

CONDITIONS OF SALE

These Conditions together with the attached Order will govern continuing business in relation to the Contract between the Parties. Where there is any inconsistency between the provisions hereof and the Order, the provisions of the Order will take precedence.

IF YOU FAIL TO MAKE PAYMENT ON TIME OR FAIL TO COMPLY WITH OUR POLICIES ON USE OF THE INTOUCHCRM SYSTEM CRM SHALL SUSPEND YOUR ACCESS TO INTOUCH.

YOUR CONTRACT WITH CRM IS FOR A ROLLING 30 DAY PERIOD AND WILL CONTINUE (AND YOU WILL CONTINUE TO BE CHARGED) UNTIL YOU TERMINATE THE CONTRACT IN WRITING GIVING 32 DAYS NOTICE. CHARGES WILL CEASE AT THE END OF THE 32 DAY NOTICE.

1. Interpretation

1.1 In these Conditions:

'Customer' means the person so described in the Order;

'Customer's Materials' mean all information, data, software, text, visual images, pictures and other materials supplied by the Customer for use in or to form part of the Goods and/or Services;

'Conditions' mean the standard terms and conditions of sale set out here and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Parties;

'Contract' means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services;

'Data' means data inputted by the Customer into the InTouchCRM system to which they subscribe;

'Intellectual Property' means copyright, database rights, rights in computer software, domain names, rights in hosting, rights in confidential information and any and all other intellectual property rights (whether now subsisting or in the future created) for the full period of those rights (including any extensions and renewals);

'InTouchCRM' means the InTouchCRM system described in the Order;

'Order' means the CRM sales order to which these Conditions are annexed;

'Parties' means the Customer and CRM;

'Price' means the price of the Goods and/or the charge for the Services and further defined at Condition 4;

'CRM' means CRM Limited (Company Number: 05561195) whose registered office is at Unit 1 Laurel House, Station Road, Worle, Weston Super Mare, Avon, BS22 6AR;

'Services' mean the services (if any) described in the Order including but not limited to ongoing support and training;

'Specification' includes any designs, descriptions, plans, drawings, data or other information relating to InTouchCRM and/or Services;

'Third Party Intellectual Property' means any and all Intellectual Property licensed to CRM by a third party in connection with the Goods and/or Services;

'Use' means copying, adaptation, publishing and otherwise

exploiting in the manner set out in the Order;

'Writing' includes e-mail, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of sale and Contractual Term

2.1 The Order constitutes an offer by the Customer to purchase InTouchCRM and/or the Services from CRM subject to these Conditions. No Order placed by the Customer shall be deemed to be accepted by CRM until CRM issues an acknowledgement in Writing of the Order or, if earlier, CRM enables the Customer to use InTouchCRM and/or performs the Services.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions.

2.3 The Contract supersedes all prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the Order (except that neither of the Parties seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). No addition to or modification to the Order or these Conditions shall be binding on CRM without the prior consent of one of CRM's authorised representatives in Writing.

2.4 The Order will lapse unless accepted by CRM by an acknowledgement in Writing within 7 (seven) days of the date of the Order.

2.5 The Contract has a rolling monthly term and as such will be automatically renewed once it enters a new 30 day period. Should the Customer wish to terminate this agreement at any time they must provide 32 days notice in writing to CRM. Charges for InTouchCRM and/or Services will cease at the end of this 32 day notice period.

3. Specifications

3.1 The quality and description of InTouchCRM and/or the Services shall, subject to these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Customer and accepted by CRM in Writing by one of CRM's authorised representatives in writing.

3.2 CRM shall not be liable for any failure to provide or delay in providing InTouchCRM and/or the Services to the extent that such delay arises out of or in connection with any act or

- omission of the Customer or its sub-contractors, agents or employees which either directly or indirectly affects CRM's ability to enable the Customer to use InTouchCRM and/or provide the Services including any breach of the Customer of its obligations under the Contract. CRM reserves the right to invoice the Customer for any additional expenses incurred by CRM as a result of such failure or delay.
- 3.3 During the course of providing InTouchCRM and/or the Services, CRM reserves the right to make any improvement, substitution or modification to the Specification and/or InTouchCRM as it reasonably deems fit provided that such improvement, substitution or modification will not materially change the nature of InTouchCRM and/or the performance of the Services.
- 4. Price of the Goods and/or Services**
- 4.1 The Price for InTouchCRM and/or the Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of VAT (which shall be payable by the Customer subject to receipt of a VAT invoice).
- 4.2 Should the Customer require any services in addition to the Services detailed in the Order then these shall be charged for in addition to the Price on a case by cases basis as agreed between CRM and the Customer.
- 4.3 Where CRM provides Services on an ongoing retainer, it may from time to time vary its charges on giving one month's notice in writing to such effect to the Customer provided that CRM shall not increase the charge for the retainer in the 3 months following the relevant Order being signed.
- 5. Terms of payment**
- 5.1 CRM may invoice the Customer on or immediately following the provision of InTouchCRM and/or performance of the Services and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order, the Customer shall pay the Price within a maximum period of 7 (seven) days of receipt by the Customer of a proper invoice.
- 5.3 Time shall be of the essence in respect of the Customer's payment of CRM's invoice.
- 5.4 If the Customer fails to pay the sums due under CRM's invoice pursuant to the Contract within seven (7) days from receipt by the Customer of a proper invoice (without prejudice to CRM's other rights and remedies) CRM may immediately suspend or limit the provision of InTouchCRM and/or the Services until such payment is made. In addition, the Customer shall be liable to pay interest to CRM on such sum from the due date of payment at the rate set out under the Late Payment of Commercial Debts (Interest) Act 1998 (regardless of whether the Act applies to the Contract) accruing on a daily basis until payment is made, whether before or after any judgment.
- 5.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by CRM to the Customer.
- 6. Intellectual Property Rights**
- 6.1 Subject to clause 6.8 and unless otherwise expressly stated in the Order, the Parties acknowledge and agree that all right, title and interest to any and all Intellectual Property in and to InTouchCRM and/or the Services and any Intellectual Property relating to them and all modifications and amendments thereto shall remain the property of CRM and the Customer shall have no residual rights in and shall make no Use whatsoever of such Intellectual Property except that the Customer shall have a licence to Use such Intellectual Property for the period stipulated in the Contract subject to any restrictions or limitation on such Use set out in the Contract or otherwise made known to the Customer in Writing.
- 6.2 The Customer hereby undertakes and agrees not to Use or enable any other person to Use the Intellectual Property for any purpose or by any media in any country other than as expressly permitted in Writing in the Contract.
- 6.3 Subject to payment of the Price, the Customer and/or its nominees shall be entitled to a non-exclusive, non-transferable licence to Use the Intellectual Property prepared by CRM relating to the Order, notwithstanding the termination of the Contract or any of the Services in accordance with the Order.
- 6.4 CRM shall procure for the Customer any rights required to use Third Party Intellectual Property in respect of the Goods and/or the Services in accordance with the Contract subject to any conditions or restrictions on such Third Party Intellectual Property, which conditions or restrictions the Customer agrees to comply with in full. Unless otherwise stated, the licence fee for such Third Party Intellectual Property is included in the charges payable pursuant to Condition 4.
- 6.5 Except as expressly provided in the Contract, CRM's sole responsibility in respect of Third Party Intellectual Property shall be limited to procuring the supply by the appropriate licensor of the Third Party Intellectual Property. CRM offers no warranty of any kind whatsoever in respect of any Third Party Intellectual Property. CRM hereby assigns and shall assign to the Customer any rights which CRM may have under any warranties given by any licensor to the extent it is reasonably able to do so.
- 6.6 The Parties agree that, unless otherwise specified in the Order, that all pre-existing rights of ownership in Intellectual Property remain unaffected and as such nothing in relation to the Contract shall operate as a transfer or licence of such.
- 6.7 Subject only to the express terms of the Contract, CRM reserves the right to use any and all skills, expertise, knowledge and know-how gained and/or arising from providing InTouchCRM and/or the Services in the provision of similar goods and/or services to other CRM clients and/or potential clients and the Customer shall place no restriction whatsoever on such right. The Customer permits CRM to promote and advertise itself through the Use of examples of InTouchCRM and/or the Services in promotional and other materials.
- 6.8 All Data shall remain the property of the Customer and on termination of the Contract that Customer shall be provided with all Data.
- 7. Protection of Data and Use of InTouchCRM**
- 7.1 CRM takes the protection of Data seriously and seeks to take all steps reasonably necessary to ensure that the Customer's Data is protected. In return CRM have set standards that they require all Customers to adhere to when using InTouchCRM.
- 7.2 **CRM reserve the right to disable or terminate a Customer InTouchCRM account and/or any email sending rights at any time without notice if a Customer breaches the standards of CRM by carrying out or causing any of the following acts:**
- (a) Sending unsolicited email (that is emails to recipients who have not given their explicit consent to receive email messages from the administrator);
- (b) Receiving a large volume of unsubscribes from the valid unsubscribe process built in to the system (the threshold is 0.8% per email sent);
- (c) Receiving a large volume of complaints from the internet service provider regarding email abuse (the

threshold is 0.2% per email sent);

- (d) A large number of bounced emails being generated (the threshold is 15% per email sent);
- (e) The account owner sending emails to 'Spam Trap' accounts;
- (f) Email content being deemed (in CRM's sole opinion) inappropriate for the intended audience.
- (g) CRM discovering that the contact data stored in the system has been obtained from a list provided by the customer.

7.3 No refund will be given in relation to any account that is disabled or terminated under this clause 7.

7.4 InTouchCRM is hosted by CRM in a secure server area protected to industry level standards.

7.5 CRM will not share any Data with any other organisation and will comply with its obligations under the Data Protection Act 1998.

7.6 CRM carry out regular backups of the Data and should any Data be lost or infected as a result of a virus CRM will reconstruct the database at no cost to the Customer.

7.7 Should Data be lost as a result of actions by the Customer, CRM reserve the right to charge the Customer for the time and any technical assistance/hardware required to return the system and/or accounts to their previous state.

7.8 Provided that CRM act in accordance with clause 7.1 and 7.6 CRM shall have no liability whatsoever for any loss of Data.

8. Warranties and liability

8.1 CRM warrants to the Customer that any Services provided will be performed by appropriately qualified and trained personnel, with due care and diligence and to such a standard of quality as it is reasonable for the Customer to expect in the circumstances.

8.2 CRM shall have no liability on its part for a purported breach of any of the warranties in Conditions 8.1 or any loss as a result of the InTouchCRM system unless the Customer gives written notice of the defect to CRM, within 7 (seven) days of the time when the Customer discovers or ought to have discovered the defect and CRM is given a reasonable opportunity to remedy the problem.

8.3 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by Section 12 of the Sale of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

8.4 The Customers attention is drawn to clause 7.8.

8.5 Nothing in these Conditions excludes or limits the liability of CRM for:

- (a) death or personal injury caused by CRM' negligence; or
- (b) fraud; or
- (c) any other liability which cannot be excluded or limited under applicable law.

8.6 Subject to Conditions 8.3 and 8.5:

- (a) CRM's total liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

- (b) CRM shall not be liable to the Customer for any indirect or any consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9. Customer's Warranties, Undertakings and Indemnities

9.1 The Customer acknowledges that CRM does not operate or exercise final editorial control over, and accepts no responsibility for the content of the Goods and/or Services or the Specification.

9.2 The Customer warrants that:

- (a) it has obtained and will obtain all necessary consents, approvals and licences for the Use of the Specification and the Customer's Materials; and
- (b) the Use of the Specification and the Customer's Materials will not violate any Third Party Intellectual Property.

9.3 In the event of an allegation(s) of a breach of Condition 9.2, or if CRM reasonably suspects such a breach or infringement has occurred, CRM may, without giving notice to the Customer and without liability, suspend availability of the Goods and/or the Services pending clarification of such allegation(s) or suspicion.

9.4 The Parties shall notify each other as soon as is reasonably possible after becoming aware of any third party allegation(s) of a breach of the provisions of Condition 9.2.

10. Breach of Contract

10.1 This Contract may be terminated:

- (a) by either party with immediate effect if the other commits a material or persistent breach of any term of the Contract which in the case of a breach capable of remedy shall not have been remedied within 14 (fourteen) days of the receipt by the other of a written notice identifying the breach and requiring its remedy. Upon remedy, the party in breach shall provide proof of remedy within this same 14 (fourteen) days in order to avoid the other party exercising its rights to terminate the Contract under this condition;
- (b) by either party with immediate effect if the other party is declared or becomes insolvent or shall have a receiver or administrative receiver appointed over it or any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide reconstruction) or if a court of competent jurisdiction shall make an order to that effect or if the other shall enter into any voluntary arrangement with its creditors or shall be subject to an administration order or shall cease to carry on business;
- (c) by CRM with immediate effect if:
 - (i) the Customer infringes the Intellectual Property rights of CRM or Third Party Intellectual Property; or
 - (ii) notwithstanding Condition 10.1(a) the Customer fails to pay any sums due by it to CRM within 14 (fourteen) days after the due date.

- (iii) The Customer infringes Condition 7.2
- (d) by the Customer or CRM on 32 days' notice in writing to the other party.
- 10.2 Any termination of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.3 On termination of this Agreement, CRM shall provide the Customer with an electronic version of the Database that is capable of being retrieved in Microsoft Excel.
- 11. Force Majeure**
- Neither CRM nor the Customer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations (except any obligation to pay money due) in relation to the Goods and/or the Services, if the delay or failure is beyond that party's reasonable control (an "event of force majeure").
- 12. Confidentiality**
- 12.1 Each party shall keep confidential the terms of the Contract and any and all confidential information that it may acquire in relation to the business or affairs of the other party. Each party shall not use the confidential information for any purpose other than to perform its obligations under the Contract. Each party shall ensure that its sub-contractors, agents, officers and employees comply with the provisions of this Condition 12.
- 12.2 The obligations on the Parties set out in Condition 12.1 shall not apply to any information which is publicly available or becomes publicly available through no act or omission of the disclosing party or is required to be disclosed by order of a court of competent jurisdiction.
- 13. Sub-Contracting and Assignment**
- 13.1 CRM shall be entitled to sub-contract, transfer or assign any or all of its rights and/or obligations under the Contract without restriction.
- 13.2 The benefits and obligations conferred by the Contract upon the Customer are personal to the Customer and shall not be capable of being, assigned, delegated, transferred, sub-contracted or otherwise disposed of and the Customer shall not purport to assign, transfer, sub-contract or dispose of the same.
- 14. Successors**
- The Contract shall be binding upon and enure for the benefit of the successors in title (as permitted hereunder) of the Parties hereto.
- 15. General**
- 15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice may be delivered personally or by first class pre-paid letter, e-mail or facsimile transmission and shall be deemed to have been served, if by hand, when delivered; if by first class post, 48 (forty-eight) hours after posting; and if by facsimile transmission or e-mail, when despatched.
- 15.2 No waiver by the Customer of any breach of the Contract by CRM shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 15.4 The Contract (including any dispute or claim of whatever nature arising under or in connection with the Contract) shall be governed by and construed in accordance with the laws of England, and the Customer hereby irrevocably submits to the non-exclusive jurisdiction of the English courts in respect of any dispute or claim of whatever nature arising under or in connection with the Contract.
- 15.5 Except in relation to Condition 6, which may be enforced by the relevant proprietor of the Third Party Intellectual Property for the purposes of the Contracts (Rights of Third Parties) Act 1999, and notwithstanding any other provision of these Conditions, the Conditions are not intended to, and do not give any person who is not a party to it any right to enforce any of their provisions.