.9 All complex software has faults and therefore much of the software that We supply will have faults. If faults in any software supplied by Us mean that the software is unusable for its intended purpose then Your exclusive remedy is to notify Us of the fault or faults within twenty-eight days of the software being delivered to You. We shall then at Our sole discretion either rectify the fault or faults causing the non-performance of the software or withdraw Your Software Licence and refund any Software Licence fees for the software that You have paid to Us or such proportion of those Software Licence fees as may be appropriate.

## 7. Software Maintenance Services

7.1 Software maintenance services are normally supplied under a separate Software Maintenance Contract. If a separate Software Maintenance Contract does not apply then software maintenance services are supplied under the following terms.

7.2 Software maintenance services are only available upon receipt by Us of advance payment from You for such services and for any corresponding Software Licence fees. We may suspend or withdraw any or all such services without warning or compensation until full payment has been received by Us for the appropriate software and period.

7.3 The initial maintenance period is normally a year from delivery of the software and software maintenance is automatically renewed at the end of each maintenance period for a further year unless cancelled.

7.4 Software maintenance can be cancelled only by either party giving advance notice of cancellation in Writing to the other party. Cancellation takes effect from the next renewal date that occurs at least ninety days after notice of cancellation was properly given. Refunds are never given for unused software maintenance periods.

7.5 We may at Our sole discretion shorten or lengthen the initial maintenance period or any subsequent renewal period by up to six months for reasons of convenience such as to synchronise renewal dates with other software maintenance or with the calendar year.

7.6 The software maintenance fee is normally calculated as a percentage of the current list price of the Software Licence at the time of each renewal. Both the percentage rate and the list price may change from time to time (either by Us or by the author or distributor of the software) and therefore software maintenance fees may vary from year to year. We shall normally relate any increases in software maintenance fees to increases in the costs of supplying software maintenance services and We shall not impose unreasonable increases.

7.7 Failure to purchase software maintenance covering a continuous period from delivery of the software may invalidate Your rights to receive updates or upgrades for the software depending on the policy of the author or distributor of the software.

7.8 The following services are normally included with software maintenance:

- a) Distribution of new general releases of the software as and when these become available;
- b) Notification of faults in and distribution of corrections to the software which We judge as likely to be useful to You;
- c) Advice and support on the telephone or by e-mail during Normal Working Hours regarding the operation of the software once the installation, configuration, implementation, system testing and user training phases have been completed.

7.9 The following items are normally excluded from software maintenance:

- a) User training whether given over the telephone or otherwise;

- b) Recovery of data regardless of the reason for the data loss;
- c) Assistance with installation, configuration, implementation or testing.

7.10 Any services supplied to You that are not covered by prepaid software maintenance services shall be charged to You according to these terms of business.

## 8. Consulting Services

8.1 Consulting services means any work undertaken for You by Our staff or subcontractors including but not limited to installation, configuration, requirements analysis, specification writing, software development, system testing, user training and documentation preparation.

8.2 Consulting services are supplied on a time and materials basis at Our normal fee rates for the time being in force unless otherwise agreed by Us in advance of work commencing.

8.3 Consultants' time is normally charged by the hour and not by the day. Fee rates may be shown as daily rates for purposes of comparison in which case the actual hourly fee rate may be calculated by dividing the daily fee rate by 7½.

8.4 All time spent by each consultant or subcontractor supplied by Us who works for You or with You or according to Your instructions is considered to be chargeable except time that is specifically non-chargeable as defined below. Consultants' time spent travelling or waiting is also considered to be chargeable in certain situations.

8.5 Non-chargeable time is limited to time spent discussing with You or demonstrating to You new products or services, time for remedial work covered by Our warranty and time for work covered by a current software maintenance contract between You and Us. All other consulting time is chargeable.

**8.6 You should always presume that Our consultants' working time is chargeable unless it is clearly stated by Us that it is not chargeable.**

8.7 You shall permit any of Our consultants working for You to receive and to respond to urgent support requests and to make reasonable use of Your telephone, fax, computer and any other resources that they may require. Time spent supporting other clients shall be deducted from the time chargeable to You.

8.8 Chargeable hours are calculated separately for each consultant by adding together each day's chargeable time and rounding the result up to the next hour. An hour is the minimum charging unit.

8.9 Chargeable days are calculated separately for each consultant by adding together each day's chargeable time and rounding the result up to the next half-day. Half a day is considered to represent up to four working hours.

8.10 The minimum chargeable time for a normal day's work is seven hours less any non-chargeable time as defined above. This minimum chargeable time for a normal day's work is increased by one hour to eight hours on each day prior to or following an overnight stopover.

8.11 We are entitled to charge You a cancellation fee for consulting work that has been ordered by You and which You subsequently cancel at short notice. The cancellation fee is calculated as 50% of the lost consulting services revenue less 5% for each Working Day between the day notice of cancellation was given to Us by You and the day the work would have started. We therefore require ten Working Days' notice of cancellation of any consulting work to avoid the possibility of a cancellation fee arising. You would nevertheless be liable for any work already done and for any expenses already incurred.

## 9. Consultants' Travel Time

9.1 We are entitled to charge You for time Our consultants spend waiting or travelling to or from Your location. These charges are made to encourage the productive use of consultants' time and to compensate Us for lost working time. These charges may be avoided or minimised by engaging Our consultants for whole days or series of days.

9.2 Consultants' time spent waiting or travelling is generally chargeable but such time is normally divided between the parties concerned. For example time spent travelling from Our place of work (or the consultant's home) to Your location and back is normally divided equally between You and Us. This means that only half the travelling time would be considered chargeable to You in such circumstances.

# ProMaster Software - Terms of Business

9.3 Consultants' time spent waiting or travelling is fully chargeable to You if Our assistance is requested at short notice or outside Normal Working Hours. On the other hand We do not normally charge for travelling or waiting time that occurs before 9:00 a.m. or after 5:00 p.m. on Working Days.

9.4 Our consultants are expected if possible to be available for travel between 7:00 a.m. and 7:00 p.m. on Working Days. Consultants are not expected to travel at other times but may elect to do so. If You ask Our consultant to travel at other times then the consultant shall be entitled to make reasonable alternative travel arrangements such as arriving later, leaving earlier or stopping overnight and You shall be liable for any additional travel time or expenses incurred.

9.5 If travel occurs between locations with different days of the week, public holidays or time zones then such changes are considered to occur only at the mid point in time on each stage of the journey. In other words a consultant is considered to be in the originating location until half way through the journey from when the consultant is then considered to be in the destination location.

## 10. Consultants' Expenses

10.1 You are liable for the full cost of all reasonable expenses incurred by Us or by Our consultants in the course of supplying consulting services to You irrespective of whether the time is chargeable or not. This includes but is not limited to consultants' travel, accommodation, subsistence and incidental expenses. You must also pay Us an Administration Fee to cover the cost to Us of arranging, financing and reclaiming these expenses. The Administration Fee may be wholly or partially avoided if You both arrange and pay directly for consultants' travel, accommodation, meals and other requisites.

10.2 We may charge You estimated expenses or per diem rates by agreement with You or if We do not have more accurate information when Our invoice is raised. Our car mileage expenses are calculated using HMRC's approved rates for business travel.

10.3 Our consultants shall generally observe Your internal policy regarding the class of travel and accommodation suitable for Management grade staff provided that any such policy is made known to Us and We are kept informed of any changes made to that policy from time to time.

10.4 In the absence of specific instructions from You We may purchase cheaper fixed reservation travel tickets rather than fully flexible tickets if such tickets are available. This generally saves You money but it can result in additional costs if tickets have to be changed or cancelled for any reason. In such circumstances You shall be liable for any and all additional costs incurred by Us or by Our consultants regardless of the reason for the change or cancellation. If You are not prepared to accept liability for these additional costs then You must instruct Us to purchase only fully flexible tickets when travelling to or from Your locations.

## 11. Consultants' Skills

11.1 Our consultants are experienced in various aspects of work regarding the computer systems and software that We supply or support. Each consultant We employ has a different set of skills and none of Our consultants is an expert in every field. Our consultants shall exercise reasonable skill and care in the work that they are asked to do and We will generally try to match Our consultants' skills with the planned work.

11.2 Our consultants shall normally attempt all the tasks that You ask of them even if the consultant concerned is not experienced in that task. If the consultant judges it necessary then another consultant may be called in to advise the first consultant or to do some or all of the work.

11.3 We are not professional advisers and none of Our consultants is qualified to give professional advice concerning accounting, legal, fiscal, tax, customs or similar matters. Our consultants may express an opinion on such matters but it is Your responsibility to verify all important details with the appropriate authorities or with Your own professional advisers.

## 12. Data Security

12.1 Your data are Your responsibility and You must ensure the validity and security of Your data at all times. In particular You must maintain adequate security systems to protect Your data against deliberate or accidental data corruption or loss as well as physical damage to data storage media.

12.2 You must ensure that only authorised and suitably trained users are allowed access to Your data and that such access is restricted to that which is necessary to perform their duties. You must also ensure that unrestricted access to Your data is given only to a few trusted individuals and that such access is closely monitored and supervised.

12.3 You must ensure that adequate security copies of Your data exist at all times. Security copies of important data should be made daily or more frequently. Some security copies should be retained for at least six months and some should be stored at different physical locations.

12.4 You must take all reasonable steps to ensure that Your security systems operate to a high level of effectiveness. In particular You should change user passwords frequently and whenever they might have been compromised. You should verify the integrity of Your data frequently and check that security copies are readable, that back up devices and media are clean and undamaged, that anti-virus software is installed and used, etc.

12.5 Your primary method of data recovery following any sort of hardware or software failure is to restore the data from Your latest security copy. Data recovery is Your responsibility and any data recovery work that You ask Us to do shall be chargeable.

12.6 You should make additional security copies of Your data immediately prior to performing any activity that might result in permanent corruption or data loss including running any program, procedure or process in a particular way for the first time.

12.7 You must maintain a working copy system or database for testing and training purposes and use it to test new software programs, procedures or processes before they are used on Your live data.

## 13. Payment Terms

13.1 Invoices or applications for payment shall be raised by Us according to the payment schedule agreed with You if any. Otherwise We shall invoice You in advance for maintenance services, upon delivery for goods and software and in arrears for consulting services and expenses. In some circumstances We may ask for a deposit or for payment in advance before supplying You with goods, software or services.

13.2 Full payment must be received by Us or into Our bank account by the due date shown on Our invoice. The due date is normally twenty-eight days after the invoice date but We may use a shorter credit period in appropriate circumstances.

13.3 Certain software authors and distributors do not issue permanent software licence keys until they have received full payment from Us. You should therefore pay Us at least six Working Days before You require such software licence keys.

**13.4 If You wish to dispute any invoice from Us then You must notify Us In Writing before the due date on the invoice or within fourteen days of receiving Our invoice whichever is later. Failure to notify Us In Writing of any dispute or claim within a reasonable time shall mean that such dispute or claim is without merit and void.**

13.5 If any payment to Us from You is overdue then We shall be entitled without liability or compensation to delay delivery of goods or software to You or to suspend services to You until payment in full is cleared through Our bank. We shall also apply service charges to each overdue invoice in accordance with the UK's Late Payment of Commercial Debts (Interest) Act 1998 as amended and Late Payment of Commercial Debts Regulations 2002 as amended.

## 14. Limitation of Liability

14.1 To the maximum extent permitted by applicable law We accept no liability for any indirect or consequential loss or damage or for any loss of data, profit, revenue, anticipated savings or business however caused and even if foreseeable or made known Us.

## 15. Severability

15.1 If any provision of these terms is shown to be void or ineffective then all other provisions of these terms shall continue in full force and effect.

## 16. Jurisdiction

16.1 These terms shall be interpreted according to English Law and are subject to the exclusive jurisdiction of the Courts of England and Wales.