

Standard Terms and Conditions of Business (Information Technology)

Consultancy Standard Terms & Conditions of Business.

The following standard Terms and Conditions are for consultancy work provided by The Palm Association – SMC Limited

The following amendments to these terms and conditions apply:

- Delegation – Clause 5.1 does not apply to these terms and conditions.
- “The Terms of Engagement” means the written proposal submitted to the client by The Palm Association – SMC Limited.

The following conditions also apply:

- Quotations are valid for 14 working days from the start date of the proposal.
- VAT at the standard rate (if applicable) is applicable to all fees and expenses.
- Work will be invoiced at the end of the project and payment is due within 15 - 30 days of invoice.

Cancellation charges.

The following cancellation charges apply once a proposal for an assignment, including (but not limited to) training courses, hire of our facilities and consultancy projects, has been accepted by the client and a start date has been agreed.

Timeframe	Cancellation charge
Cancellation within 24 hours of work commencing.	75% of total invoice value
Cancellation within 48 hours of work commencing.	50% of total invoice value

Cancellation exceeding 48 hours of work commencing.	25% of total invoice value
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1 – The IT Services.

1.1 The Client acknowledges that for the first twenty one days of the Term, beginning on the Service Commencement Date, the Company requires this time to process the Clients' requirements into the Company's systems and procure any additional spares and equipment required to enable the Company to provide the Services. During the Integration Period, the Client accepts that the Company shall use its reasonable endeavours to provide the Services.

1.2 The Services to be provided to the Client consists of corrective maintenance in respect of faulty materials in relation to the Equipment and includes all repairs which may be reasonably necessary including the supply and fitting of replacement parts. Those replacement parts may be refurbished or reconditioned parts. An engineer will attend the Site Address within the times specified in the Schedules, after a request made to the Company has been received in respect of an Equipment fault. When replacement parts are fitted the parts removed shall immediately become the property of the Company. The Company reserves the right to use equipment of a similar or higher specification if exact spares are unavailable for any reason.

1.3 In the event of the Client requiring the Company to provide the Services to additional Equipment, then such Equipment must be added to the Schedules using the prescribed change process and any such changes as agreed will be deemed to form part of this Agreement.

1.4 The Services include maintenance of the Equipment which is necessitated as a result of fair wear and tear only. Any repair and/or replacement of the "consumable items" listed under Section 16 of this document (Definitions) are excluded from the Services and will be subject to additional charges at the Company's quoted rates.

1.5 The Company warrants that it will perform the Services with reasonable skill and care and will exercise that degree of skill, diligence, prudence and foresight which would

reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

1.6 The Company will not be responsible for the repair or replacement of any consumable items.

1.7 All work carried out shall be acknowledged by the signature of a person holding position of sufficient authority at the time of signing.

1.8 In the event of this Agreement being entered into at any time subsequent to the sale or delivery of the Equipment to the Client by the Company or where the Client has installed any equipment themselves, then the Company reserves the right to undertake an inspection and produce a satisfactory report by an engineer of the Company on the following conditions:

(a) Should the Company not require an inspection or if the inspection reveals the Equipment to be in working order then this Agreement shall immediately come into force. Where the Client has installed the Equipment any subsequent fault calls that are the result of incorrect set up and configuration of the Equipment will not be covered by this Agreement and any remedial work will be carried out by the Company at the Company's rates in force at that time; or

(b) If the inspection reveals, in the sole opinion of the Company's engineer, that the Equipment is in need of repair then the Company shall notify the Client and, if the Client requires, the Company shall carry out such repair work. Such inspection and repair work to be charged to the Client at prevailing rates which may from time to time change and any parts supplied shall be charged based on the then current prices and this agreement shall come into force upon the signature of a duly authorised representative of the Client, and the Company shall not be obliged to provide the Services until the foregoing conditions of this Clause 2.10 have been satisfied to the Company's satisfaction.

1.9 If there is a failure or deficiency in the supply of the Services by the Company, the Client shall always notify the Company in writing of the same providing sufficient details of the failure or deficiency and the Client shall provide the Company with reasonable opportunity to correct such failure or deficiency.

1.10 Where repairs cannot be effectively conducted at the Site Address, the Company reserves the right to install loan equipment of similar specification whilst repairs are conducted. The Company also reserves the right to remove faulty equipment from the Site Address to carry out further examination or repair.

1.11 If loan equipment is installed, or if faulty equipment is removed from site for further examination and repair, the Company will use reasonable endeavours to ensure that the repair works are completed within 21 days.

1.12 The Company is required, at all times, to comply with the vendor's rules, regulations, guidelines and definitions; these may be different from the Company's own.

1.13 For Next Business Day Service Level the cut off for delivery is 4:30pm on the previous day (Monday – Friday, 9:00-17:30). The Company is not responsible for delays due to common couriers.

1.14 Software and firmware are included in the Services when specified in the Schedules; but are exempt from the Service Level and the Client agrees that the Company will be entitled to charge the Client additional charges, at its prevailing rates, for time which in the reasonable opinion of the Company it spends in relation to or on account of any of the following:

- (a) Restoration and/or re-establishment of digital data
- (b) Installation and configuration of software on new or replacement hardware or devices;
- (c) Training;
- (d) Upgrades and/or updates of any kind;
- (e) Unauthorised use of the software;
- (f) Inadequate back-up procedures;
- (g) Providing Services to the Client in circumstances where any reasonably skilled and competent system administrator would have judged the Clients' request to have been unnecessary;

(h) providing the Services to the Client where such support would in the Company's reasonable opinion have been unnecessary if the Client had implemented and installed any Update(s) supplied or offered to the Client;

(i) Providing the Services outside the Coverage Hours; or

(j) Providing any other Services not covered herein.

1.15 Software, firmware, operating system, application, data or configuration file restorations do not constitute part of the Service Level. Reasonable endeavours will be made to restore any software, firmware, operating system, applications, assuming that they are listed in the Schedules and have been made readily available to the Company.

1.16 The Company is not responsible for the security or integrity of any software, firmware, operating system, application, data or configuration file supplied by the Client.

1.17 No representation or warranty is given by the Company with regard to software and firmware that is included in the Services or that any faults will be fixed or that they will be fixed in accordance with the Service Levels.

2 – Assignment and Terms of Reference

2.1 The Company agrees to carry out the Assignment in accordance with the Terms of Reference.

2.2 The Client agrees to cooperate with the Company in the performance of the Company's services and to give such support, facilities and information as may be reasonably required.

3 – Charges and Payments

3.1 The Client agrees to pay the charges and expenses in accordance with the provisions of the Terms of Engagement.

3.2 All sums due from the Client which are not paid on the due date (without prejudice to the rights of the Company under these terms) shall bear interest from day to day at the same

annual rate as is prescribed from time to time pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 with a minimum rate of 10% per annum.

3.3 The Company may from time to time increase the hourly rates (if applicable) referred to in the Terms of Engagement by such amount as is reasonable and unless the Client objects to such increased rates within seven days of notification in writing all services shall thereafter be provided at the increased rates notified. If the Client objects to the increased rates, the Client shall remain liable for the existing contractual rate payable in accordance with the terms hereof plus such additional rate as shall be reasonable.

3.4 During any period in which payments from the Client are overdue, the obligations of the Company may be suspended.

3.5 Expenses incurred by the Company and recoverable from the Client hereunder shall be subject to an administration charge of 5% of cost plus VAT payable by the Client.

4 – Confidentiality

The Company undertakes not at any time to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the Client other than to sub-contractors who have signed an appropriate secrecy undertaking or others where the Client has expressly or impliedly consented to the disclosure.

5 – Delegation

5.1 The Company (if an individual) undertakes to consult with the Client before delegating any of the Company's obligations hereunder.

5.2 The Company shall have discretion as to which of its employees are assigned to perform its services but shall consult with the Client concerning any significant changes.

6 – Intellectual Property

The Company undertakes not to cause or permit anything which may damage or endanger the intellectual property of the Client or the Client's title to it or assist or allow others to do so.

7 – Liability and Insurance

7.1 The Company shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of the Company to perform its obligations under this agreement or the general law.

7.2 The Company shall have no liability to the Client for any indirect, special or consequential loss to the Client arising out of or in connection with the provision of any goods or services pursuant to this agreement (except in respect of death or personal injury resulting from negligence) and the total liability of the Company for any other loss of the Client arising pursuant to this agreement in respect of any one event or series of connected events shall not exceed the indemnity cover (if any) arranged pursuant to the Terms of Engagement or if no such cover has been agreed between the Client and the Company the charges payable by the Client in respect of the Company's services hereunder.

8 – Termination for Breach

The following obligations are conditions of this agreement and any breach of them shall entitle the party not in breach to terminate this agreement by immediate written notice and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

8.1 Failure on the part of the Client to make punctual payment of all sums due to the Company under the terms of this agreement.

8.2 Failure on the part of the Company to remedy any breach of its obligations hereunder within a reasonable time following written notice from the Client which: refers to this clause; specifies the breach with full particulars; indicates how the breach is to be remedied and specifies the Client's opinion of a reasonable time for remedy.

8.3 The levying of distress or execution against the Client or the making by it of any composition or arrangement with creditors or the presentation of a petition for the Client's liquidation or bankruptcy or administration or the appointment of a receiver over any part of the Client's assets.

8.4 The doing or permitting of any act by which the Company's rights in any intellectual property may be prejudiced or put in jeopardy.

8.5 Any serious or persistent breach by the Client of its obligations hereunder.

9 – Termination and Consequences

In the event of this agreement being terminated whether by effluxion of time, notice, breach or otherwise and without prejudice to any other remedy available to the Company the Client shall immediately pay to the Company:

9.1 any sums due under the terms of this agreement, and

9.2 in the event of termination by reason of sub-clauses 8.1, 8.3, 8.4 or 8.5, any further sums which would but for the termination of this agreement have fallen due by the end of the Company's engagement less a discount for any accelerated payment at the rate of 5% per annum.

10 – Recruitment of the Company's Staff

10.1 The Client undertakes that it (including for this purpose any subsidiary or associated organisation) or any person connected with it will not directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by the Company in connection with the services provided hereunder for a period of twelve months after such person last provided services to the Client.

10.2 If the Client is in breach of condition 10.1, the Client, recognising that the Company will suffer substantial damage, will pay to the Company by way of liquidated damages (and not as penalty) a sum equal to the annual salary for the immediately preceding 12 months of the person concerned or such sum on a pro rata basis where the person concerned was employed by the Company or was undertaking services for the company for less than the preceding 12 months.

11 – Company's Outputs, Materials and Information

11.1 All intellectual property rights including copyright which are capable of existing in any documents, computer software or information or (without limit) other materials created or provided pursuant to this contract by the Company shall be and remain the Company's property.

11.2 The Client undertakes to keep all materials, documents and information provided to it by the Company confidential to itself and its employees and not to distribute any product of the services provided hereunder to any third party without the Company's prior written consent.

11.3 Any materials produced or supplied to the Client by the Company in which intellectual property rights are capable of subsisting shall be licensed to the Client for internal use only in connection with the purposes of the terms of reference and such licence shall forthwith terminate if notice is given by the Company terminating this contract pursuant to clause 8.

11.4 The Client and the Company undertake with each other not during the course of this contract to infringe the intellectual property rights of any third party.

12 – Company's References to Client

12.1 Subject to clause 4 (Confidentiality) the Company shall be entitled to refer to its provision of services to the Client for any purpose in connection with the Company's business provided that prior to any published reference to the Client the Company shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.

13 – Force Majeure

Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this agreement impossible, whereupon all money accrued due under this agreement shall be paid.

14 – Miscellaneous

14.1 Warranty – Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

14.2 Whole Agreement – Each party acknowledges that this agreement (as varied) and the conditions contain the whole agreement between the parties and that it is not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

14.3 Change of Address – Each of the parties shall give notice to the other of the change or acquisition of any address or telephone, telex or similar numbers at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.

14.4 Notices – Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement or such other address substituted in writing under clause 14.3 (and if more than one address any such address) or by facsimile transmission or by electronic mail or by telex and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail number of the addressee (with correct answer back).

14.5 Headings – Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

14.6 Joint and Several – All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

14.7 Proper Law and Jurisdiction

14.7.1 – This agreement shall be governed by law in every particular including formation and interpretation.

14.7.2 – Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction.

14.7.3 – The submission by the parties to such jurisdiction shall not limit the right of the Company to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate.

14.7.4 – Any notice of proceedings or other notices in connection with or which would give effect to such proceedings may without prejudice to any other method of service be served upon any party in accordance with clause 14.4.

14.7.5 – In the event that the Client is resident outside Uganda/UAE, its address for service in Uganda/UAE shall be the address for such service nominated in this agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.

14.8 Waiver – Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this agreement.

14.9 Status of Company

14.9.1 – The Company (if an individual) shall be an independent contractor and not the employee of the Client.

14.9.2 – In such capacity, the Company shall bear exclusive responsibility for the payment of his or her National Insurance contributions as a self-employed person and for the discharge of any income tax and VAT liability arising out of remuneration for the work performed by him or her under this agreement.

14.9.3 – The Company shall not be subject to directions from the Client as to the manner in which he or she shall perform his or her work.

14.10 Assignment or Sub-Contracting – The Company shall be entitled to sub-contract any of its rights or duties under this agreement.

14.11 Set-off – The Client shall not be entitled to withhold payment of any sum otherwise payable to the Company by reason of any claim, set-off or for damages in relation hereto.

15 – Mediation

15.1 In the event of any dispute arising between the parties in connection with this agreement, the parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within seven days of one party requesting mediation, failing which the mediator shall be appointed by the then Professional Standards Manager of the Institute of Management Consultancy. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary nor shall the Company be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.

16 – Definitions

“The Assignment” means the Assignment referred to in the Terms of Engagement.

“the client” refers to a customer that has signed a permanent or ad-hoc Contract of Service with The Palm Association – SMC Limited.

“The Terms of Reference” means the Terms of Reference referred to in the Terms of Engagement.

“The Terms of Engagement” means the written terms of agreement between the client and the Company which incorporate these terms.

The Palm Association – SMC Limited is also referred to in this documentation as “The Company” “Company’s” or “the Company’s”.

“Consumable items” refers to any of the following: ribbons, toner cartridge, paper, collector units / bottles, paper separator belt, maintenance kits, ozone filters, developer kits, print heads, fuser units, print wheels, ink bottles / ink, ribbon Masks, transfer Belts, print shields,

ink cartridges, print bands, Batteries, Cathode ray tubes, Laptop or Notebook screens and hinges, All cables of any type, Server storage, tape, and backup drives, Screws, fittings, and brackets, Monitors, displays or VDU's, All peripherals – A peripheral is a device attached to a host computer behind the chipset whose primary functionality is dependent upon the host, and can therefore be considered as expanding the hosts capabilities, while not forming part of the system's core architecture, Terminal / PC Accessories such as: screen filters, mouse mats, holsters, monitor arms.

“the Schedules” means an explicit and complete list of Equipment at the Site Address and includes the Services and Service Level as agreed by the Customer and the Company from time to time and signed on behalf of each of the Customer and the Company.

“the Service Commencement Date” means the date from which the Company is under an obligation to provide the Services to the Customer as specified in the Schedules.

“Service Level” means the Service Level relating to Fix, Response, or Advanced Replacement and specified in the Schedules.

“the Services” means the maintenance services to the Equipment described in and pursuant with the Schedules.

“the Site Address” means the address set out in the Schedules being the location where the Equipment is installed and operated.

“the Term” means the period during which the Services are to be provided on the terms of this Agreement and as referred to in the Schedules and the initial Term shall be as stated in the Schedule.

“Updates” means corrections, by-passes or revisions to the software which add no functionality.

“Upgrades” means an enhancement to features or capabilities or performance of the Equipment.

“Vendor” means the original manufacturer of the equipment.