

## JARRETT & LAM LIMITED TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

- “You, the Customer” a person or company buying products from us.
- “Consumer” a private person buying Products for private use. If you are a consumer, please find your specific rights and exceptions in Section 20.
- “JLC (us, our)” the Product Vendor as identified on your invoice and, where relevant, Service Provider.
- “JLC Branded Product” Hardware or Software products that are marked with the “JLC” or “Jarrett & Lam Consulting” brand.
- “Order Confirmation” formal acknowledgement of Product ordered by you, sent by JLC.
- “Price” stated in Quotation and or Order Confirmation.
- “Product” as described in Quotation and or Order Confirmation, may include JLC-branded product.
- “Service Offering” as described in Order Confirmation and / or JLC Service Contract document.
- “Service Provider” JLC or its authorised Service experts.
- “3<sup>rd</sup> Party Products” all goods that are not JLC branded Products.
- “Software” means computer operating systems, middleware or applications.
- “Services” means general services and support (including Internet Services such as web hosting and email) carried out by JLC or Service Provider in accordance with the Service Offering.
- “The Agreement” means the agreement between JLC and the Customer for the provision of Services formed by these Conditions and the Order Confirmation(s).

### 2. APPLICATION

This Agreement applies to this sale, Service and all statements made by JLC in brochures, price lists, adverts, quotations, on the internet or verbally. Any variations to this agreement must be confirmed by JLC in writing. Any other Terms and Conditions are excluded. Placing your order means acceptance of this Agreement.

### 3. QUOTATIONS / ORDERS / CONTRACT

Quotations are only valid in writing and during the period that they state. If unstated, the period is 10 days (incl. 3<sup>rd</sup> Party Products). Orders may be received by writing, internet, telephone or fax but are only binding when accepted by JLC in a written Order Confirmation. Please check the Order Confirmation and notify JLC of any mistake in writing immediately or the details stated in the Order Confirmation will apply to this Agreement. JLC reserves the right to change Products (incl. 3<sup>rd</sup> Party Products) at any time but JLC guarantees you at least equivalent functionality and performance.

The Seller shall sell and the Buyer shall purchase the Goods and / or Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order which is accepted by the Seller, subject in either case to these Conditions which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

No variation to these Conditions shall be binding unless agreed in Writing (includes Telex, Fax, cable and any other comparable means of communication) between the authorised representatives of the Buyer and the Seller.

Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission in any literature, quotation, pricelist, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without liability on the part of the Seller. No order submitted by the Buyer shall be deemed accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.

The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and services within a sufficient time to enable the Seller to perform the contract in accordance with its terms.

The quantity, quality and description of and any specification for the Goods and services shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).



If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any person which results from the other industrial or intellectual property rights of any person which results from the Seller's use of the Buyer's specification.

The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance. The Seller reserves the right to decide how it will perform the Services. No order accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

#### 4. PRICE & PAYMENT TERMS

Products and Service Offering prices, tax, shipment, insurance and installation are as shown on your invoice. Changes to exchange rates, duties, insurance, freight and purchase costs (incl. for components & Services) may cause JLC to adjust prices accordingly. Payment will be made before supply or Service or, if agreed, within 30 days of the invoice date without further notice from JLC. Payment timing is of the essence, JLC may suspend deliveries or Service until full payment for that order is received. If payment is late, and you purchase as a company, the maximum statutory interest rate will apply on the late amount and if you purchase as a Consumer, interest will be at 2% above the minimum lending rate on the late amount. In either case, the costs of recovery shall be payable by you.

The Seller reserves the right, by giving notice to the Buyer at any time before delivery or performance, to increase the price of the Goods and services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

#### 5. DELIVERY / TITLE / RISK

The delivery period in the Order Confirmation is approximate. Delivery by instalments may be made. The place of delivery is stated in the Order Confirmation. Title to product passes on full payment and until then you must insure and store our goods separately and you may not modify, pledge or sell them. JLC may enter the storage premises to repossess the goods. If you sell them before title passes, you will become JLC's agent and the proceeds of that sale shall be held on our behalf, separately from your general funds. JLC may sue for the Price before title passes. If you refuse delivery without JLC's agreement, you must pay JLC's expenses or loss resulting from that refusal, including storage costs, until you accept delivery. All risk of the loss of the goods passes to you on delivery.

Risk of damage to or loss of the Goods shall pass to the Buyer:

- a) In the case of the Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- b) In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the property as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to use the Goods in the ordinary course of its business.

Until the property in the Goods passes to the Buyer, (and provided the Goods are still in existence), the Seller shall be entitled at anytime to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Seller may enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of any Goods, which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller (without prejudice to any other right or remedy of the Seller) shall forthwith become due and payable.



## 6. ACCEPTANCE

When you receive the Product you must inspect it for any defects or non-conformity within 7 days. After this period, you will have accepted the Product. If JLC agrees to the return of the Product at its choosing, it must be in its original condition with packaging, a return note and proof of purchase; the return costs may also be payable by you.

## 7. SERVICES

Services will be provided by JLC or Service Provider. Response times are estimates and may vary according to the remoteness or accessibility of Product location. Service may be provided via telephone or internet where appropriate. You must allow JLC to examine Product at your or JLC's premises (at our choosing). JLC owns any replaced Product or parts resulting from repair and will charge Customer if these are not returned upon request. JLC may use third party software to collect and store information about systems. This information will be used to help our staff provide effective support for our products and services.

Unless stated otherwise in Service Offering, the following are excluded from Service: work outside local working hours, weekends or on public holidays, items excluded from Warranty, changes to configuration, relocation, preventative maintenance, consumables, diskettes, unnecessary work in JLC's assessment, electrical environment, transfer of data or software, reloading of any data or software including operating system after repair or replacement of a whole system or parts of a system, viruses, adware, spyware. Parts not critical to Product Function (e.g. hinges, doors, cosmetic features, frames) may not be serviced within Service Offering time period.

## 8. LIABILITY

JLC accepts liability for any private property loss or damage, death or personal injury caused by the negligence or deliberate misconduct of JLC, Service Provider or our employees, agents, subcontractors. Except for death/personal injury this liability is limited to the lesser of £250,000 or Price.

JLC does not accept liability for 1) indirect or consequential loss, 2) loss of turnover, 3) loss of business profits, salary, revenue, savings, 4) damage remedied by JLC within reasonable time, 5) loss avoidable by you through reasonable conduct, including backing up all data and following JLC's reasonable advice generally, 6) all items excluded from the Warranty or by Force Majeure.

## 9. WARRANTY

JLC limits any hardware warranty to that provided by the original supplier or manufacturer. Hardware warranty is limited to guaranteeing that complete products will be free from defects for 12 months from delivery and spare parts for 90 days from installation or delivery date, whichever is the earlier.

JLC does not give a warranty guarantee protection for:

1. Damage caused by incorrect installation, use, modification or repair by any unauthorised 3<sup>rd</sup> party or by yourself.
2. Damage caused by any party (except JLC) or other external force.
3. Fitness for any particular purpose.
4. 3<sup>rd</sup> Party Products and Software specified by you. You will receive the warranty or licence for these products directly from their manufacturer or licensor.
5. Any instruction given by you and correctly performed by JLC.

## 10. HARDWARE

Hardware not manufactured by or branded by JLC is supplied subject to the warranty provided by the original manufacturer. No additional warranty beyond that of the original manufacturer is offered. Hardware may be supplied with a manufacturer Maintenance Agreement and this is the only Hardware Maintenance Agreement. Unless covered under a separate support agreement with JLC you will be expected to report faults directly to the provider of the Maintenance Agreement and arrange repairs directly with them. Where repairs result in loss of data and you require the system rebuilt by JLC such service will be chargeable unless an agreement in its place with JLC that specifically includes this.

## 11. SOFTWARE

Software not owned by JLC is supplied subject to licence and warranty of the Software licensor. JLC encloses the Software licence that you require with the Product where necessary; you must comply with that licence. If you choose



not to accept the operating system or licence at start-up, if any, JLC will only accept the return of the entire product for refund. Software owned by JLC is supplied subject to the licence agreement and warranty provided by JLC.

## 12. DOMAIN NAME REGISTRATION

Where JLC registers a domain name the Nominet Terms and Conditions shall apply where applicable in addition to those detailed here. These Terms and Conditions can be found at <http://www.nominet.org.uk/registrants/aboutdomainnames/legal/terms>.

## 13. WEB HOSTING AND EMAIL SERVICES

JLC resells Web Hosting and E-mail services provided by Layershift and hence all their Terms and Conditions shall apply where applicable in addition to those detailed here. These Terms and Conditions can be found at <http://uk.layershift.com/legal.php>

## 14. CLIENT INDEMNITY

The Client will fully indemnify and keep JLC and its officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

1. The Customer's breach of the Agreement, negligence or other default.
2. The operation or break down of any IT systems owned or used by the Customer.
3. The Customer's use of misuse of the Services.
4. Any claims made against JLC arising from the content of the Customer's website where the website is designed and/or hosted by JLC.
5. Any claims made against JLC arising from the content of email sent to or received from the Customer where email services are provided by JLC.

## 15. EXPORT CONTROL

You acknowledge that Product may include technology and Software which is subject to US and EU export control laws and laws of the country where it is delivered or used: you must abide by all these laws. Product may not be sold, leased or transferred to restricted / embargoed end users or countries for a user involved in weapons of mass destruction or genocide without the prior consent of the US or competent EU government. You understand and acknowledge that US and EU restrictions vary regularly and depending on Product, therefore you must refer to the current US and EO regulations.

## 16. FORCE MAJEURE

JLC is not liable for delays in performance (incl. delivery or Service) caused by circumstances beyond its reasonable control and will be entitled to a time extension for performance; examples include strikes, terrorist acts, war, supplier / transport / production problems, exchange fluctuations, government or regulatory action and natural disasters. If this lasts more than 2 months, this Agreement may be terminated by either party without compensation.

## 17. CONFIDENTIALITY

Each party must treat all information received from the other marked "confidential" or reasonably obvious to be confidential as it would treat its own confidential information.

## 18. TERMINATION

JLC may terminate this agreement with immediate written notice if you: 1) fail to pay on time, 2) breach or JLC suspects you have breached export control laws. Either party may terminate if the other: 1) commits a material or persistent breach of this Agreement and fails to remedy this within 30 days of written notice from the other; or 2) or becomes insolvent or is unable to pay debts as they fall due.



## 19. YOUR OBLIGATIONS AS A CUSTOMER

You are responsible for:

1. Your own choice of Product and its suitability for purpose:
2. Your telephone & postal charges in contacting JLC if any:
3. Any instructions given by you to JLC.

You must provide JLC with all reasonable courtesy, information, cooperation, facilities and access to enable JLC to perform duties, failing which JLC shall not be obliged to perform any Service or assistance. You are responsible for the removal of non JLC supplied products during Service, the backup up and confidentiality of all data in Product and all of your legal and regulatory requirements.

## 20. CONSUMER RIGHTS

If you are a Consumer you may cancel your purchase at any time within 7 days of receipt without cause and receive a refund of the Price paid. To do this you must inform JLC in writing and return the products immediately, in the same condition you received them and at your own cost and risk. Any statutory Consumer rights are unaffected by this Agreement. This does not apply to any business customer or user.

## 21. JURISDICTION

English law and the exclusive court jurisdiction of the English courts will apply to this Agreement. The Vienna Convention on Contracts for the International Sale of Goods is excluded.

## 22. MISCELLANEOUS

If any part of the Agreement is found to be invalid or unenforceable by a court, the rest is unaffected. JLC may subcontract, assign or transfer its obligations or rights to a competent third part whether in whole or in part. You may not assign or transfer any of your obligations. All notices must be in writing (by hand, email, fax or 1<sup>st</sup> class post deemed delivered 498 hours after posting) and sent to a legal office of either party.

**END**

