

Terms and Conditions of Sale of ISAMs

All ISAMs provided by the Company and orders for ISAMs accepted by the Company are subject to the following express terms and conditions and no additions thereto or variation thereof, whether contained in the Customer's Purchase Order or otherwise, shall apply unless expressly agreed in writing by the Company. No Purchase Order shall be binding upon the Company unless accepted in writing by the Company.

Definitions

"Company" means ITSO Limited and shall include the Company's successors and assignees.

"Customer" means the party acquiring the ISAMs.

"Purchase Order" means the written request by the Customer for the supply of ISAMs by the Company, submitted via the ITSO Service Management Tool ("Serena").

"ISAM" means the ITSO Secure Application Module comprising hardware and software supplied by the Company to the Customer.

"ISAM Operating System" means the master utility program that provides generic functionality such as communications, memory management and cryptographic algorithms, and, as such, provides the environment required for the execution of application program code with specific functionality such as mass transit ticket transactions. The ISAM Operating System is provided by an implementation of the Company's Mfos product.

"ITSO Application" means the application software program running on the ISAM providing specific functionality as specified by ITSO.

"Mfos" is the product owned by Rambus which fulfils the role of the ISAM Operating System and includes all machine code, programs, software, data, information, know-how and technology and media in whatever form supplied to the Customer by the Company in conjunction with the ISAMs. Mfos is a registered trademark of Rambus.

"Specification" means the specification of the ISAM detailed in separate documents approved by ITSO which were current at the date of the Purchase Order.

"Rambus" means the company who owns and retains the rights to Mfos.

"Terminal" means an ITSO Point of Service Terminal (POST) or an ITSO Remote POST Server.

1. Agreement

In consideration of the obligations of the Customer, the Company agrees subject as hereinafter provided to sell the ISAMs to the Customer and to grant a licence for the Mfos operating system software supplied on the ISAM.

2. Delivery, Substitution and Installation

- 2.1 A delivery schedule for the Purchase Order may be agreed between the Customer and the Company. Unless otherwise expressly agreed in writing, any delivery dates specified by the Company are approximate only and time shall not be of the essence for delivery.
- 2.2 Unless otherwise agreed, or unless the Customer notifies the Company of any defects or shortages within seven working days of delivery, the ISAMs will be deemed to have been accepted on delivery.

- 2.3 No installation services are included. The ISAMs must be installed by a suitably experienced and qualified person in accordance with good working practices and any instructions issued by the Company.

3. Charges and Payment

- 3.1 Prices and charges are due as agreed and exclude installation charges unless expressly agreed in writing.
- 3.2 The delivery of the ISAMs will be subject to a delivery charge.
- 3.3 All prices and charges quoted are valid for a period of thirty days.
- 3.4 Unless otherwise agreed, the Customer shall pay 50% of the total agreed price for ISAMs upon acceptance of the Purchase Order and the balance within 30 days from the date of delivery.
- 3.5 The Company reserves the right to charge interest on overdue accounts at the rate of 8% per annum from the date on which the account becomes due until the date of payment. In the event of late payment, the Company's obligations under these terms will be suspended until payment has been made in full.

4. Value Added Tax

All prices are quoted exclusive of Value Added Tax which is payable in accordance with current legislation

5. Passing of Risk and Property

- 5.1 Risk in the ISAMs shall pass to the Customer on delivery.
- 5.2 Title to and property in the ISAM hardware shall remain with the Company until payment in full is made by the Customer.
- 5.3 If payment for the ISAMs is not made in full the Company may require the Customer to return the ISAMs forthwith and if the requirement is not immediately complied with the Company shall be entitled at any time and without notice to enter any premises to retake possession of the whole or any part of the ISAMs without prejudice to any other remedy that may be available to the Company.

6. Software

- 6.1 The ISAMs include a version of the ITSO Application and a version of the Rambus' Mfos operating system software. The ITSO Application is supplied under the general terms and conditions of ITSO membership and any operating licence issued by the ITSO organisation. Mfos is supplied subject to the following express terms and conditions;
- 6.2 Mfos is licensed on a non-exclusive basis for use by the Customer only in connection with the ISAMs supplied by the Company.
- 6.3 Mfos is licensed subject to the payment of the licence fee which is included in the sale price of the ISAMs.
- 6.4 Mfos is licensed on the condition that it must only be used in the ratio of one ISAM per terminal. The linking of more than one terminal to an ISAM is not allowed.
- 6.5 The term of the licence hereby granted shall commence on the date of delivery and shall continue for so long as the Customer owns and is using the ISAM.

- 6.6 Mfos remains the property of Rambus and consists of confidential and proprietary data whose disclosure to or use by third parties may be damaging.
- 6.7 Rambus shall not be obliged to provide any amendments to, or updated versions of Mfos.
- 6.8 The Customer shall not permit publication of any benchmark tests that may be run on Mfos.
- 6.9 The Customer may not make any copies of Mfos except such copies as are reasonably necessary for back up purposes. Any such copies are subject to these same conditions.
- 6.10 The Customer shall not cause or permit any reverse engineering, modification, adaptation, disassembly or decompilation of Mfos.
- 6.11 If any unauthorised modification is made either to Mfos or the ISAM on which it is used then the Customer shall be deemed to be in breach of contract and the Company shall be entitled to terminate the licence forthwith, and in the meantime the Customer's continued use of Mfos shall be regarded as unauthorised.

7. Environment and Operating Conditions

- 7.1 The Customer is responsible for ensuring that a suitable environment is maintained for the storage and the operation of the ISAMs.
- 7.2 The ISAMs must only be used in the ratio of one ISAM per terminal. The linking of more than one terminal to an ISAM is not allowed.
- 7.3 The operating voltage is 3 Volt $\pm 10\%$. The voltage rating is specified at manufacture, in the ITSO Specification (TS 1000-8) and in the ISAM's ATR (Answer to Reset). The ISAMs operate at the specified voltage range only.
- 7.4 The operating temperature range is -25°C to $+70^{\circ}\text{C}$.
- 7.5 The ISAMs must be handled with care particularly on installation.

8. Warranty

- 8.1 The Company warrants to the Customer that, subject to correct storage, installation and operating conditions, the ISAMs will under normal use perform in all material respects in accordance with the Specification for a period of twelve months from the delivery date.
- 8.2 If the ISAMs fail to comply with the warranty in clause 8.1 then the Customer shall at his own expense and risk return the faulty ISAMs to the Company. The Company will then remedy any defect in the ISAMs at its option, by repair, replacement or refund of the original sale price.
- 8.3 The warranty mentioned above shall not apply:
 - 8.3.1 to any ISAM modified or repaired by the Customer or any third-party other than in accordance with the Company's instructions.
 - 8.3.2 where any environmental specification for the storage and operation of the ISAM is not maintained.
 - 8.3.3 to any loss, damage or destruction of or to the ISAM.

- 8.3.4 to any defect or malfunction caused by neglect, abuse, misuse, improper handling, improper installation or problems with electrical power.
- 8.3.5 to any defect or malfunction resolved in an ISAM Operating System update that has not been applied to the ISAM within 3 months of the update's release to the ITSO Security Management Service (ISMS).
- 8.3.6 to any ISAM not operated in accordance with the regulations of the Company.
- 8.4 It is specifically agreed that data is the Customer's responsibility. The Customer shall take full responsibility for all data generated and handled by the ISAM. In the event of an error or defect being found in the ISAM, the responsibility for managing any incorrect data generated as a result of the said error or defect shall remain with the Customer and the Company shall have no responsibility to the Customer in respect of the same.
- 8.5 The Company's obligations under the above warranty shall be its sole liability and it shall have no other liability whatsoever whether in contract, tort or otherwise as regards the quality, fitness for purpose or merchantability of the ISAMs and all other representations, conditions, warranties and terms in respect thereof whether express or implied, statutory or otherwise are hereby excluded save to the extent that the same are not capable of exclusion at law.
- 8.6 Any claims under this warranty must be made before the end of the warranty period.
- 8.7 This warranty is granted to the Customer only and is non-transferable.

9. Limit of Liability

- 9.1 The Company and the Customer agree to indemnify each other against any liability arising in respect of physical injury (including death) to any person which results from the negligence of the other party, its employees, agents or sub-contractors.
- 9.2 The Company and the Customer agree to indemnify each other against any loss of, or damage to, physical property to the extent caused by any negligence of that party, its employees, agents or subcontractors in connection with the performance of their duties provided that each party's total liability under this clause 9.2 shall be limited to £1,000,000.
- 9.3 Subject to clause 9.1, neither the Company nor the Customer shall be liable to the other for any claims for indirect or consequential losses, loss of business, data, profits, revenue, goodwill, use, or anticipated savings or damage suffered by the other party as a result of an action brought by a third party arising from any use, or inability to use, any item supplied under the terms or from any breach (whether or not the other party was advised of, or knew of, the possibility of such losses) or loss or damage to the other party's data or records whether arising from negligence or otherwise.
- 9.4 Except where liability arises under clauses 9.1 or 9.2, the Company's entire liability to the Customer for all claims made in respect of or in connection with the sale of ISAMs whether in contract, for misrepresentation (other than fraudulent misrepresentation), tort (including, but not limited to, negligence) or under statute and however and whenever arising shall not exceed the total sums paid by the Customer to the Company for that sale.

10. Patents, Designs and Copyright

- 10.1 The Company and its suppliers retain all property interests and rights in and over their own products and systems and all trade secrets, patents, patent applications, copyright and ideas in relation thereto remain the exclusive property of the Company and its suppliers.

- 10.2 All patent, registered design, copyright and other intellectual property rights of ITSO in the ITSO Application shall remain vested in ITSO and through ITSO the Crown.
- 10.3 The Customer shall forthwith notify the Company of any claim or demand made or action brought against the Customer for infringement or alleged infringement of any patent, copyright or trade secret in respect of the ISAMs and shall not make any comment or admission to any third party in respect thereof. The Company shall have conduct of all proceedings or negotiations relating to such allegations or claims and shall deal with the same as it sees fit in its absolute discretion. The Customer shall provide all reasonable assistance to the Company in relation to the conduct of such litigation and/or negotiations.

11. Export

- 11.1 If the Customer wishes to export any ISAMs from the country of initial supply, it is the Customer's responsibility to obtain all such consents and licences as may from time to time be required by English Law and the US Export Administration Regulations or under laws of any other country affecting or regulating such export.
- 11.2 No ISAMs shall be exported if the Customer has any grounds for suspecting that such ISAMs are intended to be used for any illegal or prohibited purpose.

12. Termination

- 12.1 Either party shall have the right to terminate the agreement if the other party is in material breach of contract and does not rectify such breach within 30 days after receiving written notice from the injured party requiring it to do so. Termination shall not affect any other rights of the injured party.
- 12.2 If a petition to wind up the Customer is presented to a court or the Customer calls a meeting of creditors or passes a resolution for voluntary winding up (otherwise than for the purposes of solvent reconstruction or amalgamation), or a receiver, administrative receiver, administrator or other similar officer is appointed in respect of the Customer or any of the Customer's assets, or the Customer makes any proposal to its creditors for any composition or voluntary arrangement, then the Company may immediately terminate the contract without notice and payment for goods or services already supplied shall immediately become due.

13. Force Majeure

Neither party shall be liable for failure to perform its obligations if such failure results from circumstances beyond the other party's reasonable control.

14. Assignment

The Customer may not assign, novate or subcontract the contract or any of its rights or obligations under the contract without agreement from the Company, such agreement not to be unreasonably withheld. The Company may assign, subcontract, novate or charge all of its rights or interests or obligations under the contract to any third party.

15. General

- 15.1 Any modifications or amendment to these terms must be made in writing and signed by an authorised signatory of each party.
- 15.2 Any delay or failure by the Company to exercise any rights or remedies set out herein shall not be deemed to be a waiver or relinquishment thereof.

16. Severance

The provisions of the contract shall be deemed to be severable and any invalidity of any provision shall not affect the validity of the remaining provisions of the contract.

17. Notices

Any notices to be given under these terms shall be in writing and served on either party at their registered office, unless either party notifies the other of a change of address for service. Service of notices must be made by facsimile transmission, in which case service shall be effective immediately upon transmission, or by first class post, in which case, service shall be effective on the second working day after posting.

18. Law

Unless otherwise agreed in writing, the contract shall be construed and interpreted in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

19. Entire Agreement

- 19.1 The parties agree that these terms and conditions, together with any other terms and conditions expressly agreed and incorporated elsewhere, represent the entire agreement between the parties and supersedes all other proposals, agreements, statements, representations or warranties (whether written, e-mail or oral) made by or between the parties relating to the sale of the ISAMs to the Customer, and that no statements or representations made by either party have been relied upon by the other in agreeing to enter into the contract.
- 19.2 Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in the contract (or for breach of any warranty given by the other not set out or referred to) unless such statement or warranty was made or given fraudulently.

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