

TERMS AND CONDITIONS FOR RENTAL EQUIPMENT

1. DEFINITIONS

In these terms and conditions ("Conditions") the following expressions shall have the meanings ascribed to them below: (1) "Company" means Netlogix UK Ltd, whose registered office is at 30e Forresters Business Park, Estover Close, Plymouth, England, PL6 7PL; (2) "Contract" means the contract between the Company and the Hirer for the supply and rental of the Equipment (3) "the Hirer" means the legal entity with whom the Contract is made by the Company. Throughout the agreement the term 'Hirer' and corresponding pronouns shall be construed to apply whether the Hirer is male, female or corporate, single or plural, as the case may be; (4) "Equipment" means the hardware, software, manuals, documentation, accessories, or articles or any of them (including any replacements or renewals thereof, additions thereto and substitutions thereof) described in the Schedule; (5) "Company's Premises" means the premises of the Company at 30e Forresters Business Park, Estover Close, Plymouth, England, PL6 7PL, or such other premises as may be notified to the Hirer; (6) "Delivery Date" means the date that the Equipment is collected by the Hirer from the Company's Premises or the date of delivery of the Equipment to the Hirer, whichever is applicable; (7) "Return Date" means the date specified in the Contract as the date for the return of the Equipment to the Company or such other date as the parties may hereafter agree; (8) "Rental Period" means the period commencing on the Delivery Date and expiring on the Return Date. (9) "Schedule" means the schedule to these Conditions issued by the Company.

2. STATUS OF TERMS AND CONDITIONS

(1) These Conditions shall be incorporated in all contracts between the Company and Hirer for the rental of Equipment to the exclusion of all other terms and conditions and communications between the Company and the Hirer. In the case of any inconsistency between these Conditions and the Equipment Schedule the provisions of these Conditions shall prevail. Variations of the Contract shall be effective only if agreed in writing by a director of each party and will then prevail over these Conditions. (2) The Contract constitutes the entire agreement between the Hirer and the Company for the rental of the Equipment and supersedes all prior or other arrangements relating to such rental and no statement, description, information, warranty, condition, or recommendation contained in any price-list, advertisement, documentation or communication or made verbally by any of the agents or employees of the Company shall be construed so as to extend, vary or override any provisions of this Contract in any way.

3. ORDERS

Notwithstanding that the Company may have given a detailed quotation to the Hirer no order shall be binding on the Company unless and until it has been accepted by the Company.

4. DELIVERY

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Company registration number: 4364578 VAT registration number: GB 787 3488 66



All times or dates quoted for delivery of the Equipment are given in good faith but without any responsibility on the part of the Company. Time of delivery shall not be of the essence of the Contract.

5. RENTAL CHARGES

(1) The Contract shall be automatically renewed at the end of the Rental Period unless the Company receives notice in writing from the Hirer not less than thirty working days prior to the end of the Rental Period. Any such renewal shall be subject to the terms of the original Contract. (2) Unless otherwise expressly stated in writing to be firm for a given period, the Company's charges are subject to variation, upon 14 days' prior written notice to the Hirer, to take account of any variations in wages, materials or other costs incurred by the Company since the start of the Contract. The Company accordingly reserves the right to modify its price list and to adjust its charges by the amount of any increase or decrease in such costs. (3) All charges are exclusive of the costs of carriage, insurance and collection (as appropriate) all of which shall be payable by the Hirer.

(4) All charges are exclusive of Value Added Tax which shall be payable by the Hirer at the then applicable rate. (5) The Company reserves the right to increase the rental charges of Equipment to reflect any change in delivery dates, quantities or specifications which is requested by the Hirer, or any delay caused by the Hirer or any failure of the Hirer to perform its obligations for the Equipment or to give the Company adequate information or instructions.

6. PAYMENT TERMS

(1) The Company does not grant credit facilities automatically. Should the Company grant the Hirer credit facilities, payment of all charges shall be made strictly within 30 days of the invoice date. If the Hirer is not granted a credit account then payment is to be made on or before the invoice date. (2) Payment in full shall be due to the Company and the Hirer shall not be entitled to exercise any set-off, lien, counter-claim or cross demand or any other similar right or claim whatsoever. (3) The time of payment shall be of the essence of the Contract. (4) The Company reserves the right to suspend access or services provided by the equipment if payments are not made within the terms specified within this agreement. (5) The Company reserves the right to withdraw credit facilities at any time and without notice. (6) Without prejudice to any other rights it may have the Company is entitled to charge interest on any unpaid invoices at the applicable rate as prescribed in the Late Payment of Commercial Debt (Interest) Act 1988, such interest to run from the due date for payment until the date when payment in full is received, whether before or after judgment has been obtained and the Company may cancel the Contract and suspend further deliveries to the Hirer.

7. SOFTWARE

(1) The title and intellectual property rights in and to any software supplied with or as part of the Equipment, including programs and documentation ("the Software") shall be retained by the appropriate proprietor thereof. (2) The Hirer is granted the right to use the Software only for the term of the Contract. The Hirer's receipt of the Equipment indicates acceptance of the terms of any license for software supplied and the Hirer shall indemnify the Company against any liability, damage, cost or expense which it incurs in relation to any failure by the Hirer to observe the terms of any such license. (3) The Software shall only be used as part of the Equipment with which it is rented and the Hirer undertakes not to copy, in whole or in part (other than for use on such Equipment), alter, adapt, modify or translate the Software nor to communicate the Software to any third party other than those of its employees and agents who are directly engaged in the use of the Software with such Equipment on the Hirer's behalf. (4) Upon the expiration of the Contract (or termination thereof for any reason) the Hirer shall (unless otherwise agreed by the Company in writing) return the Software and any copies thereof to the Company's Premises at its own risk.

The obligations in respect of Software as set out in these Conditions shall survive notwithstanding any termination or expiration of the Contract.

8. OBLIGATIONS OF THE HIRER

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Company registration number: 4364578 VAT registration number: GB 787 3488 66



The Hirer hereby undertakes and agrees as follows:-

(1) to inspect the Equipment immediately on delivery thereto and to notify the Company within 24 hours of delivery by fax or telephone if the Equipment is either defective or otherwise not in accordance with the Contract. If no such notification is given the Equipment shall be deemed to be complete and in good order and condition and fit for the purpose for which it is required by the Hirer and the Hirer shall be bound to accept and pay for the same accordingly; (2) to use the Equipment in a proper manner and with all reasonable care and to operate the Equipment in accordance with any instructions issued for it. (3) not to use the Equipment for any purpose for which it was not designed or intended and not to interfere or tamper with it nor allow any other person to do so unless previously agreed in writing by the Company; (4) to allow the Company or its duly authorised agent or representative upon reasonable notice at any time access to inspect repair, service and collect the Equipment (as appropriate); (5) not to make any alterations, modifications or technical adjustments or make or attempt to make any repairs to the Equipment without the prior written consent of the Company; (6) not to obliterate, move or to deface or cover up any identification plates or marks affixed to the Equipment by the Company; (7) not to affix the Equipment or allow the Equipment to become affixed to any land or building and to take all the necessary steps to prevent title to the Equipment from passing to the owner or landlord of such land or building; (8) not to use or permit the Equipment to be used in contravention of any statutory provision or regulation or in any way contrary to law; (9) that the Equipment shall at all times remain the property of the Company unless sold to the Hirer under a separate agreement in writing; (10) not to sell or offer for sale, assign, mortgage, pledge, sub-let or transfer the Equipment or the benefit of the Contract either in whole or in part; (11) not to move the Equipment to a different address from those to which the Equipment was delivered or remove the Equipment in any manner except as authorised in writing by the Company, and, if so authorised, to give prompt written notice of the change of address or relocation to the Company; (12) unless otherwise expressly stated in the Schedule, to maintain for the duration of the Rental Period comprehensive insurance on the Equipment for its full reinstatement value with a reputable insurance company approved in writing by the Company against all risks of loss or damage (other than those risks for which the Company agrees to insure the Equipment) and also against all risks of third party liability arising out of the hire or use of the Equipment by the Hirer or the presence thereof at the Hirer's premises; (13) to indemnify the Company against any loss, claim or liability suffered or incurred by the Company as a result of any third party claim arising out of the state, condition or use (fair wear and tear excepted) of the Equipment during the Contract or in any way arising out of the Equipment being let under the Contract; (14) that for the purposes of United Kingdom taxation and irrespective of the accounting treatment to be adopted by the Hirer in respect of the hire of the Equipment, the Hirer is not entitled to claim capital allowances in respect thereof; and (15) to pay all licence duties, fees or other charges payable in respect of the Equipment during the Rental Contract whether such duties are charged upon the Company or on the Hire; any such charges paid by the Company will be reimbursed on demand by the Hirer. If the Hirer commits any breach of obligations placed on it by these Conditions the Company may in addition to any legal or equitable remedies available to it immediately terminate the Contract and the Hirer shall indemnify the Company against any liability, loss, cost or expense which the Company incurs in relation to any such breach.

9. RISK OF LOSS OR DAMAGE

(1) Loss of or damage to the Equipment shall not discharge the Contract nor affect the Hirer's liability to make payments under it. Risk of loss of or damage to the Equipment under a Contract shall, unless otherwise expressly stated in the Schedule, be borne by and remain with the Hirer until the Equipment is delivered back to the Company (provided that if it is agreed to check the Equipment at the Hirer's premises prior to collection by a carrier, risk in the Equipment shall pass to the Company upon collection by the carrier).

(2) Where Equipment is at the Hirer's risk pursuant to clause 9(1) and is lost or damaged in transit, the Company shall invoice the Hirer for such loss or damage within 7 days of the loss or damage becoming apparent. (3) Unless it has been expressly stated in the Schedule that the risk of loss of or damage to the Equipment shall be retained by the

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Company, if the Equipment becomes a total or constructive total loss for any reason the Hirer shall pay the Company on demand such sum as equals the manufacturer's then current list price for goods which at the time are the same as or the closest available equivalent to the Equipment. (4) The Hirer shall notify the Company immediately of any event which may give rise to a claim under any insurance policy covering the Equipment and shall not agree the settlement of any claim without the agreement of the Company; if, the Equipment being insured by the Hirer pursuant to clause 8(12), the Equipment is returned to the Company or if the Company recovers possession of the Equipment, the interest of the Hirer in any insurance effected by the Hirer under clause 8(12) shall vest absolutely in the Company who shall be entitled to the full benefit of such insurance including any claims which may be outstanding at the time of such return or recovery of possession; (5) If the Hirer receives any insurance payments from any insurer of the Equipment (whether the Company's insurer or its own) the Hirer shall instruct the insurer that such insurance payments received in respect of the Equipment shall be paid to the Company and the Hirer hereby irrevocably appoints the Company its agent to receive the money and authorises the Company to give a good discharge to the insurer therefore. (6) If it is expressly stated in the Schedule that the Company retains the risk of loss of or damage to the Equipment during the Rental Period, the Hirer shall: (a) not do or refuse to do anything likely to invalidate any insurance maintained by the Company; (b) be responsible for the damage waiver specified in the Schedule but the Company waives its right to recover from the Hirer reimbursement in excess of such amount of the manufacturer's then current list price for goods which at the time are the same as or the closest available equivalent to the equipment provided that the Hirer is not in breach of any provision of these Conditions; (c) if the Equipment is damaged or lost by reason of the Hirer's or its agents', servants' or representatives' wilful damage, negligence or lack of reasonable care, pay the Company on demand such sum which equals the manufacturer's then current list price for goods which at the time are the same as or the closest available equivalent to the Equipment.

10. LIABILITY

(1) The Hirer expressly acknowledges that the Company is not the original manufacturer or supplier of the Equipment, and that the Equipment has been selected by the Hirer as suitable for its purpose. The Hirer accordingly agrees and acknowledges that all conditions, warranties or representations whether express or implied or statutory or otherwise in respect of the Equipment or its fitness for any particular purpose are hereby expressly excluded to the fullest extent permitted by law; (2) The aggregate liability of the Company to the Hirer in respect of any loss or damage whether arising in contract, tort, for breach of statutory duty or otherwise shall be limited to and shall not in any circumstances exceed the total amount of the rental charges paid or payable by the Hirer to the Company in respect of the Equipment during the Rental Period in which receipt of notification by the Company of the relevant claim was received. (3) The Company shall not in any circumstances be liable whether in contract, tort, for breach of statutory duty or otherwise for any consequential or indirect loss or damage howsoever arising and of whatsoever nature (including, without limitation, any loss or damage to computer programs or data, loss of profit, loss of goodwill, loss of revenue, loss of anticipated benefit, business interruption, management time or third party liability. (4) Notwithstanding anything contained in this Contract the Company shall be liable in full for fraudulent misrepresentation and for any death of or physical injury to any person which is caused by the negligence of the Company or its employees.

11. HEALTH AND SAFETY

The Hirer undertakes to take such steps as may be properly recommended by the manufacturer of the Equipment or may otherwise be necessary to ensure that the operation of the Equipment will be without risk to health and safety.

12. SALE OF EQUIPMENT OFF RENTAL

The sale will become effective at the end of the Rental Period following receipt by the Company of an official purchase order from the Hirer.

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Company registration number: 4364578 VAT registration number: GB 787 3488 66



13. RETURN OF THE EQUIPMENT

(1) The Hirer shall be responsible for the return of the Equipment (together with the packing materials thereof) to the Company's Premises at its own risk on or before the Return Date and the Equipment shall be returned unencumbered and in good repair, condition and working order (fair wear and tear excepted). (2) The Company will notify the Hirer of any items not returned off rental including cables, manuals and other accessories. Any items not returned within 31 days of any such notification will be invoiced at the manufacturer's then current list price for goods which at the time are the same as or the closest available equivalent to such items. (3) All packing materials are chargeable at the Company's then prevailing rate if not returned or if found to be damaged when returned to the Company. (4) If the equipment is not returned on the required date then the hirer will be liable for continuing rental costs and if the company has to collect the equipment the hirer is also responsible for the costs associated with the collection.

14. TERMINATION

(1) Without prejudice to its other rights, the Company may by notice in writing terminate the Contract forthwith upon the occurrence of any of the following events:-

- (a) if the Hirer shall be in breach of any of its obligations under the Contract; (b) if any person takes steps to seize attach arrest or sequester the Equipment;
- (c) if the Hirer ceases or threatens to cease to carry on business or is subject to any legal proceedings in which its solvency is in question or has any process of distress or execution levied against it or calls a meeting of, or enters into any composition or arrangement with, its creditors; (d) if the Hirer being an individual shall die or being a partnership shall be dissolved or if the Hirer (or where the Hirer is a partnership if any partner thereof) shall suffer an interim order (within the meaning of the Insolvency Act 1986 or any statutory modification or re-enactment thereof) to be made against him or suffer the making of a statutory demand or commit any act of bankruptcy or if a bankruptcy petition be presented against him; (e) if, the Hirer being a company, any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator shall be appointed over the whole or any such part of such company's undertaking, property or assets. (2) Termination of the Contract for any reason shall be without prejudice to any rights of the Company which have accrued hereunder up to the effective date of termination.
- (3) Upon termination of the Contract the Hirer shall:-
- (a) at its own risk and expense forthwith disconnect, return or redeliver the Equipment to the Company's Premises and if the Hirer shall fail to return or redeliver the Equipment within a reasonable time of being requested so to do the Company may forthwith and without any notice retake possession of the Equipment and for this purpose the Company is hereby licensed to enter into and upon any premises occupied by or under the control of the Hirer; and (b) without prejudice to the Company's rights to claim damages, become immediately liable to pay to the Company all arrears of rental charges and other monies accrued due and unpaid for the term of the Contract together with interest thereon at the rates set out in Condition 6(5) and any costs and expenses incurred by the Company in locating, repossessing recovering or restoring the Equipment or any payments due under the Contract.

15. CANCELLATION

(1) Save as provided in Conditions 15 and 18(2) hereof the Contract may only be cancelled prior to the delivery of the Equipment by the agreement in writing of both parties and upon the payment to the Company of such amount that may be necessary to indemnify the Company against all loss (including without limitation loss of profit and the cost of all labour and materials used or appropriated to the Contract) resulting from the said cancellation. (2) Without prejudice to condition 16 (1) the Company also reserves the right to make a cancellation charge equal to 15% of the rental charges due hereunder. (3) Once the Equipment is delivered the Hirer must pay for the whole of the agreed Rental Period even if the Equipment is returned early.

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Company registration number: 4364578 VAT registration number: GB 787 3488 66



16. NOTICES

Any notice to be given by either party to the other shall be in writing and may be served either by delivering it by hand or sending it by first class post or facsimile transmission in the case of the Company to the Company's Premises and in the case of the Hirer to the address appearing in the Contract as the relevant address for the despatch of invoices or such other address as the Hirer may from time to time have communicated to the Company in writing for this purpose. Service by delivery by hand shall be deemed to be effected upon delivery to the relevant address, service by first class post 3 days following the date of posting and service by facsimile transmission upon transmission of the relevant communication.

17. EQUIPMENT FAILURE

(1) In the event of any failure of the Equipment the Hirer shall forthwith provide the company with a written notice specifying the said failure. (2) Should the Equipment failure prove to be due to misuse or the fault of the Hirer in anyway including but without limitation due to the Hirer's existing equipment, the company reserves the right to pass on the full costs of repair including any labour charges to the Hirer which shall be payable by the Hirer to the company in accordance with these Terms. (3) In the event of equipment failure the company shall use best endeavours to repair or replace said equipment with the same or comparable, within a reasonable amount of time but in any event within 3 working days of the fault being reported to the company. If a fault is reported but not found then engineer cost will be liable for payment at the companies normal rate.

18. GENERAL

(1) The Company may assign the Contract or sub-contract the whole or any part thereof to any person firm or company but the Hirer shall not assign the Contract or any of its rights or obligations hereunder without the prior written consent of the Company. (2) The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in obtaining or delivering the Equipment by the normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lockouts or any other form of industrial action, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant machinery or shortage or unavailability of raw materials or labour from normal sources of supply. (3) No waiver by the Company of any breach by the Hirer of its obligations hereunder shall constitute a waiver of any subsequent breach thereof. (4) If in any particular case any provision of this Contract shall be held to be invalid, unenforceable or shall not apply to the Contract then the remaining provisions shall continue in full force and effect. (5) Where two or more persons are a party to the Contract as the Hirer the liability of such persons shall be joint and several. (6) The Contract shall be governed by and construed in accordance with English Law. The Hirer hereby submits to the exclusive jurisdiction of the English Courts provided that (and without prejudice thereto) the Company shall be entitled to apply for any provision of conservatory measures or interim relief in any other court having jurisdiction

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