

[www.panacea.co.uk](http://www.panacea.co.uk)

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PANACEA

Helping Business to Grow

PANACEA LIMITED  
**STANDARD TERMS  
& CONDITIONS**

*(Effective November 2004)*

For any enquiries regarding Panacea's  
General Terms & Conditions, contact:

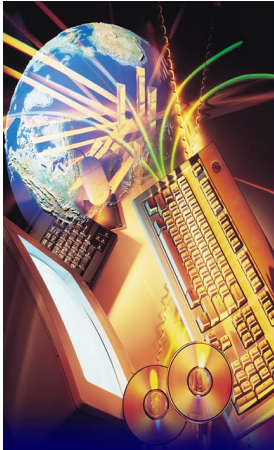
**Mike Olpin**  
Financial Director  
PANACEA LTD

Telephone 01256 30 50 50



PANACEA

*Helping Business  
to Grow*



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## 1. DEFINITIONS AND EFFECT OF CONDITIONS

- (a) The "Company" means Panacea Limited (Company Number 2052916). The "Conditions" means the standard terms and conditions set out in this document. The "Contract" means the contract between the Company and the Customer to which these conditions apply. The "Customer" means any person, firm or company receiving Goods and/or Services from the Company under this Contract; The "Goods" and "Services" mean, respectively, those Goods and Services identified in the Company's quotation or acknowledgement of order relating to this Contract; "Relevant Period" means the period when any project, contract or business arrangement between the parties remains current (or until it expires or is expressly terminated) and the period of six months thereafter; and "Year 2000 Conformity" means the definition of year 2000 conformity requirements published by the British Standards institutions under reference DISCPD2000-1.
- (b) These Conditions shall apply to and be incorporated into every Contract between the Company and the Customer under which the Company supplies Goods or Services to the Customer.
- (c) These Conditions shall govern the Contract for the supply of Goods or Services by the Company to the exclusion of any other terms and conditions of the Customer and may not be varied without the written consent of a Director of the Company.
- (d) The Company's employees or agents are not authorised to make any representations concerning Goods or Services unless confirmed by the Company in writing. In entering into this Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed. The provisions of this clause shall not apply in the case of fraud. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk.
- (e) Any error or omission in any sales literature or other document or information relating to the Goods or Services or the Contract issued by the Company shall be subject to correction without any liability on the part of the Company.

## 2. SERVICES

- (a) The Customer shall at its own expense supply the Company with all necessary documents, data, materials or other information relating to the Services, within sufficient time to enable the Company to provide the Services in accordance with the Contract. The Customer shall ensure the accuracy of all such documents, data, materials or other information.
- (b) The Company may at any time without notifying the Customer make any changes to the Services which are necessary to comply with any statutory requirements, or which do not materially affect the nature or quality of the Services.

## 3. ORDERS

- (a) No Customer order (whether by telephone, letter, e-mail or otherwise) shall be deemed accepted by the Company unless and until confirmed by the Company in writing.
- (b) The Customer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company all necessary information in relation to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- (c) The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation or acknowledgement of order. Changes to specification may be made without notice to make the Goods conform to any applicable UK or EU requirements.

## 4 DELIVERY

- (a) Any delivery dates quoted whether verbally or otherwise are estimates only and time shall not be of the essence in relation to them.
- (b) The unloading of the Goods at the Customer's address or any other place agreed by the parties in advance shall constitute delivery and the risk in the Goods shall pass to the Customer on such delivery.
- (c) The Company shall be entitled to make partial deliveries or deliveries by instalments and these Conditions shall apply to each partial delivery. Each delivery of an instalment shall constitute a separate contract and failure by the Company to deliver any one or more instalment in accordance with these Conditions shall not entitle the Customer to treat the Contract as a whole as breached.
- (d) If the Customer fails to take delivery of Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage or sell the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price due under the Contract with the Customer or.

## 5. FRUSTRATION ETC. (FORCE MAJEURE)

- If the Company is prevented at any time from performing any contractual obligation, or if any loss damage or injury or delay in delivery is occasioned by or due to any cause beyond the Company's reasonable control including, but not limited to, the commission of any criminal act, shortage of Goods or components, Act of God, or any restriction imposed by any local municipal or governmental authority (including Customs Authorities) whether British or foreign, the Company shall be entitled to terminate the Contract immediately and to be discharged from all liabilities whatsoever to the Customer and the Company shall not be liable for any such loss, damage, injury or delay.

## 6. PRICE

- (a) Unless otherwise stated any prices quoted by the Company are exclusive of value added tax, any other taxes and carriage packing and insurance for which the Customer shall be additionally liable. Prices are also exclusive of the Company's travel, subsistence, hotel and other out of pocket expenses incurred in the provision of the Goods and/or Services, which will be charged to the Customer and be payable within 30 days of despatch of the Company's invoice.
- (b) Prices quoted are those current at the time of quotation and will be the

price payable by the Customer except where specific fixed price arrangements have been agreed in writing in advance.

- (c) Where agreed call offs are not adhered to by the Customer, the Company reserves the right to amend the price structure in accordance with the quantities delivered.

## 7. PAYMENT

- (a) Payment is required by the Company in advance of delivery of the Goods or performance of the Services unless otherwise agreed in writing by the Company. Where credit terms are granted, payment shall be due strictly in accordance with the terms stated on the Company's invoice.
- (b) The Company reserves the right to suspend deliveries where payment is not received in accordance with any alternative terms of payment agreed in writing.
- (c) Where payment is not made in accordance with the terms of clause 7(a) hereof the Customer shall pay interest on any unpaid amounts from the due date until payment in full, calculated at 3% above Lloyds TSB Bank Plc's base rate for the time being in force calculated on a daily basis.
- (d) No cash or other discount is allowed unless agreed in writing by the Company.
- (e) If the Company is able to deliver some items comprising the Goods and or Services the subject of a Contract but is unable to deliver all such items due to causes beyond its control (including but not limited to the examples referred to in clause 5 hereof) the Customer shall pay for such items as are delivered

## 8. PASSING AND RESERVATION OF TITLE

- (a) The risk in the Goods shall pass to the Customer on delivery.
- (b) Property in Goods supplied under the Contract will pass to the Customer when the Goods the subject of this Contract and all other goods the subject of any other contract between the Company and the Customer which have been delivered to the Customer but not paid for in full, have been paid for in full.
- (c) Until full payment has been received by the Company, the Customer shall hold the Goods in a fiduciary capacity for the Company and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured in a manner which enables them to be identified as the Goods of the Company and the Customer shall immediately return the Goods to the Company should its authorised representative so request.
- (d) The Customer's right to possession of the Goods shall cease if he does anything or fails to do anything which would entitle an administrator or administrative receiver or any third party to take possession of any assets or entitle any person to present a petition for winding up of the Customer.
- (e) The Customer grants the Company an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing or removing any Goods, the property in which remains with the Company.

## 9. SOFTWARE

- (a) Where the Goods include software, prior to delivery, the Customer shall enter into a licence for those Goods on such terms as the Company shall require, including payment of any licence fees.
- (b) If requested, the Company will provide consultancy services in relation to the software, on such terms (including as to payment) as shall be agreed between the Company and the Customer.

## 10. DRAWINGS ETC

- (a) All drawings, plans descriptive weights dimensions and the descriptions and illustrations contained in the sales literature and price list are approximate only and shall not form part of this Contract. In addition, drawings, plans and technical documents issued either before or after the making of this Contract for the use or information of the Customer and such other information as may be supplied to the Customer including specifications shall not at any time be copied, reproduced or communicated to any third party without the Company's prior written consent.

## 11. LOSS AND DAMAGE IN TRANSIT

- The Company will refund the cost of, or at its discretion replace or repair free of charge any of the Goods proved to the Company's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within 3 days after receipt of the Goods in the case of damage, or within 10 days of receipt of invoices in the case of loss, the Customer notifies the Company in writing of the occurrence of the damage or loss, and its nature and extent.

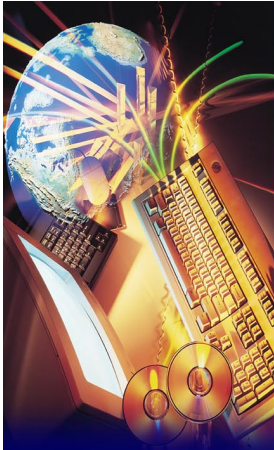
## 12. SUPPORT AND MAINTENANCE

- (a) If requested the Company will provide software support and hardware maintenance to the Customer in respect of any Goods supplied (where applicable) on such terms (including payment) as shall be agreed between the Company and the Customer.

## 13. LIMITATIONS OF LIABILITY

- (a) The Company will use reasonable endeavours to assign the benefit of any available third party manufacturer's warranty in respect of any Goods to the Customer.
- (b) The Company warrants that the Services will be performed with reasonable care and skill.
- (c) In relation to any Goods, the Company does not make any representation or warranty regarding Year 2000 Conformity or euro compliance.
- (d) The Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of 3 months from the date of delivery.
- (e) The warranty in clause 13 (d) is given by the Company subject to the following conditions:
- (i) the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design, configuration or specification supplied by the Customer;
- (ii) the Company will be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse, or alteration or repair of the Goods without the Company's written approval;





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- (iii) the Company shall be under no liability if the total price for the Goods has not been paid by the due date for payment;
- (iv) the above warranty does not extend to parts, material or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and be assigned to the Customer.
- (f) Any claim by the Customer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 5 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect. If delivery is not refused and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods or Services and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods or Services had been delivered in accordance with the Contract.
- (g) Where any valid claim in respect of the Goods or Services which is based on any defect in the quality or condition of the Goods or Services or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) or re-perform the Services free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods or Services (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- (g) In the event that the Customer returns Goods under the terms of an applicable warranty and the defect or error is found not to be within the terms of that warranty, the Customer shall pay the Company's then applicable current fees for the examination and return of the Goods, but the Company shall have no other liability to the Customer.
- (h) Except as stated in this clause 13 all conditions warranties, terms and undertakings, express or implied statutory or otherwise, including but not limited to warranties or conditions as to satisfactory quality, fitness for purpose or any Year 2000 Conformity or other date change or euro conformity are hereby excluded to the fullest extent permitted by law.
- 14. LIMITATIONS OF LIABILITY**
- (a) The liability of the Company for direct loss or damage (including but not limited to direct loss of profit, business, contracts or goodwill) and in respect of loss of or damage to the tangible property of the Customer arising out of the Contract or due to negligence shall be subject to a limit of £100,000 per claim or series of connected claims and an aggregate limit of liability for any 12 month rolling period of £500,000. The Customer may request, but the Company shall not be obliged to agree, to increase either or both of these limits. If the Company agrees to any such increase, it shall be a precondition of any increase that the Customer pays to the Company in advance, any additional insurance premium and other costs and expenses notified to the Customer by the Company.
- (b) Except in respect of death or personal injury caused by the negligence of the Company (in respect of which the Company shall have unlimited liability) the Company shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law, or under the express terms of this or any other contract, for any indirect, special or consequential loss or damage whatsoever (including but not limited to any failure to achieve anticipated savings or economies, loss of profit, business, contracts or goodwill), costs, expenses or other claims for indirect or consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise), which arise out of or in connection with the supply of all or any Goods or the Services or the use or resale of any of them by the Customer or otherwise under this Contract.
- 15. RETURNED GOODS AND CANCELLATIONS**
- (a) The Customer shall not return Goods or cancel orders without the Company's previous written consent. Such consent will not be given where Goods have been specially purchased by the Company to meet the Customer's requirements or where the Company has commenced performance of any Services (including but not limited to the acquisition of any materials required for the performance thereof). If the Company gives such consent, it reserves the right to make a cancellation charge.
- (b) The Company reserves the right to invoice confirmed bookings for Services which are subsequently cancelled by the Customer. Notice of cancellation must be made in writing or e-mailed (with the Customer bearing the risk of non-receipt) to [serviceadministration@panacea.co.uk](mailto:serviceadministration@panacea.co.uk). The amount invoiced shall be determined by the notice period given for the cancellation; 1-3 days @ 100% of the charge for Services, 4-7 days @ 50% of the charge for Services, 8-14 days @ 25% of the charge for Services. No charge will be made where a cancellation notice of 15 days or more is given. Periods shall be calculated from the date the Company actually receives the notice and all cancellation charges are subject to VAT.
- 16. COPYRIGHT, PATENTS, TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS**
- (a) The Customer acknowledges that all trade marks, trade names, copyrights, patents and other intellectual property rights used in relation to or connected with the Goods or Services are and shall remain the exclusive property of the Company (or its third party licensors), save that the provisions of this clause shall not apply to any documents, data, plans or other materials provided by the Customer to the Company for the purpose of providing the Services.
- (b) The Customer agrees to indemnify the Company against all liabilities costs, damage, damages and expenses which the Company may incur as a result of work done in accordance with the Customer's specifications which involve infringement of any copyright, patent or other intellectual property or proprietary right.
- 17. ASSIGNMENT AND SUB-CONTRACTING**
- The Company reserves the right to assign, sub-contract or otherwise transfer any of its rights or obligations under this Contract. The provisions of this clause shall not, for the avoidance of doubt, apply to the Customer.
- 18. PERSONNEL**
- The Customer covenants with the Company that it will not (whether directly or indirectly) for the Relevant Period, induce or attempt to induce any employee of the Company to leave his or her employment or any agent or contractor working for the Company to cease working for the Company and will not employ or receive services from any employee, agent or contractor or former employee or agent of or contractor to the Company during such period. If, with the prior written agreement of the Company or otherwise, the Customer employs or hires any employee of the Company during the term of this Agreement, or for a six month period following its termination, the Customer shall pay to Company a fee equivalent to six months of the employee's final basic pay received whilst in the employment of the Company.
- 19. CONSTRUCTION AND USE**
- The Company shall not be responsible for adapting or modifying any Goods to conform to statutory requirements not current at the time of the acceptance of order.
- 20. HEADINGS AND INVALIDITY**
- (a) The headings of these Conditions are for convenience, only and shall have no effect on the interpretation thereof.
- (b) If any provision of this Contract is held by a court or other competent body to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 21. TERMINATION**
- (a) The Company may terminate this Contract immediately if the Customer fails to pay any sum due under it on the due date (time being of the essence regarding payment) or immediately if the Customer commits a material breach of any term of this Contract and which (in the case of a breach capable of being remedied) has not been remedied within 7 days of a written request remedy the same from the Company. Any termination of this Contract shall be without prejudice to any of the Company's other rights or remedies.
- (b) This sub-clause applies if the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of or a receiver is appointed over any of the property or assets of the Customer, or the Customer ceases or threatens to cease to carry on business or the Company reasonably apprehends that any of the above events is about to occur in relation to the Customer and notifies the Customer accordingly. If this sub-clause applies then, without prejudice to any other right of remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Customer and if the Goods have been delivered or Services performed but not paid for, the price should become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.
- 22. WAIVER**
- No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of this Contract.
- 23. TELECOMMUNICATIONS**
- If the Customer intends to use Goods in conjunction with a telecommunications network, it shall be responsible for obtaining the consent of the owner of the network for such connection, paying all charges from time to time levied by the owner for such connection to the network and at all times complying with such technical and other regulations as the owner shall impose as condition of connection to the network. The Company shall not be liable for any loss or damage resulting from the acts of omissions of the owner of the network or the breach by the Customer of its obligations under this clause.
- 24. ENTIRE AGREEMENT**
- These Conditions and the Contract constitute the entire agreement and understanding of the parties and supersedes all prior written or oral agreements, representations, understandings or arrangements between them relating to the subject matter of these Conditions and the Contract. Neither party shall be entitled to rely on any agreement, representation, understanding or arrangement which is not expressed in these Conditions or the Contract. The provisions of this clause shall not apply in the case of fraud.
- 25. LAW AND JURISDICTION**
- (a) This Contract will be governed by the Laws of England.
- (b) The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between their respective senior executives who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through Alternative Dispute Resolution ("ADR") . If the matter has not been resolved by an ADR procedure within 21 days of the initiation of such procedure (or such other period as the parties may agree), or if either party will not or ceases to participate in an ADR procedure, the dispute shall be referred to the exclusive jurisdiction of the English Courts.

