

Positiv-IT Website - Terms of Business

Please read this Terms of Business carefully. By submitting an order to Positiv-IT, you are deemed to accept this Agreement. Please scroll through this screen, read the Agreement and print a copy for future reference.

Agreement acceptance procedure: By checking on the “accept” box which follows this Agreement and/ or submitting an order to Positiv-IT and/ or by installing Software into computer hardware memory and/ or using Software, you indicate acceptance of this Agreement.

Agreement rejection procedure: You must read this Agreement carefully before performing any action, which are noted prior, which would indicate your acceptance of this agreement. If you do not accept this Agreement, you should leave the accept check box clear and/or not install or use Software. You should also destroy any unlicensed copies of the Software which might be in your possession.

This Website is operated by Positiv-IT Limited (registration number 6382507) with its registered office at

81 Fairwater Grove East, Llandaff, Cardiff, CF5 2JT

If you have any comments please telephone us on

+44 (0)870 803 4922, fax us at +44 (0) 870 803 4933, write to us at our registered office address or email us at customercare@positiv-it.co.uk

1. Definitions

1.1 In this Agreement the following definitions shall have the following meanings:

“**Company**” Positiv-IT Ltd, here after referred to as Positiv-IT.

“**Customer**” You or any person/s authorised to enter your organisation into a legal contract whereby Positiv-IT will supply, software, Goods, Consumables or Services .

“**Agreement**” this Terms of Supply/ Licence.

“**[Advanced] Version**” Software [named as such] upon the Website which may be supplied subject to payment by you of a Licence Fee.

“**Consumables**” any other item that is sourced from or otherwise approved by Positiv-IT for use in conjunction with Software and or Hardware

“**Customer Facilities**” means all hardware, software, ancillary equipment, telecommunications, storage and other facilities owned or controlled by you.

“**Documentation**” any Positiv-IT approved and released specifications, user instructions and other literature supplied to you.

“**Download**” the transfer of Software to Customer Facilities via the Website.

“Goods” any Positiv-IT goods (other than Software and including, without limitation, Consumables) requested by you and mutually agreed to be supplied by Positiv-IT.

“Services” any Positiv-IT service (in isolation or in conjunction software or goods supplied or requested) requested by you and mutually agreed to be supplied by Positiv-IT.

“IP Right” any copyright, patent, registered design, trademark or other intellectual property right (or applications therefore) of whatever nature subsisting anywhere in the world.

“Licence” means the Licence granted by Positiv-IT to you for the right to Use Software in conjunction with Consumables, Goods or in isolation.

“Licence Fee” the sum, quoted and agreed, shown on the Website from time to time, which is payable by you to Positiv-IT in consideration of the grant of the Licence.

“New Version” any new version of the Software offered by Positiv-IT from time to time.

“Remedial Item” means a release of support or diagnostic Software/Hardware which, upon commencement of Use by you, will be deemed part of the Software/Hardware.

“Support Services” services in the nature of support supplied to you by Positiv-IT under this Agreement.

“Training” services in the nature of software training supplied to you by Positiv-IT under this Agreement.

“[Trial] Version” Software [named as such] upon the Website which is available for Download and which will operate for a limited period of time only.

“Use” means use of the Software/Hardware for your internal business requirements and only in conjunction with Consumables.

“Software” any software supplied or licensed to you by Positiv-IT including without limitation Freeware Version, Trial Version and Advanced Version.

“Website” the website located on the internet at <http://www.positiv-it.co.uk> or such other location as used or approved by Positiv-IT from time to time.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 any reference to a clause is to the relevant clause of this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause in which it appears;

1.2.2 the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.3 use of the singular includes the plural and vice versa;

1.2.4 use of any gender includes the other genders;

1.2.5 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

2. Orders

2.1 Positiv-IT makes no offer to supply any goods and/ or services on the Website.

2.2 Any order for goods and/ or services made on the Website by you is subject to acceptance by Positiv-IT and Positiv-IT may conclude a legally binding contract with you for the supply of ordered Goods and/ or Software by accepting your order in accordance with clause 2.3.

2.3 Positiv-IT may accept your order by (the earlier of) either:

2.3.1 supplying written acceptance of your order (acceptance is effective once sent), or

2.3.2 delivering ordered Software (acceptance is effective when Software has been Download) or delivering ordered Goods (acceptance is effective when Goods reach your delivery address).

3. Software Licence

3.1 Subject to payment by you to Positiv-IT of any applicable Licence Fee and upon Download, Positiv-IT shall grant to you a non-exclusive Licence to Use the Software (and related Documentation) on and in conjunction with Customer Facilities and subject to the terms and conditions of this Agreement.

3.2 You shall not (without the prior written consent of Positiv-IT):

3.2.1 use any consumables in conjunction with the Software other than Consumables;

3.2.2 permit any third party to use the Software;

3.2.3 rent, lease, sublicense, sell, assign, pledge, transfer or otherwise dispose of the Software, on a temporary or permanent basis;

3.2.4 translate, adapt, disassemble, decompile, reverse engineer, vary or modify the Software except as permitted by law; and

3.2.5 seek to circumvent any security measures incorporated into the Software.

3.3 Use of the Software is restricted to Use on Customer Facilities.

3.4 Subject to the Copyright (Computer Program) Regulations 1992 you may make only so many copies of the Software as are reasonably necessary for operational security and Use. Such copies and the media on which they are stored shall be the property of Positiv-IT and you shall ensure that all such copies are not used in any other circumstance whatsoever,

other than recovering from a system/software failure which rendered the original installation inoperable, thus replacing the licensed installation.. The Licence shall apply to all such copies as it applies to the Software.

3.5 You hereby acknowledge that you are licensed to Use the Software only in accordance with the express terms of this Agreement and not further or otherwise.

4. Duration of Licence/ New Versions

4.1 The Software Licence shall commence in accordance with clause 3.1 of this Agreement and shall continue in effect:

4.1.1 (in the case of Freeware Version) until the Software is disabled or otherwise until termination of this Agreement;

and/ or

4.1.2 (in the case of Trial Version) until the Software is disabled or otherwise until termination of this Agreement;

and/ or

4.1.3 (in the case of Advanced Version) in perpetuity subject to termination of this Agreement upon which the Licence shall cease to have effect.

4.2 Positiv-IT reserves the right to disable Freeware Version and Trial Version at any time by any means (including without limitation by disablement measures embedded within the Software).

5. Your Obligations

5.1 During the continuance of the Licence you shall:

5.1.1 effect and maintain adequate security measures to safeguard the Software and Customer Facilities from access or use by any unauthorised person;

5.1.2 keep fully secure any copies of the Software in accordance with best computing practice;

5.1.3 maintain a full and accurate record of your copying of the Software and shall produce such record to Positiv-IT upon request at any time;

5.1.4 be solely responsible for the security of all your data and maintain a comprehensive and fully operational backup of all your data;

5.1.5 keep fully secure any password or other Software access code made available by Positiv-IT and/ or created by yourself in setting security and access privileges in the software.

5.1.6 only use Consumables in conjunction with the Software; and

5.1.7 forthwith upon receipt install any update to the Software or Remedial Software supplied by Positiv-IT (which Positiv-IT may supply by any means in its discretion) and which upon commencement of Use shall be deemed to be part of the Software.

6. Services

6.1 Provided that you have only used Consumables in conjunction with the Software and otherwise complied with the obligations upon you and set out in this Agreement, Positiv-IT shall endeavour to (but shall not be obliged to) supply any Support Services and/ or Training requested by you. In the event that Positiv-IT supplies (at its discretion) Support Services and/ or Training to you, such Support Services and/ or Training may be chargeable in accordance with applicable rates to be confirmed by Positiv-IT.

6.2 Unless agreed by Positiv-IT in writing the following matters are not included in Support Services:

6.2.1 rectification of damage caused to the Software/Hardware by your use of consumables (other than Consumables) in conjunction with it;

6.2.2 support of other software, accessories, attachments, machines, systems or devices other than Software;

6.2.3 rectification of lost or corrupted data;

6.2.4 Support Services rendered more difficult because of any changes, alterations, additions, modifications or variations to Customer Facilities;

6.2.5 attendance to faults caused by using Software outside the scope indicated in Documentation or in writing by Positiv-IT or otherwise caused by operator error or omission;

6.2.6 diagnosis and/ or rectification of problems not associated with goods or services supplied or supported by Positiv-IT under this Agreement; and

6.2.7 support rendered necessary due to a failure by you to maintain comprehensive and fully operational back-up of all your data for which you shall be solely responsible.

7. Prices and Payment

7.1 The prices of Software and Goods shown on the Website are expressed in pounds sterling (£GBP)

Unless otherwise indicated exclusive of VAT, and shipping costs where applicable.

7.2 Prices shown on the Website are indicative only, subject to confirmation by Positiv-IT and do not constitute an offer to sell Software or Goods to you at that price. Whilst Positiv-IT will use reasonable endeavours to ensure that prices on the Website are accurate and up to date, Positiv-IT is not responsible for errors that may occur.

7.3 Positiv-IT reserves the right to change the price of Goods and/ or Software shown on the Website at any time.

7.4 You must make payment for Software and Goods in full upon placement of your order on the Website using such payment methods as are made available by Positiv-IT from time to time. [Where you make payment before receipt of an invoice from Positiv-IT, Positiv-IT will transmit an invoice to you as soon as reasonably practicable after payment.]

7.5 Positiv-IT reserves the right to charge interest on any late payment in accordance with the Late Payment of Commercial Debts Regulations 2002. Time of payment by you shall be of the essence of this Agreement.

7.6 You are responsible for all applicable taxes and delivery charges.

7.7 To avoid doubt New Versions shall be subject to such charges as confirmed in writing by Positiv-IT.

8. Warranties and Liability

8.1 Positiv-IT warrants that Software/Goods will correspond to their description at the time of delivery.

8.2 You acknowledge that:

8.2.1 software in general is not error free and irrevocably agree that Positiv-IT shall not be responsible for any error or failure in performance of the Software and that the existence of such errors shall not constitute a breach of this Agreement; and

8.2.2 certain equipment/ software are required in order to operate the Software and it is your responsibility to acquire such equipment/ software at your own risk and any recommendations made by Positiv-IT in respect of such equipment/ software are based only upon manufacturer information and Positiv-IT shall not be responsible for any failure of such equipment/ software, or any software supplied, but not created by Positiv-IT Ltd.

8.3 Notwithstanding clause 8.2.1, in the event that you discover a material error in Software /Hardware which substantially affects your Use of the same and/ or a material defect in Goods and notify Positiv-IT of the error in writing within 30 days of delivery or Download (as applicable), Positiv-IT shall (in its sole discretion) use all reasonable endeavours to correct the error or replace the Software and/ or Goods (provided that such error has not been caused by any act or omission by you, breach by you of your undertakings and obligations hereunder or by Use of the Software with other software or on Customer Facilities with which it is incompatible).

8.4 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of any goods or services provided hereunder will be assumed by

Positiv-IT and except as expressly provided in this Agreement all such warranties, conditions, undertakings and terms are hereby excluded.

8.5 Both parties accept liability without limit for death or personal injury caused by its negligence arising under this Agreement.

8.6 Subject always to clause 8.5 above you irrevocably agree that Positiv-IT's liability shall be limited to the Licence Fee/ Invoice Amount paid by you to Positiv-IT.

8.7 Subject always to clause 8.5 above in no event shall either party be liable to the other for any of the following however and whenever arising:

8.7.1 loss of profits, business, revenue, data, goodwill or anticipated savings; and/ or

8.7.2 indirect or consequential loss or damage.

8.8 Each party agrees that the limitations of liability contained in this Agreement have been considered and agreed between the parties and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977.

9. IP Rights

9.1 The IP Rights of whatever nature in the Goods and Software are and shall remain the property of Positiv-IT or the original creator where Positiv-IT act as a supplier, Positiv-IT reserves the right to grant Licences to use the Software to third parties. You shall not at any time dispute such ownership or right.

9.2 You shall notify Positiv-IT immediately if you become aware of any unauthorised use of the whole or any part of the Software by any person or organisation.

9.3 You will permit Positiv-IT to check the use of the Software by you at all reasonable times and for that purpose Positiv-IT shall be entitled to enter any of your premises (and you hereby irrevocably license Positiv-IT, its employees and agents to enter any such premises for such purpose).

9.4 For the avoidance of doubt the provisions of this clause 9 shall apply to any modification or adaptation of the Software as such provisions are expressed to apply to the Software and you hereby undertake to be bound by and comply with the terms of this Agreement accordingly.

10. Indemnity

10.1 Positiv-IT agrees to indemnify and save harmless and defend at its own expense you from and against any and all claims of infringement of IP Rights affecting the Goods and/ or Software provided that you:

10.1.1 have complied with your undertakings and obligations hereunder; and

10.1.2 have otherwise exercised a reasonable standard of care in preventing such infringement protecting the same failing which you shall indemnify Positiv-IT against all actions, proceedings, costs, claims and expenses incurred in respect thereof.

11. Force Majeure

11.1 Neither party will be under any liability to the other for, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather or the requisitioning or other act or order by any Government department, council or other constituted body.

12. Termination of Licence

12.1 You may terminate the Licence forthwith upon written notice to Positiv-IT.

12.2 Positiv-IT may terminate this Agreement forthwith upon written notice to you if you:

12.2.1 use consumables other than Consumables in conjunction with the Software;

12.2.2 commit any breach of any provision of this Agreement;

12.2.3 permanently discontinue the use of the Software.

12.3 Forthwith upon the termination of this Agreement you shall return to Positiv-IT the Software and all copies of the whole or any part thereof or if requested by Positiv-IT shall destroy the same and certify in writing to Positiv-IT that they have been destroyed.

12.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it effect the coming into force or the 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.

13. Specifications

13.1 All specifications shown on the Website (including descriptions and photographs of Goods and Software) are given for general information purposes only.

13.2 Positiv-IT shall not be responsible for the accuracy or otherwise of such specifications and provides no guarantees in respect of such accuracy.

14. Delivery of Goods

14.1 Subject to acceptance of your order, Positiv-IT will deliver Goods to the delivery address notified at the time your order is placed or otherwise agreed in writing by Positiv-IT.

14.2 You are liable for any delivery costs incurred by Positiv-IT and any other applicable duties, taxes and charges.

14.3 Positiv-IT will use reasonable endeavours to deliver Goods to you within thirty (30) days of the placement of your order.

14.4 You acknowledge that time for delivery is not guaranteed and that Positiv-IT shall in no circumstances be liable to you for any losses, damages or charges incurred by you due to the late delivery of Goods.

14.5 Positiv-IT may require a signature upon delivery of the Goods. If a signatory is not available to sign for Goods then a further attempt to deliver Goods will be made at a later date and you will be responsible for any additional costs incurred.

15. Risk and Title

15.1 Risk of damage or loss to Goods passes to you at the moment Goods are delivered to your premises.

15.2 Notwithstanding the passing of risk in Goods, the title to Goods shall not pass to you until Positiv-IT has received in cash or cleared funds payment in full of all sums due for that and any prior order. Until title to Goods passes to you Positiv-IT may without notice require you to deliver up Goods to Positiv-IT and, if you fail to do so, forthwith enter upon any of your premises (or any third party premises where Goods are stored) and repossess Goods.

15.3 Until you have paid for Goods in full you shall keep all Goods clearly and separately identified by order number.

16. Cancellation

16.1 Provided that you are an individual consumer not buying Goods in the course of business, you have seven working days (excluding Saturday and Sunday and statutory holidays) from the day after the date of delivery of Goods to cancel an order by serving a written notice of cancellation upon Positiv-IT at its registered office address as set out above.

16.2 If you cancel an order, the purchase price (excluding delivery charges and other expenses specified in this Agreement) will be returned to you as soon as practicable and in any event within 30 days of receipt of your notice of cancellation.

16.3 You must return Goods to Positiv-IT undamaged, unopened and in the original packaging and with all related documentation and accessories. If you do not return Goods undamaged Positiv-IT may claim damages equal to the difference between the price of Goods and the value of Goods upon their return. Positiv-IT may charge you any direct costs incurred in returning Goods and preparing Goods for resale.

17. Data Protection

17.1 Positiv-IT always processes personal data in accordance with applicable data protection law and its Data Protection Statement.

18. General

18.1 This Agreement comprises the entire agreement between you and Positiv-IT in respect of the sale of Goods and supply of Software.

18.2 You may not transfer any of your rights and obligations under this Agreement to a third party. Positiv-IT has the right to assign or transfer any of its rights and obligations at any time without notice.

18.3 Positiv-IT reserves the right to vary this Agreement from time to time without notice. You will be deemed to have accepted the varied Agreement if you continue to use the Website, or otherwise contract Good, Consumables, Software and or Services from Positiv-IT after variation.

18.4 None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party in this Agreement.

18.5 Any notice to effect suspension or termination of the whole or any part of this Agreement:

(i) shall be made in writing and either delivered personally or sent by first class recorded delivery to the party to whom the notice is addressed at its address as set out in this Agreement or such other address as one party may specify by notice in writing to the other;

(ii) in the absence of evidence of earlier receipt notice shall be deemed to have been duly given:

(a) if delivered personally, when left at the address referred to in clause 18.5 (i);

(b) if sent by first class recorded delivery, at the time recorded by the delivery agent.

18.6 For the avoidance of doubt electronic mail shall be deemed to be “writing” for the purpose of this Agreement but this shall not prejudice the express requirements for delivery of notices under clause 18.5.

18.7 If any provision of this Agreement is held to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

19. Applicable Law

19.1 This Agreement shall be governed by and construed in accordance with English law and each party to this Agreement submits to the exclusive jurisdiction of the English courts.