



GENERAL TERMS & CONDITIONS

Version: 1.1

Date: August 2017

Aura Technology Ltd - General Terms and Conditions

The definitions and rules of interpretation in this condition apply in these conditions.

"Acceptable Use Policy"	means the Company's acceptable use policy
"Business Hours"	means Monday to Friday, 9am to 5.30pm, excluding Bank and other Public Holidays.
"Company"	means Amicus ITS Limited t/a Aura Technology (Company Registered Number 03879859). Unit 1-2 Trinity Court, Brunel Road, Totton, Southampton, Hampshire, England, SO40 3WX
"Contract"	means the Customer's order and the Company's acceptance of it in accordance with condition 3.3.
"Customer"	means the person, firm or company who purchases Services from the Company.
"Deliverables"	means all products and materials provided by the Company in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports, documentation and specifications (including drafts), as defined in the Order or other Schedule.
"Intellectual Property Rights"	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of confidential information, and all other intellectual property rights.



"Order"	means the order placed by the Customer for the supply of the Services setting out, amongst other items, the specification for the Services.
"Pre-existing Materials"	means materials which existed before the commencement of the Services.
"Schedule"	means any schedule applicable to the particular Services as specified in the Order.
"Services"	means the services to be provided by the Company under the Contract as specified in the Order and shall include IT Consultancy and Engineering, IT Support, Hosting Services, Online Backup, Broadband Services & Ethernet Services, Telephony Services, together with various other services as specified in the Order.
"Site"	means the site where the Services are to be provided by the Customer to the Company as specified in the Order.
"Site Software"	means any and all software for the Site provided by the Customer to the Company.
"Start Date"	means the date the Services are to commence as set out in the Order or otherwise agreed between the parties.
"VAT"	means value added tax chargeable under English law for the time being and any similar additional tax.
"Virus"	means any thing or device which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, telecommunications service, equipment or network or other service or device.



1. Interpretation

1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of the Contract.

1.3 A person includes a natural person, corporate or unincorporated body.

1.4 A reference to a company shall include any company, corporation or other body corporate.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract.

1.8 A reference to writing or written includes faxes and email.

1.9 References to conditions and Schedules are to the conditions and Schedules of these Conditions.

2. Application of Conditions

2.1 These Conditions and the Schedules shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Company unless in writing and signed by a duly authorised representative of the Company.

2.3 If there is a conflict between these General Terms & Conditions and any Schedule, the order of priority shall be: first, the Order; second, the relevant Service Schedule; and third, these General Terms & Conditions.

3. Basis of Sale

3.1 Any quotation is valid for a period of 14 days only, unless otherwise stated, and the Company may withdraw it at any time by notice to the Customer.

3.2 Each purchase order or acceptance of a quotation for Deliverables by the Customer constitutes an offer by the Customer to purchase the Services specified in it on these conditions.



3.3 A binding contract shall not come into existence between the Company and the Customer unless and until the Company issues a written order acknowledgement to the Customer, or the Company delivers the Deliverables to the Customer, whichever occurs earlier.

3.4 The Company may deliver the Services by separate instalments.

3.5 No order which has been acknowledged by the Company may be cancelled by the Customer, except with the agreement in writing of the Company.

3.6 All Services are subject to the Acceptable Use Policy and the Customer shall at all times comply with the Acceptable Use Policy in relation to the Services.

4. Supplier's Obligations

4.1 The Company shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Customer, in accordance in all material respects with the Order.

4.2 All dates supplied by the Company for the provision of the Services shall be treated as approximate only and time shall not be of the essence of the Contract. The Company shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

5. Customer's Obligations

5.1 The Customer shall be responsible for the accuracy and completeness of the Pre-existing Materials and the Site Software, including the provision of valid up-to-date licencing of any such software.

5.2 The Customer shall:

5.2.1 co-operate with the Company in all matters relating to the Services;

5.2.2 provide in a timely manner such access to the Customer's equipment, data and premises, including the Site, and such office accommodation and other facilities as requested by the Company;

5.2.3 provide in a timely manner any Site Software and information requested by the Company, and ensure it is accurate and complete;

5.2.4 obtain and maintain all licences, consents and permissions necessary to use the Pre-existing Materials and Site Software;

5.2.5 comply with all applicable laws, rules and regulations; and

5.2.6 be responsible, at its own cost, for preparing the Site for the supply of the Services.



5.3 The Customer shall not store, distribute or transmit any Viruses, or any other material in the course of the Customer's use of the Services that:

5.3.1 is unlawful, harmful, threatening, defamatory, obscene or infringes any third party's Intellectual Property or other rights;

5.3.2 facilitates illegal activity;

5.3.3 promotes unlawful violence;

5.3.4 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity; or

5.3.5 causes damage or injury to any person or property.

5.4 If the Company's performance is prevented or delayed by any act or omission of the Customer, the Company shall not be liable and the Customer shall be liable to pay reasonable costs, charges or losses.

5.5 The Customer shall not solicit or employ certain Company employees or subcontractors without prior written consent.

5.6 Any consent under condition 5.5 shall be subject to the Customer paying the Company the specified recruitment-related sum.

6. Charges and Payment

6.1 The total price for the Services and the Deliverables shall be the amount set out in the Order. The Company shall invoice the Customer for the charges that are then payable. The total price shall be paid to the Company in instalments as set out in the Order, or otherwise monthly in advance by direct debit within 14 days of the Company's invoice. All amounts due shall be paid in full without any set-off, counterclaim, deduction or withholding, other than as required by law.

6.2 If the Customer exceeds the agreed storage space, bandwidth or other capacity requirements, including software licencing, the Company shall charge the Customer the excess fees in force from time to time.

6.3 Without prejudice to any other right or remedy, if the Customer fails to pay on the due date the Company may:

6.3.1 charge interest at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc, accruing daily and compounded quarterly until payment is made; and

6.3.2 suspend all Services until payment has been made in full.

6.4 Time for payment shall be of the essence.

6.5 The Company may increase its charges from each anniversary of the Start Date.



6.6 The Company may set off any liability of the Customer against any liability of the Company.

6.7 The Company may increase prices before delivery to reflect increased costs outside its control.

6.8 All sums payable shall become due immediately on termination.

7. Change Control

7.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

7.2 If either party requests a change to the scope or execution of the Services, the Company shall provide a written estimate of:

7.2.1 the likely time required to implement the change;

7.2.2 any variations to the Company's charges;

7.2.3 the likely effect on the Deliverables; and

7.2.4 any other impact on the terms of the Contract.

7.3 If the Company requests a change, the Customer shall not unreasonably withhold or delay consent.

7.4 If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed the necessary variations in writing.

8. Warranty

8.1 The Company shall perform the Services with reasonable care and skill.

8.2 Unless otherwise agreed in writing, the Company warrants that the Deliverables will perform substantially in accordance with the Order for 30 days from the Start Date. If the Deliverables do not so perform, the Company shall carry out work necessary to ensure substantial compliance with the Order.

8.3 The warranty in condition 8.2 shall not apply where failure is caused by the Site Software or Materials.

8.4 The Company is not responsible for delays, delivery failures or other loss or damage resulting from transfer of data over communications networks and facilities, including the Internet.

8.5 The Company does not warrant that the Deliverables will be uninterrupted, error-free or free from any Virus.



9. Remedies

9.1 The Company shall not be liable for non-performance unless the Customer notifies the Company in writing of the failure to perform 7 days after the scheduled performance date.

9.2 Any liability for non-performance shall be limited to providing the Services within a reasonable time or issuing a credit note at the pro rata contract rate.

9.3 If performance is prevented or delayed by an act or omission of the Customer, the Customer shall be liable to pay reasonable costs, charges or losses.

9.4 The Company may suspend access to or use of the Services if it becomes aware of or reasonably suspects breach of Contract.

9.5 The Company may also suspend access to or use of the Services if it becomes aware of or reasonably suspects fraudulent activity on any services provided to the Customer.

10. Limitation of Liability

10.1 The following provisions set out the entire financial liability of the Company to the Customer in respect of:

10.1.1 any breach of the Contract;

10.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

10.1.3 any representation, misrepresentation, statement or tortious act or omission arising out of or in connection with the Contract.

10.2 No warranty or representation is given that all faults will be fixed, or fixed within a specified period.

10.3 All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.4 Nothing excludes or limits liability for:

10.4.1 death or personal injury caused by negligence; or

10.4.2 fraud or fraudulent misrepresentation.

10.5 Subject to condition 10.2 and condition 10.3:

10.5.1 The Company shall not be liable for:

10.5.1.1 loss of profits; or

10.5.1.2 loss of business; or



10.5.1.3 depletion of goodwill or similar losses; or

10.5.1.4 loss of anticipated savings; or

10.5.1.5 loss of goods; or

10.5.1.6 loss of contract; or

10.5.1.7 loss of use; or

10.5.1.8 loss or corruption of data or information; or

10.5.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

10.5.2 The Company's total liability shall be limited to the price paid for the Services by the Customer for the month when the event occurred.

10.6 The Customer agrees that it did not rely on representations other than those expressly set out in the Contract.

11. Intellectual Property Rights

11.1 Except where the Customer's use of the Services is and has at all times been strictly in accordance with the terms of the Contract, the Customer shall defend, indemnify and hold the Company harmless against claims, actions, proceedings, losses, damages, expenses and costs suffered or incurred by the Company arising out of or in connection with the Customer's use of the Services, including any action or claim that the Site Software or Pre-existing Materials infringe any third-party Intellectual Property Rights.

11.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Deliverables are and shall remain the sole property of the Company or relevant third-party rights owner.

11.3 The Company shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract.

11.4 The Company's Intellectual Property Rights in and relating to the Deliverables shall remain the exclusive property of the Company, and the Customer shall not make unauthorised use of such rights.

11.5 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written end-user licence or sub-licence from the relevant licensor or licensors.

12. Confidentiality and Supplier's Property



12.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives of a confidential nature disclosed by the Company, and any other confidential information concerning the Company's business or products.

12.2 All materials, equipment, tools, drawings, specifications and data supplied by the Company to the Customer shall remain the exclusive property of the Company.

12.3 Nothing in the Contract is intended to create a partnership between the parties or authorise either party to act as agent for the other.

12.4 The Company may refer to the Customer as being a client of the Company in customer reference lists, sales presentations, advertising and press releases.

12.5 This condition 12 shall survive termination of the Contract, however arising.

13. Data Protection

13.1 For the purposes of this clause 13, references to personal data, data subject, personal data breach, processing, data processor and data controller shall have their respective meanings specified in applicable Data Protection Laws. Both parties acknowledge their respective duties under applicable Data Protection Laws and undertake to comply with their obligations.

13.2 The Company confirms that it will, and shall ensure that its third-party providers and any associated companies will, only process such personal data in accordance with the Customer's instructions.

13.3 The Company shall promptly notify the Customer if it receives notice of any complaint or communication relating to the processing of personal data or compliance with Data Protection Laws, unless legally prohibited.

13.4 Both parties shall take appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and accidental loss of or damage to personal data.

13.5 With effect from 25 May 2018, the Company shall not engage another data processor without the prior specific or general written consent of the Customer.

13.6 In an emergency situation where disclosure or transfer is necessary to preserve the integrity of personal data, the Company may disclose or transfer such personal data to a third party only to the extent required for that purpose.

13.7 The Company shall ensure that any disclosure or transfer of personal data to third parties pursuant to clause 13 is made subject to the same data protection obligations.



13.8 The Company shall not cause or permit personal data to be transferred outside the European Economic Area unless subject to appropriate transfer mechanisms that provide an adequate level of protection.

13.9 The Company shall give reasonable assistance to the Customer to respond within required timescales to requests made by data subjects exercising their rights.

13.10 The Company shall provide reasonable assistance to the Customer in undertaking data protection impact assessments and ensuring compliance with security and breach notification obligations.

13.11 The Company shall ensure that persons authorised to process personal data are subject to confidentiality commitments or statutory confidentiality obligations.

13.12 The Company shall promptly notify the Customer if it becomes aware of any personal data breach involving personal data processed on behalf of the Customer.

13.13 At the Customer's option and cost, the Company shall delete or return all such personal data on termination, except where retention is required by law.

13.14 The Company shall make available to the Customer and its auditors all information reasonably necessary to demonstrate compliance with clause 13.

13.15 The Customer shall at all times use the Services in accordance with the Company's Acceptable Use Policy.

13.16 Each party will comply with all applicable law in providing or using the Services.

14. Termination

14.1 The Contract shall commence on the Start Date and shall continue, unless terminated earlier in accordance with these Conditions, for the minimum term stated in the Order and thereafter on an annual basis, or any other basis stated in the Order, unless either party gives the other a minimum of 90 days' prior written notice.

14.2 Without prejudice to any other right or remedy available to the Company, the Company may terminate the Contract or suspend further provision of the Services without liability to the Customer if:

14.2.1 the Customer fails to pay any amount due under the Contract on the due date and remains in default not less than 7 days after being notified in writing to make payment;

14.2.2 there is a change of control of the Customer; or

14.2.3 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.



14.3 Without prejudice to accrued rights or remedies, either party may terminate the Contract with immediate effect by giving written notice if:

14.3.1 the other party commits a material breach which is irremediable or fails to remedy a remediable breach within 14 days after written notice;

14.3.2 the other party repeatedly breaches the Contract in a way that reasonably justifies the opinion that its conduct is inconsistent with an intention or ability to give effect to the Contract;

14.3.3 the other party suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due, or admits inability to pay its debts;

14.3.4 the other party begins creditor negotiations, makes a proposal, or enters into an arrangement with creditors;

14.3.5 a petition, notice, resolution or order is made in connection with winding up;

14.3.6 an application or order is made for the appointment of an administrator, notice of intention to appoint an administrator is given, or an administrator is appointed;

14.3.7 the holder of a qualifying floating charge becomes entitled to appoint or has appointed an administrative receiver;

14.3.8 a person becomes entitled to appoint a receiver or a receiver is appointed; or

14.3.9 a creditor or encumbrancer attaches, takes possession of, or enforces against the whole or part of the other party's assets and it is not discharged within 14 days.

14.4 On termination:

14.4.1 the Customer shall immediately pay all outstanding unpaid invoices and interest, and the Company shall submit an invoice for Services supplied but not yet invoiced; and

14.4.2 accrued rights, remedies, obligations and liabilities shall not be affected.

14.5 Any provision intended to continue after termination shall remain in full force and effect.

14.6 Termination shall not affect rights, remedies, obligations or liabilities accrued up to the date of termination or expiry.

15. Anti-bribery Compliance

15.1 Both parties shall:

15.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010;



15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if carried out in the UK; and

15.1.3 immediately notify the other party in writing if a foreign public official becomes an officer or employee. Both parties warrant that they have no foreign public officials as officers or employees at the date of execution of the Agreement.

15.2 Breach of this clause 15 by either party shall be deemed a material breach incapable of remedy.

16. Force Majeure

The Company shall not have liability if it is prevented from or delayed in performing its obligations by acts, events, omissions or accidents beyond its reasonable control, including industrial disputes, utility or transport failures, act of God, war, riot, civil commotion, malicious damage, compliance with law, accident, breakdown, fire, flood, storm or default of suppliers or sub-contractors.

17. Waiver

No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy. No single or partial exercise shall prevent or restrict further exercise.

18. Variation

The Company is entitled to make changes to these conditions at any time and the Customer will be subject to any amended conditions from the date changes are made. The Company will endeavour to provide revised versions, but it is the Customer's responsibility to check the Company's website periodically for changes. The most recent version shall be held at <https://www.auratechnology.com/generalterms> or any other location notified by the Company.

19. Rights and Remedies

Except as expressly provided in the Contract, the rights and remedies provided are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant



provision or part-provision shall be deemed deleted, without affecting the validity and enforceability of the rest of the Contract.

20.2 If any provision or part-provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend it so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire Agreement

21.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty that is not set out in the Contract.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.4 Nothing in this condition shall limit or exclude any liability for fraud.

22. Assignment

22.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

23. Third Party Rights

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce its terms.

24. Notices

24.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or main trading address as identified on the company letterhead.



24.2 Any notice or communication shall be deemed to have been received:

24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

24.3 This condition does not apply to the service of proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this condition, writing shall not include email.

25. Governing Law

The Contract and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract.