

These Terms and Conditions apply to TRC Business Solutions Ltd, Total Retail Control Ltd and Total Retail Control UK Ltd, henceforth referred to as TRC in this document.

Terms & Conditions

This agreement sets out the Terms & Conditions which TRC shall supply products and services to the Customer. These terms cannot be altered unless agreed in writing & signed by both TRC and the Customer.

A. PROVISIONS RELATING TO THE SALE

1. SALE AND PURCHASE

TRC shall sell, and the Customer shall purchase:

- a) Software licenses as listed in the Sales Contract. b) Hardware as listed in the Sales Contract.
- c) Professional Services as listed in the Sales Contract. d) Support Services as listed in the Sales Contract.
- e) Software Assurance as listed in Sales Contract.

2. SOFTWARE INSTALLATION AND DELIVERY

- a) Provided the Customer has complied with the commercial terms detailed in the Sales Contract, TRC will make every effort to deliver the System to the site on the mutually agreed Delivery Date.
- b) Risk in the System will pass to the Customer on delivery to site. The Customer must insure the System from that time.
- c) TRC reserves the right to charge in full for all direct and indirect costs, including but not limited to travel, subsistence, accommodation and professional services charges if the installation is postponed by the customer within a 3 week period of an agreed delivery date.

3. TRAINING

TRC will provide training to the Customer's staff as detailed in the Sales Contract.

4. INSTALLATION OF HARDWARE

- a) TRC will install the Hardware at the Customers Site(s) as detailed in the Sales Contract.
- b) To enable TRC to install the Hardware, the Customer must: i) Have completed any preparatory work agreed with TRC prior to the installation e.g. Networking, Cashier Worktops for POS Hardware. ii) Provide to TRC access to the site during agreed times iii) Provide any labour and equipment to TRC to facilitate the installation on site. iv) Provide a safe working environment. c) TRC shall ensure that its employees observe any regulations set out by the Customer whilst working at the Site.

5. PRICE, PAYMENT AND TITLE

- a) The prices are as detailed in the Sales Contract. All prices quoted are exclusive of VAT. VAT shall be charged at the rate prevailing on the date the invoice is issued.
- b) Payment terms are as detailed in the Sales Contract. TRC reserves the right to delay the date of Delivery of any item or provision of any services if the customer has not complied with the payment terms as detailed on the Sales Contract.
- c) Expenses such as travel, accommodation and subsistence will be charged as detailed in the Sales Contract.
- d) TRC retains title over all goods supplied until paid for in full.

6. WARRANTIES

- a) TRC warrants that:
 - i) TRC has full authority to license the Software as detailed in the Sales Contract to the Customer.
 - ii) The Software provided will, on the date of delivery, perform substantially in accordance with the relevant manufacturers specifications. The Customer confirms it has relied on no other warranty in relation to the performance of the Software.
- c) TRC shall not be liable for any breach of warranty that arises from:
 - i) The improper use, operation or neglect of the Software or the Hardware.
 - ii) The use of the Software on equipment other than Hardware approved by TRC.
 - iii) Any repair, adjustment, alteration or modification to the Software or Hardware other than by TRC.
 - iv) The use of the Software for a purpose other than that for which it was designed.

B. PROVISIONS RELATING TO THE SOFTWARE LICENCE

Customers are subject to the terms and conditions of the End User Licence Agreement(s) specific to the software detailed in the Sales Contract.

C. PROVISIONS RELATING TO SYSTEM SUPPORT

1. PROVISION OF SERVICES

TRC shall provide Support Services as detailed on the Sales Contract.

2. TERM

The Agreement to provide System Support will run for an initial term of one year from signing of Sales Contract. The Agreement will then continue to run automatically after the initial term for successive periods of one year.

Should either the Customer or TRC wish to terminate the agreement, written notice should be given, not less than 3 months before the end of the ongoing period.

3. SOFTWARE SUPPORT PROVIDED

TRC will provide Software Support Services as detailed in the Sales Contract.

4. HARDWARE SUPPORT PROVIDED

TRC will provide Hardware Support Services as detailed in the Sales Contract.

- a) Where TRC are contracted to provide Hardware Maintenance:
 - i) TRC will send an engineer to the Customer's premises in line with the SLA detailed within the Sales Contract. TRC will notify the Customer of the issue and whether it is covered under the terms of the Sales Contract.
 - ii) If possible, TRC will repair the Hardware (including the supply and fitting of replacement parts where necessary) at the Customer's premises.

- iii) If it is not possible to repair the Hardware on the Customer's premises, TRC reserves the right to repair the Hardware on either its own premises or replace the Hardware with equipment of an equivalent specification. If this is necessary, TRC will advise the Customer of its estimate of the time it will take to repair or replace the Hardware, and will keep the Customer informed as to progress.
- iv) In the event that repairs or replacement of the Hardware is excluded for any reason under this Agreement, TRC will notify the Customer immediately of that fact and if possible provide an estimate as to how much it will cost to repair or replace the Hardware. If the Customer wishes TRC to proceed, TRC will carry out the necessary repairs or replacement and will invoice the Customer accordingly.

- b) TRC shall support only the Hardware included in the Sales Contract. TRC may remove any item from cover upon written notification to the Customer if in its reasonable opinion, the item is no longer economic to maintain, or if spare parts for the item are no longer available.

5. EXCLUSIONS

- a) TRC shall not be required to rectify a Software problem, or repair any item of Hardware, should the fault in the System have arisen for any of the following reasons:
 - i) The Customer's neglect or misuse of the System.
 - ii) The use of the Software on equipment other than Hardware provided or approved by TRC
 - iii) The failure by the Customer to implement recommendations in respect of, or solutions to faults previously advised by TRC
 - iv) Any repair, adjustment, alterations or modification of, or addition to, the System by any person other than TRC without TRC's prior written consent.
 - v) Any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Hardware (if supported by a third party).
 - vi) The Customer's failure to take our recommendations for a software upgrade.
 - vii) The Customer's failure to maintain a suitable environment for the system.
 - viii) The Transportation or relocation of the System save where the same has been performed by or under the direction of TRC.
 - ix) The use of defective or inappropriate supplies not provided by the Hardware manufacturer.
 - x) Any defect or error in any software other than the Software or the failure of the System to function through the introduction of a software virus.
 - xi) Any accident or disaster affecting the System including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary.
 - xii) The Customer's failure, inability, or refusal to afford TRC personnel proper access to the System.
- b) System support does not include the provision of any of the following services:
 - i) Installation of any software.
 - ii) Site visits other than pursuant to clauses C3 and C4.
 - iii) Initial set-up of data or data inputting.
 - iv) Transfer of software and data from one computer to another
 - v) Prolonged investigation of errors by the Customer's staff. vi) Training of the Customer's staff in the use of software.
 - vii) Telephone support on software not listed in the Sales Contract.
 - viii) The painting or refinishing of the Hardware. ix) The relocation or transportation of the Hardware. x) Electrical work external to the Hardware.
 - xi) Any modification, alteration or attachment to the Hardware or removal of the same.
 - c) TRC obligation to supply replacement parts free of charge is limited to replacing those parts required to repair any item of Hardware detailed on the Sales Contract. For the avoidance of doubt, TRC shall not supply free of charge any items classed by the Hardware manufacturer as consumable items, including ribbons, print-heads, toner cartridges, developer kits and batteries for any item of Hardware.
 - d) TRC shall upon request by the Customer provide any of the services described in this paragraph at the request of the Customer but shall be entitled to charge for same.

6. CUSTOMER'S OBLIGATIONS

The Customer agrees that it shall throughout the term of this Agreement;

- a) Keep back-up copies of its data in line with recommendations made by TRC
- b) Ensure all staff operating the hardware and software provided have been adequately trained
- c) Grant TRC access to the Customer premises as is required to discharge its obligations under the terms of the Sales Contract.
- d) Make available at the Customer's premises, at no charge to TRC, such facilities as TRC shall reasonably require in order to discharge its obligations including adequate work space, power supplies and equipment.
- e) Provide access to the Equipment for the purpose of inspection and maintenance.
- f) Make available employees of the Customer with appropriate skills, knowledge and authority to assist TRC's staff in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults.
- g) Ensure full co-operation with TRC engineers in the diagnoses of the reason for any malfunction of the Equipment.
- h) Take all reasonable precautions to protect the health and safety of TRC employees, agents and sub-contractors while on the Customer's premises.
- i) Accept that it is a fundamental condition that save with the written authority of a Director of TRC, no third party and no person in the employment of the customer shall service the hardware or software detailed on the sales contract.
- k) If the Hardware has been supplied by a third party, make available the Hardware and supply all documentation and other

information necessary for TRC to diagnose any fault in the Hardware.

- l) Ensure that the environment and supply conditions suitable for the equipment are maintained in accordance with the Equipment manufacturers specification.
- m) Ensure that external surfaces of the Equipment are kept clean and in good condition.
- n) Use only consumables which are approved by manufacturer.

7. CHARGES

- a) The charges for the initial term and the annual support charges payable thereafter in respect of the System shall be as set out in the Sales Contract. Support charges shall not include the cost of any services provided pursuant to clause C5 above.
- b) The charges for the initial term shall be invoiced on delivery of the System and shall be payable within the stated credit terms on the invoice. Invoices for other charges shall be raised immediately after the provision of the relevant services and are payable within stated credit terms on the invoice.
- c) Total Retail Control Ltd reserves the right to charge the Customer interest in respect of the late payment of any support or other charges due under this Agreement at the rate of 2 per cent per month until payment and to withhold the provision of services hereunder until the Customer has paid all overdue invoices in full.
- d) All charges are quoted exclusive of Value Added Tax, which shall be charged at the rate prevailing at the time.

D. GENERAL PROVISIONS

1. LIMITATION OF LIABILITY

This section sets out the limit of the liability of TRC to the Customer for breach of its obligations under this Agreement, or any misrepresentation, negligence or other wrongful act on the part of TRC, its employees or agents, called an "Act of Default". a) TRC shall be liable in full and without limitation for death or injury resulting from its own negligence or that of its employees or agents. b) TRC shall accept liability for damage to the Customer's tangible property caused by an Act of Default up to an aggregate maximum liability of €2,500. c) TRC shall not be liable for any consequential loss arising from an Act of Default. Consequential loss includes loss of profits, loss of goodwill, loss of data and any type of special, indirect or other consequential loss. d) Except as herein expressly stated, TRC shall not be liable for loss or damage arising from any stoppage, breakdown or failure of the equipment. TRC shall use all reasonable endeavor to remedy any stoppage or breakdown or failure as promptly as it is able.

2. CONFIDENTIALITY

a) Each of the parties hereto undertakes to the other to keep confidential all information concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Sales Contract, except that which is:

- i) Trivial or obvious.
- ii) Already in its possession. iii) In the public domain.

b) Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this section by its employees, agents and subcontractors.

3. TERMINATION

a) This Agreement may be terminated;

- i) Forthwith by TRC, if the Customer fails to adhere to the payment terms as detailed in the Sales Contract.
- ii) Forthwith by either party if the other commits any material breach of any term of the Sales Contract.
- iii) Forthwith by either party if the other shall convene a meeting of its creditors or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

b) Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party, nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

4. FORCE MAJEURE

a) Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes, insurrection or riots, embargoes, delays in transportation, container shortages, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority ("Event of Force Majeure"). b) Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure. c) If a default due to an Event of Force Majeure shall continue for more than four weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

5. WAIVER

The waiver by either party of a breach or default of any of the provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same of other provisions nor shall any delay or omission on the part of either party to exercise of, avail itself of, any power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

6. NOTICES

Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by post.

7. INVALIDITY AND SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or

Registered Offices

**TRC Business Solutions Ltd, TRC House, Dundrum Road, Dublin 14, Ireland
Total Retail Control Ltd, TRC House, Dundrum Road, Dublin 14, Ireland
Total Retail Control UK Ltd, 132/134 Great Ancoats Street, Manchester, M46DE, UK**

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unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

8. ENTIRE AGREEMENT

a) TRC shall not be liable to the Customer for loss arising from, or in connection with, any representations, agreements, statements or undertakings made prior to the date of execution of the Sales Contract, other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of TRC in writing or expressly incorporated or referred to in the Agreement.

b) The Customer accepts that the TRC supplied Software was not designed and produced to its individual requirements and that the Customer was responsible for its selection.

c) TRC liability to the Customer to remedy any breach is as exclusively set out in this Agreement

9. ASSIGNMENT AND SUB-LICENSING

The Customer shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the TRC supplied Software without the prior written consent of TRC.

10. ARBITRATION

Any questions or differences which may at any time arise between the parties hereto concerning the provisions of this agreement or the effect thereof or the rights or duties of the parties hereto shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be appointed by the president of the Incorporated Law Society of Ireland and such reference shall be deemed to be for all purposes as submission to arbitration under the arbitration act 1954 or statutory modification or reenactment thereof for the time being in force.

11. LAW

This Agreement shall be governed by and construed in accordance with Irish law and the parties hereto agree to submit to the non-exclusive jurisdiction of the Irish courts.

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