

CUSTOMER TERMS - SOFTWARE

1. **Parties.** These terms represent the agreement (“**Agreement**”) that governs the purchase of software product licences and services from Entco Software India Private Limited (“**Company**”) by the Customer entity identified below (“**Customer**”).
2. **Orders.** “**Order**” means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) software product lists, software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Company website.
3. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties’ “**Affiliates**”, meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify software product or service delivery in the same country as the Company Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order Arrangements.** Customer may place orders with Company through our website, customer-specific portal, or by letter, fax or e-mail. Where appropriate, orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order.
5. **Prices and Taxes.** Prices will be as quoted in writing by Company or, in the absence of a written quote, as set out on our website, customer-specific portal, or Company published list price at the time an order is submitted to Company. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Company order representative to discuss appropriate procedures. Company will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services.
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of Company’s invoice date. Company may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Delivery.** Company will use all commercially reasonable efforts to deliver software products in a timely manner. Company may elect to deliver software and related software product/license information by electronic transmission or via download.
8. **Support Services.** Company’s support services will be described in the applicable Supporting Material, which will cover the description of Company’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
9. **Eligibility.** Company’s service, support and warranty commitments do not cover claims resulting from:
 1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. Modifications or improper system maintenance or calibration not performed by Company or

- authorized by Company;
3. failure or functional limitations of any non-Company software or product impacting systems receiving Company support or service;
 4. malware (e.g. virus, worm, etc.) not introduced by Company; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Company's control.
10. **Professional Services.** Company will deliver any ordered IT consulting, training or other services as described in the applicable Supporting Material.
 11. **Professional Services Acceptance.** The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other products or services to be provided by Company.
 12. **Dependencies.** Company's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
 13. **Change Orders.** We each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.
 14. **Software Performance.** Company warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. Company warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. Company does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by Company in Supporting Material.
 15. **Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and Company will re-perform any service that fails to meet this standard.
 16. **Services with Deliverables.** If Supporting Material for services define specific deliverables, Company warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies Company of such a non-conformity during the 30 day period Company will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to Company.
 17. **Product Warranty Claims.** When we receive a valid warranty claim for Company software product, Company will either repair the relevant defect or replace the software product. If Company is unable to complete the repair or replace the software product within a reasonable time, Customer will be entitled to a full refund upon the prompt written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. Company will pay for shipment of repaired or replaced software products to Customer.
 18. **Remedies:** This Agreement states all remedies for warranty claims. To the extent permitted by law, Company disclaims all other warranties.

19. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants Company a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Company and its designees to perform the ordered services. If deliverables are created by Company specifically for Customer and identified as such in Supporting Material, Company hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.
20. **Intellectual Property Rights Infringement.** Company will defend and/or settle any claims against Customer that allege that a Company-branded software product or service as supplied under this Agreement infringes the intellectual property rights of a third party. Company will rely on Customer's prompt notification of the claim and cooperation with our defense. Company may modify the software product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected software product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. Company is not responsible for claims resulting from any unauthorized use of the software products or services. This section shall also apply to deliverables identified as such in the relevant Support Material except that Company is not responsible for claims resulting from deliverables content or design provided by Customer.
21. **License Grant.** Company grants Customer a non-exclusive license to use the version or release of the Company-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-Company branded software, the third party's license terms will govern its use.
22. **Updates.** Customer may order new software versions, releases or maintenance updates ("**Updates**"), if available, separately or through Company software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that Company makes them available to Customer.
23. **License Restrictions.** Company may monitor use/license restrictions remotely and, if Company makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide Company with reasonably detailed information about those activities.
24. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, Company may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to Company, except that Customer may retain one copy for archival purposes only.

25. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by Company. Company-branded software licenses are generally transferable subject to Company's prior written authorization and payment to Company of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
26. **License Compliance.** Company may audit Customer compliance with the software license terms. Upon reasonable notice, Company may conduct an audit during normal business hours (with the auditor's costs being at Company's expense). If an audit reveals underpayments then Customer will pay to Company such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse Company for the auditor costs.
27. **Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
28. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. Company does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Company has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Company will use any PII to which it has access strictly for purposes of delivering the services ordered.
29. **US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under Company's standard commercial license.
30. **Global Trade compliance.** Software products and services provided under these terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers software products and/or deliverables provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Company may suspend its performance under this Agreement to the extent required by laws applicable to either party.
31. **Limitation of Liability.** Company's liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to Company for the relevant Order. Neither Customer nor Company will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; wilful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.

- 32. Disputes.** If Customer is dissatisfied with any software products or services purchased under these terms and disagrees with Company's proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
- 33. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 34. Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
- 35. General.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of Company or the Company Affiliate accepting the Order and the courts of that locale will have jurisdiction, however, Company or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and Company agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state where Customer US Affiliate is headquartered, excluding rules as to choice and conflict of law.