

# New Customer Application Form



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<b>Trading Name:</b>	<b>Since:</b>
<b>Address:</b>	<b>Post Code:</b>
<b>Main Telephone:</b>	<b>Main Fax:</b>
<b>Accounts Telephone:</b>	<b>Accounts Fax:</b>
<b>Email Address:</b>	
<b>Registered Office:</b>	
<b>Company Registration No.:</b>	<b>Registered Date:</b>
<b>Directors/Partners:</b>	
<b>Bank:</b>	
<b>Address:</b>	<b>Post Code:</b>
<b>Account Number:</b>	<b>Sort Code:</b>
<b>Contact:</b>	<b>Telephone Number:</b>
<b>Reference 1:</b>	<b>Reference 2:</b>
<b>Address:</b>	<b>Address:</b>
<b>Post Code:</b>	<b>Post Code:</b>
<b>Contact:</b>	<b>Contact:</b>
<b>Telephone Number:</b>	<b>Telephone Number:</b>
<b>We hereby agree to the attached terms and conditions of Trade and payment within 30 days of date of invoice.</b>	
<b>Signature:</b>	
<b>Name &amp; Position:</b>	<b>Date:</b>

# ORCHID BUSINESS COMPUTING LTD

## TERMS & CONDITIONS

### 1 DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions ("**Conditions**").
- "**Additional Deliverables**" means any Goods, Services or other work provided by Orchid under a Contract in addition to the Deliverables;
- "**Client**" means the person, firm or company who purchases Goods and/or Services from Orchid;
- "**Client's Equipment**" means any equipment, systems, cabling or facilities provided by the Client and used in the supply of the Services;
- "**Contract**" means any contract between Orchid and the Client created in accordance with condition 2.2 subject to these Conditions;
- "**Deliverables**" means any Goods or the Services (or either of them as the contract requires) to be provided by Orchid under a Contract;
- "**Goods**" means any goods (including hardware or software) agreed in the Work Schedule, Proposal or Contract to be supplied to the Client by Orchid (including any part or parts of them);
- "**Orchid**" means Orchid Business Computing Limited, a company registered in England number: 03337756;
- "**Price**" means the aggregate of the charges to be made by Orchid for the Deliverables calculated in accordance with the provisions set out in condition 6;
- "**Proposal**" means any proposal, quotation or similar document issued by Orchid in connection with the provision of the Deliverables;
- "**Services**" means any services to be provided under the Contract as set out in the Work Schedule, Proposal or the Contract;
- "**Work Schedule**" means any document prepared by Orchid describing the Services (other than a Proposal) and, where appropriate, their intended use and any pre-set timings for supply.

- 1.2 Condition and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Where the words "include(s)", "including" or "in particular" are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

### 2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Contract (and any subsequent contract for the supply of Deliverables by Orchid to the Client) and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Client's purchase order, or the Client's acceptance of a Proposal or signature of a Work Schedule in relation to the supply of the Deliverables by Orchid, constitutes an offer by the Client to purchase the Deliverables specified in it on these Conditions. No such offer placed by the Client shall be accepted by Orchid other than by Orchid issuing an order acknowledgement or, (if earlier) by Orchid starting to provide the Deliverables when a contract for the supply and purchase of those Deliverables on these Conditions will be established (the "Contract"). The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.3 Immediately upon each of Orchid and the Client having signed a Work Schedule that Work Schedule shall become a schedule to, and shall be subject to, these Conditions and by signing the Work Schedule the Client warrants and confirms that the contents of the Work Schedule is complete and accurate in all respects.
- 2.4 All Proposals are given by Orchid on the basis that no Contract shall come into existence except in accordance with condition 2.2. Contracts may not be amended except by agreement between the Parties in writing.
- 2.5 All samples, descriptive matter, specifications and advertising issued by Orchid and any descriptions or illustrations contained in Orchid's catalogues or brochures are issued or published for illustrative purposes and they do not form part of the Contract and any advice or recommendation given by Orchid or its employees, contractors or agents about the storage, application or use of the Goods which is not confirmed in writing by an authorised officer of Orchid is followed or acted upon entirely at the Client's risk.

### 3 ORCHID'S OBLIGATIONS

- 3.1 Orchid shall use reasonable endeavors to provide the Deliverables to the Client in all material respects in accordance with any relevant Work Schedule or Proposal.
- 3.2 Orchid shall use all reasonable endeavors to meet any performance dates (in the case of Services) and any delivery dates (in the case of Goods) specified in the Work Schedule, Proposal or the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract. The quantity and description of the Goods shall be as set out in the Proposal.

### 4 CLIENT'S OBLIGATIONS

- 4.1 The Client shall be obliged to assist Orchid in the provision of Deliverables:
- 4.1.1 co-operate with Orchid in all matters relating to the Services;
- 4.1.2 provide, for Orchid, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably requested by Orchid;
- 4.1.3 provide, in a timely manner, such in-put material and other information as Orchid may reasonably request and ensure that it is accurate in all material respects;
- 4.1.4 inform Orchid of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises; and
- 4.1.5 ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the services and conforms to all relevant United Kingdom standards or requirements.
- 4.2 If Orchid's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, Orchid shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 4.3 The Client shall be liable to pay to Orchid, on demand, all reasonable costs, charges or losses sustained or incurred by Orchid (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

### 5 CHARGES AND PAYMENT

- 5.1 Unless otherwise stated in the Proposal or acknowledgement of order issued by Orchid, the price of the Goods shall be Orchid's list price for the Goods prevailing on the date of delivery or deemed delivery.
- 5.2 The total price for the provision of the Services shall be calculated on the basis set out in the Work Schedule or Proposal (or if no basis is specified the price payable for the Services shall be calculated in accordance with Orchid's standard daily fee rates from time to time). The total Price shall be paid to the Supplier (without deduction or set-off) as set out in the Work Schedule, Proposal or Contract (or otherwise when the Services have been completed). The Supplier shall invoice the Customer for the Price which is then payable (including the cost in relation to any Additional Services), together with expenses, the costs of materials and VAT, where appropriate.
- 5.3 The price payable for any Additional Deliverables shall be the price agreed in writing between the parties, or if no price is specified, shall be the list price for the Goods prevailing on the date of delivery or deemed delivery in the case of Goods and, in the case of Services, calculated in accordance with Orchid's standard daily fee rates from time to time.
- 5.4 Unless otherwise agreed in the Proposal or Work Schedule, any Price or daily rate excludes overtime and the cost of hotel, subsistence, traveling and any other ancillary expenses reasonably incurred by the individuals whom Orchid engages in connection with the Services, the cost of any materials and the cost of Services reasonably and properly provided by third parties and required by Orchid for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Orchid (and Orchid resumes the right to require any such costs to be paid by the Client in advance); and VAT, which Orchid shall add to its invoices at the appropriate rate.
- 5.5 The Client shall pay each invoice submitted to it by Orchid, in full and in cleared funds, without counterclaim, deduction or set off within 30 days of receipt. Time for payment shall be of the essence of the Contract.
- 5.6 Without prejudice to any other remedy available to Orchid, if the Client fails to pay Orchid on the due date, Orchid may (at Orchid's sole discretion) (1) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Yorkshire Bank plc, accruing on a daily basis and being compounded quarterly until payment is made; (2) immediately suspend all Services until payment has been made in full; or (3) immediately terminate the Contract without liability to the Client.
- 5.7 All sums payable to Orchid under the Contract shall become due immediately on its termination, despite any other provision. This condition 5.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

- 5.8 Orchid may, without prejudice to any other rights it may have, set off any liability of the Client to Orchid against any liability of Orchid to the Supplier.

### 6 COMPLIANCE

- 6.1 It shall be the sole responsibility of the Client to ensure that the Deliverables comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Contract. It shall also be the Client's responsibility to ensure that the Deliverables carry appropriate disclaimers, warnings and public information. Accordingly the Client agrees to indemnify and hold harmless Orchid and Orchid's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Deliverables or use of them are contrary to any law, code or regulation in any country.

- 6.2 The Client shall be responsible for procuring all and any licenses or permissions which are required in connection with the use of the Deliverables on the Client's systems and the Client shall indemnify Orchid and hold Orchid harmless from and against any costs, losses, expenses, fines or similar penalties in connection with the Client's failure to obtain any such licenses or permissions.

### 7 DELIVERY

- 7.1 The delivery of any Goods shall be deemed as occurring when either two business days have elapsed following the day the Client has been informed that the Goods are awaiting collection or, in cases where the Deliverables include delivery of the goods to the Client, on the day of delivery to the Client.
- 7.2 If the Client is unable to collect or take delivery of the Goods in accordance with the provisions of condition 7.1 above, then Orchid shall be entitled to arrange storage and/or transportation for the goods on the Client's behalf at the Client's expense. All charges for such storage, transport and any insurance shall be payable by the Client forthwith on request.
- 7.3 The Client shall inspect and check the Goods immediately on delivery and shall give Orchid notice in writing by e-mail, fax or post within 3 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Client will permit Orchid to inspect any allegedly defective Goods. Failing such notice, the Goods shall be deemed to be in accordance with the Contract and the Client shall be deemed to have accepted the Goods and to be liable to pay the Price for those Goods.
- 7.4 Orchid may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract. Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Client to repudiate or cancel any other Contract or installment.
- 7.5 Goods which have been supplied in accordance with the Contract may not be returned to Orchid without Orchid's prior written consent. If Orchid consents to the return of any Goods, the Client is responsible for the cost of returning such goods to Orchid's premises and shall pay to Orchid a re-stocking fee equal to 15% of the invoiced Price of such Goods.
- 7.6 Any consent by Orchid to accept the return of Goods under condition 7.5 is conditional upon (1) software packages being unopened and unused and in as-new condition; and (2) hardware and other equipment being in the same condition as when supplied by Orchid and in its original packaging.

### 8 TITLE AND RISK

- 8.1 The Goods are at the risk of the Client at the time of delivery or deemed delivery.
- 8.2 Ownership of the Goods shall not pass to the Client until Orchid has received in full (in cash or cleared funds) all sums due to it in respect of (1) the Goods; and (2) all other sums which are or which become due to Orchid from the Client on any account.

- 8.3 Until ownership of the Goods has passed to the Client, the Client shall (1) hold the Goods on a fiduciary basis as Orchid's bailee; (2) store the Goods (at no cost to Orchid) separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as Orchid's property; (3) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (4) maintain the Goods in satisfactory condition.
- 8.4 The Client may not sell the Goods before ownership has passed to it solely on the condition that (1) any sale shall be effected in the ordinary course of the Client's business at full market value; and (2) any such sale shall be a sale of the Client's property on the Client's own behalf and the Client shall deal as principal when making such a sale.

- 8.5 The Client's right to possession of the Goods shall terminate immediately if (1) the Client has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or (2) if the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his /its obligations under the Contract or any other contract between Orchid and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade.
- 8.6 Orchid shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Orchid.
- 8.7 The Client grants Orchid an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Client's right to possession has ended, to recover them.
- 8.8 On termination of the Contract, however caused, Orchid's rights contained in this condition 8 shall remain in effect.

### 9 REJECTION OR CANCELLATION

- 9.1 Unless a rejection fee has been agreed in advance, the Client shall have no right to terminate the Contract, allege breach of Contract or seek any cancellation, reduction or repayment of the Price on the basis of style or composition of any of the Deliverables. Once the Contract is concluded as provided on these terms and conditions, any subsequent cancellation by the Client will result in the Client being liable for the full Price as if the cancellation had not taken place, excluding such committed third party expenses as Orchid is able to avoid liability for within its existing contractual commitments to suppliers.

### 10 QUALITY

- 10.1 The Client acknowledges that Orchid does not manufacture or produce hardware or software products and, accordingly, Orchid shall endeavour to transfer to the Client the benefit of any warranty or guarantee given to Orchid but otherwise gives no warranty in connection with the Goods.
- 10.2 Orchid will provide the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards.
- 10.3 If, within 30 days of the provision of any Services, such Services are found to be in breach of the warranty contained in condition 10.2, Orchid will re-perform the Services. If Orchid complies with this condition 10.3 it shall have no further liability to the Client for the breach of the warranty contained in condition 10.2 in respect of such Services.

### 11 LIABILITY

- 11.1 This condition 11 sets out the entire financial liability of Orchid to the Client in respect of (1) any breach of the Contract; (2) any use made by the Client of the Deliverables or any part of them; and (3) any representation, statement or tortious act or omission (including negligence) rising under or in connection with the Contract.
- 11.2 Except as otherwise provided in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions limits or excludes the liability of Orchid for (1) death or personal injury resulting from Orchid's negligence; or (2) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Orchid; or (3) for any matter which it would be illegal for Orchid to exclude or to attempt to exclude or limit its liability.

- 11.4 Subject to condition 11.2 and condition 11.3:
- 11.4.1 Orchid shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 11.4.2 Orchid's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid under the Contract.

### 12 GENERAL

- 12.1 Orchid may at any time assign, charge, transfer, sub-contract or deal in any other manner with any or all of its rights or obligations under a Contract.
- 12.2 If any provision (or part of a provision) of the Contract is held to be invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Orchid, its employees, agents or sub-contractors and any other confidential information concerning Orchid's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Client's obligations to Orchid. The provisions of this condition 12.2 shall continue in force in accordance with its terms, notwithstanding the termination of this Agreement for any reason.
- 12.4 Orchid shall not be liable for any breach of this Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Orchid's employees), weather of exceptional severity or acts of local or central government or other authorities.
- 12.5 This Contract is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreements between the parties in that regard.
- 12.6 A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of this Contract, but this does not affect any other right or remedy of a third party.
- 12.7 The Contract shall be governed by and construed in accordance with the laws of England and Wales and both parties agree to submit to the non-exclusive jurisdiction of the courts of England and Wales in relation to any claim, dispute or difference which may arise hereunder or in relation to this Contract.