

## Standard Terms of Sale, Service and Technical Support

(All terms and conditions are part of Virtuosol Consulting Group A Division of TISLtd. Order Acceptance Policy) Amended as of January 30th 2007.

### Customer Acknowledgment.

The Buyer (Customer) acknowledges agreement with these Terms and Conditions (also located at [www.virtuosol.com/virtuosol/about/toc.pdf](http://www.virtuosol.com/virtuosol/about/toc.pdf) and the reference of the same is either mentioned on the Quotation sheet (Printed), Emailed Quotation or Emailed Offer or Proforma Invoice or Advertisement or Product Brochure) by the placement of an order to purchase a Product or Service (Purchase Order) from Virtuosol Consulting Group A Division of TISLtd. (hereafter referred as VCG). VCG's offer (by advertisement, by quotation or however given) being accepted by Customer verbally or by accepting the VCG's Quotation/Proforma Invoice or by making the advance payment shall be treated as Purchase Order.

The products sold and/or services rendered are subject to the Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by Customer. The Customer acknowledges that he/she is aware of the contents of and agrees to be bound by the Terms and Conditions and reference of these terms and conditions before the placement of the Purchase Order or entering into this contract with VCG.

All Purchase orders must obtain pre-approval with an acceptable method of payment, as established by VCG's credit department. VCG may require additional inputs or information before accepting any Purchase order, and depending upon the credit report we may choose to accept or decline the Purchase Order.

These terms and conditions of VCG supercede and control over those contained in the Customer's Purchase Order. Unless VCG Order Acceptance Department (OAD) specifically agrees in writing through overt reference or other express written indication of assent, the terms and conditions of Purchase Order set by the customer shall have no effect even if VCG's Marketing/Sales/Support/Accounts staff acknowledged the receipt of Purchase Order or its terms or signed as accepted on the Customer's Purchase Order duplicate copy. THE FINAL AUTHORITY TO ACCEPT OR DECLINE THE CUSTOMER PURCHASE ORDER SHALL REST WITH VCG'S ORDER ACCEPTANCE DEPARTMENT THROUGH A SEPARATE LETTER QUOTING THE PURCHASE ORDER ACCEPTANCE REFERENCE NUMBER, OR THE SAME SHALL BE MADE AVAILABLE ON THE WEB OR THE SAME CAN BE ACCESSED THROUGH EXTRANET USING YOUR USERID AND PASSWORD OR THE SAME SHALL BE SENT BY POST/COURIER OR EMAIL TO THE CUSTOMER WITHIN 3-5 BUSINESS DAYS OF THE RECEIPT OF THE PURCHASE ORDER OR PAYMENT WHICHEVER IS LATER.

Customer warrants that it is buying for its own internal use only and not for re-sale purposes.

### Terms and Conditions of VCG Order Acceptance Policy:

#### 1. Purchase Price, Quotation, Payment and Tax/Other Levies.

(a) Prices and promotions are listed/published from time to time in VCG's Shopping Sites or Corporate WebSites are subject to change without prior notice. Prices mentioned in the advertisements and other forms of Promotional campaigns through web, mail or courier are also subject to change without notice. Prices for certain governmental, corporate, and institutional customers participated under tender may be set forth in a bid or other written agreement between the parties.

(b) Oral quotations made by VCG or written quotations which do not have a period specified are valid only to the end of the business day upon which they are given.

(b) Payment is due before shipment, unless credit terms have been arranged in advance with VCG's



Credit Department. In such cases, payment terms shall be as set forth in the credit agreement. In any case all the payments must be made immediately against the delivery of the products as per the terms of the Invoice. Time is the essence of the payment. In addition, VCG shall have discretion to withhold any delivery of products and/or services to Customer until all overdue amounts are fully discharged. VCG reserves the right to demand immediate payment for any products and/or services already dispatched to the customer.

(c) VCG collects Sales Tax or Value Added Tax, Octroi (if applicable), any other levies along with any difference in such rates at the time of quote/sale, execution of the order or immediately after the execution of the order from the customer. Customer is bound by such changing Tax structures, Value Added Taxes, Inter-state Taxes, customs duties during the entire period of order completion. All-Inclusive-Price quotes are subject to the prevailing Tax structures or other levies, and any changes taken place after the receipt of the Purchase Order but before the execution of the Order shall be to the account of the customer, and pro-rata changes will apply on the final billing.

(d) Purchase Prices are tailor-made as per the quantity, customer profile, and according to the promotional offers or other Direct Supplier/Manufacturer discounts from time to time, hence VCG shall not promise to offer uniform pricing at all the times. The Prices quoted may be subject to change due to changing market conditions, product discontinuation, manufacturer price changes, errors in advertisements, changes in the customs duty structure, or other demand-supply schedules or Currency fluctuations, or any other extenuating reasons beyond VCG's control. While VCG uses reasonable efforts to include accurate and up-to-date information on its Websites, VCG makes no warranties or representations as to the VCG's accuracy. VCG assumes no liability or responsibility for any errors or omissions in the content on its websites.

## **2. Shipping/Delivery**

VCG shall deliver the products/Services as ordered by the customer in full or part by instalments or in any sequence. Where the products/Services are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by VCG in respect of any one or more instalments shall vitiate the Contract in respect of products previously delivered or undelivered products.

Shipping terms are by hand, by Air or by Courier or through web/FTP or other Download sites depending upon location or customer preference. VCG will arrange payment for shipping with the carrier, but such costs are the responsibility of Customer wherever VCG does not have its presence. Any additional charges for express shipments or express goods movement or for download shall be to the account of the customer. Risk of loss is upon Customer once VCG delivers the Product to the carrier of Customer choice. Delivery times are estimates only and VCG shall not be liable for delays or any consequential losses arising out of delays even if the customer is intimated of such delays or not.

All the delivery periods quoted in the Proforma Invoice or Quotation are only indicative and shall vary due to extraneous reasons. Number of Business Days refers to the working days (excluding public holidays, bank holidays/strikes, Saturdays, Sundays In India and the country of shipment or origination including that of Airlines, Carriers or customs).

Software sold through internet, web, or in the form of media like CD, USB Flash Drive or DVD shall accompany the trail or time bound perpetual licenses as they deem fit depending upon the nature of contract. Upon the full payment, VCG shall register the licenses thus issued in the name of the customer on a condition such software is not returnable even if the software or associated services rendered useless.

## **3. Acceptance of Delivery by the Customer.**

Unless the Customer notifies VCG to the contrary on the day of delivery/installation and such notification is confirmed in writing within 24 hours, the Products shall be deemed to have been accepted by the

Customer as being in good condition and in accordance with the Purchase Order. The Customer shall not be entitled to withhold payment of all or any of the Price of the Products whilst any claim is being investigated by VCG.

#### **4. Vendor License Agreements.**

Customer agrees to abide by all license provisions or end user agreement imposed by the manufacturer or publisher from time to time. End User Licensing Agreement (EULA) and its terms are binding on the Customer at all times during the usage of the software.

#### **5. Purchase Order Amendments**

Any amendments in the Purchase Order shall not be entertained except if the product(s) / services ordered with VCG, its Principals including Manufacturers or Manufacturer Representatives in India or abroad is/are not reserved or shipped by then. Any amendment in the Purchase Order is limited to increase in the quantity or total value of the Contract of the same or equivalent products of the same description.

Any amendments in the Purchase Order by the customer shall attract additional freight or handling charges in addition to the product's differential cost, and the same shall be borne by the customer.

Any amendments in the Purchase Order by the customer or such amendments if necessitated due to product obsolescence shall disrupt the original delivery date(s) indicated by VCG to the customer, and accordingly fresh delivery dates are counted from the date of the new amendment taken place in the Purchase Order.

#### **6. International.**

Products sold by VCG, including equipment and software, may be exported from India only in accordance with the Export Administration Regulations. Diversion contrary to Indian law is prohibited. Customer warrants and represents that it is eligible to receive Products under Indian law and agrees to abide by any export or re-export restrictions imposed by the manufacturer or publisher. All the products sold in India through VCG are not meant for re-export except such provisions have been clearly laid down in the Customer's Purchase Order duly accepted by OAD of VCG.

#### **7. LIMITED MANUFACTURER'S SUPPORT.**

(a) VCG agrees that it has no direct or indirect control on the quality of the Products it sells. It would be purely the Customer's preference of brand, model/version or configuration hence we shall not be responsible for any inconvenience, loss or productivity loss by the customer on account of using the product or any associated services. Products supplied by VCG as a Solution Partner of reputed Global Software & Hardware Manufacturers come with optional Product Annual Support (PAS). Products required to be registered for Support by the customer to claim free support through web from Manufacturer. VCG shall play a contributory role for arranging such support from the manufacturer to the customer when required.

(b) VCG does not warrant the performance or integrity of any Product, but merely passes through to the Customer whatever end-user warranty the manufacturers or software publishers provide with their respective Products.

(c) All the terms and conditions of the Product Annual Support or warranty are in accordance with the Manufacturer's user guidelines, manuals and other documents/guides that accompanied the product.

(d) VCG DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW, INCLUDING MERCHANTABILITY AND USE FOR A PARTICULAR PURPOSE.

#### **8. LIMITATION OF LIABILITY.**



IN NO EVENT SHALL VCG BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OPPORTUNITY EVEN IF VCG IS ADVISED OF THEIR POSSIBILITY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS STATED IN THE MANUFACTURER'S OR PUBLISHER'S END USER WARRANTY OR PRODUCT ANNUAL SUPPORT GUIDES ACCOMPANYING THE PRODUCT. IN NO EVENT SHALL VCG'S LIABILITY EXCEED THE REPAIR, REPLACEMENT WITH THE SAME OR EQUIVALENT, REPLACEMENT WITH UPGRADED PRODUCT OR COST OF THE SPECIFIC PRODUCT PURCHASED FROM VCG AFTER DEPRECIATION. VCG IS NOT LIABLE FOR ANY PRODUCTS OR SERVICES NOT BEING AVAILABLE FOR USE, OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. VCG IS NOT RESPONSIBLE FOR DELAY IN DELIVERY OR INSTALLATION AND/OR ANY CONSEQUENTIAL DAMAGES INCLUDING LOSS OF BUSINESS OR PROFITS.

#### **9. Product Returns, Replacements and Substitute Deliveries.**

Products once sold are not returned under normal circumstances except in the case of Product found not functional on arrival only when it is hand delivered by VCG's Delivery Department through various modes such Digital Media, Download or FTP. Product found non-functional on delivery by the carrier such as Airlines, Courier, Roadways shall be referred to the Insurance agencies through the Customer 's own Insurance Policy for any claims on the same. Customer should pursue on its own with their Insurance Agents for any or all claims.

#### **Returns of Products are subject to the following current return policies.**

A) All goods accepted by the customer under Open Mode, Delivery Challan or Invoice shall be treated as acceptance of the same by the customer provided the same is/are not returned within 24 hours provided such products are hand-delivered or downloaded through FTP or other Web links. Goods shipped out by using any carrier shall not be returned except if the goods shipped are distinctively different from the goods ordered by the customer.

B) Goods delivered in lieu of the goods ordered if received by the customer but not returned within 48 hours shall be treated as acceptance of the goods by the customers at the prices quoted in the Invoice, Delivery Challan or any Other document as substitute(s) for the original product(s) ordered by the customer.

C) Goods shall not be returned once delivered to the customer even if the complete order is not executed, and VCG will bill only for the part deliveries made and collect the payment on pro-rata basis.

D) Replacement of the goods in lieu of the defective (found on arrival within the same Business day and intimated within 24 hours) goods shall be made in the reasonable period of original delivery period(s) mentioned in the Quotation/Proforma Invoice.

E) Return Freight shall be born by the Customer wishing for the replacement using VCG's own Insurance Policy.

#### **10. Exclusive Agreement.**

These Terms of Sale represent the complete and final agreement between the Customer and VCG for the matters set forth herein, and shall be supplemented only by the prices, quantity, and descriptions (configurations and versions) set forth in VCG's invoice for the relevant sale. Terms contained in Customers' purchase orders, offers to buy, terms and conditions, and the like shall have no effect except if VCG's Order Acceptance Department(OAD) has expressly agreed to the customer's Purchase Order conditions in writing separately.

#### **11. Order Cancellation/Refunds**

All orders placed with VCG shall not be cancelled by the customer under normal circumstances even if there is any delay in executing such order in time due to factors such as customs clearance, no-stock

situation at the Manufacturer or its Distributor location or short supply or Airlines delay or other customs regulations. However customer can seek to cancel the order with VCG on mutual consent if it's delayed by more than four weeks from the date of original or extended delivery dates promised by VCG in writing or proposed by the customer in writing or otherwise. In such events VCG shall refund full amount within 30 days to the customer. If there is any further delay in refund, the same shall be communicated to the customers in advance due to any reasons including the impending merger, or change of bankers, etc. For all such delays beyond 30 days, customers can seek to send to the debit note for appropriate interest at the rate of 12% per annum for reimbursement.

If the orders cancelled by the customer before the delivery period or before VCG's Principal was confirmed, or customer extended delivery schedules, VCG shall deduct 20% of the total order value (excluding Sales Tax and Octroi) towards the liquidated damages and refund the balance amount within 30 days. However if the software or Licenses including products if registered in the name of the Customer prior to the cancellation, the customer is bound to make full payment for the products and services even if the software is not in use by the customer.

If the part deliveries of products or services made and accepted by the customer and if the same are already communicated to the customer, then Customer can not seek to cancel the unexecuted order for pro-rata refund since products or services delivered in sequence and these are part of the total solution.

## **12. PRODUCT OBSOLESCENCE OR NO STOCK SITUATION**

Should the product ordered by the customer is discontinued or remain out of production or out of stock for longer periods, VCG may take the liberty of giving higher configuration of product or replacement product or superior product at no extra cost. Should the successor to the original product ordered by the customer cost more, then VCG may propose to the customer for the consideration of the marginal difference. In the event that customer does not agree to the proposed hike in the price, VCG may choose to have the order cancelled, and refund the amounts on products withholding the costs on services part.

## **13. TECHNICAL SUPPORT & SERVICE.**

VCG will provide general service and technical support to Customer in accordance with the then-current service and technical support policies in effect. Service and support offerings may vary from product to product. If Customer purchases optional services and support as listed on Customer's invoice, VCG will provide the optional service and support to Customer in accordance with the then-current terms and conditions in the optional service contract between VCG and Customer (available via the Internet on VCG's Web site at <http://www.virtuosol.com> or upon request) in addition to the Standard Warranty as per the separate terms/conditions of the manufacturers. VCG may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them. VCG has no obligation to provide service or support until VCG has received full payment for the product or service/support contract for which service or support is requested. VCG shall not be responsible for the delays in repair or replacement of the software, hardware or other components due to the delays of the Manufacturer as per the latter's product / warranty guidelines or due to customs clearance delays and other delays beyond VCG's control. VCG has option(s) of providing technical support and service through outsourced agencies including franchisees, Dealers or Support Providers.

## **14. FORCE MAEJURE & LIABILITY.**

Neither party shall be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

VCG's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.



a) The customer shall indemnify VCG and keep VCG fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.

b) VCG and Customer agree that VCG will not be liable for Products not being available for use, or for data or software which is lost, corrupted, deleted or altered. VCG shall not be liable to the Customer for any incidental, indirect, special or consequential damages arising out of or in connection with the purchase, use or performance of products or services, even if VCG has been advised of their possibility.

c) Any service response times stated by VCG in the service contracts are approximate only and VCG shall not be liable for any direct or indirect loss or damage arising from its failure to meet such response times, howsoever occasioned.

d) Any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by VCG shall be subject to correction without any liability on the part of VCG.

### 15. General

(a) These Terms and conditions and any transactions made under them shall be interpreted by and be subject to the laws prevailing in the country.

(b) In the event any section or portion of a section of these Terms and conditions are deemed unlawful or unenforceable, that section or portion of a section shall be stricken from the Terms and conditions and the remaining terms shall continue in full force and effect.

(c) All the disputes are subject to the jurisdiction of New Delhi and/ Hyderabad even:

- i) if the Purchase Order is released by the customer from a different place,
- ii) if the Purchase Order or payment is released to the different office/location of VCG,
- iii) if the payment is made or received at the different location
- iv) if the Invoice or Order Acceptance is issued from the different office/location of VCG.

(d) VCG shall not be responsible for damages or delays resulting from Acts of God, strikes, fire, theft, death, or customs delays or VCG's supplier delays and from other actions, both governmental and otherwise, including but not limited to war, riot, seizure, and embargo. The only remedy for the customer is to cancel the order if there is any continued delay due to the above reasons, and seek the refund of the amount for undelivered products.

VCG SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL DAMAGES OR PRODUCTIVITY LOSS INCLUDING OTHER LOSSES FOR ANY DELAY IN EXECUTING THE ORDER IN FULL OR PART EVEN IF VCG IS ADVISED OF THE SAME. CUSTOMER SHALL NOT DEPEND HIS BUSINESS OR BUSINESS GAINS, PROFITS ON THE DELIVERIES EITHER EXPRESSLY PROMISED OR WRITTEN BY VCG IN ITS QUOTATION SHEET, OR PROFORMA INVOICE OR ANY OTHER SUBSEQUENT DOCUMENTS. SINCE MOST OF THE PRODUCTS THAT VCG CARRIES ARE NOT PACKAGED SOLUTIONS AND REQUIRES EXHAUSTIVE IMPLEMENTATION & DEVELOPMENT / RE-DEVELOPMENT, AND ORDERED ON SPECIAL INDENT WITH VCG'S PRINCIPALS OR ASSOCIATES, HENCE THE TIME TAKEN FOR EXECUTING THE PURCHASE ORDER MAY CONSIDERABLY TAKE TIME.