



Terms and Conditions

Confidential

© SMI Global Ltd 2019

© Smart Media Innovations LLC 2019

SMI Global Ltd, trading as © SMIDistribution 2019

All rights reserved.

These Software, Products and Services Terms and Conditions (the "Terms and Conditions") shall apply to the provision of software, materials, goods and services by either of:

- **SMI Global Ltd**, a company registered in England and Wales with Company No 8466700, whose principal place of business is at Menta Business Centre, 5 Eastern Way, Bury St Edmunds, Suffolk IP32 7AB, United Kingdom.
- **SMIDistribution**
A trading name of SMI Global Ltd, whose place of business is as above.
- **Smart Media Innovations LLC**, a company registered in the United States of America, whose principal place of business is at 4500 140th Avenue North, Suite 101, Clearwater, FL 33762, USA

to the client identified in the corresponding Quote (as defined below) ("Client").

WHEREAS:

- a. Company is engaged in the development of software in the area of Mobile Identification and Verification, and the supply of associated services and products;
- b. Client requires the use of the software; and
- c. Company is able to provide and Client wishes to purchase a licence to use the software, services and ancillary hardware products, under the terms and conditions set out below.

1) Definitions

In these conditions (unless the context otherwise requires):

- **"Client"** means the person, firm or company with whom the Contract is made;
 - **"SMI"** means SMI Global Ltd, SMIDistribution or Smart Media Innovations LLC and also (where the context so permits) its assigns and any sub-contractor for the said company
 - **"Company's Premises"** means the premises mentioned in the Company's quotation or other contractual document in respect of the Goods or if not so mentioned means the Company's premises as identified in the descriptions above for each company
 - **"Contract"** means the contract between the Client and the Company for the sale and purchase of Goods.
 - **"Goods"** means the goods (or any instalment or part of them) to be the supplied pursuant to the Contract, including software applications and utilities, hardware items, and services.
 - **"Contract Services"** means any service (or any part of them) to be performed pursuant to the Contract;
- 2) Orders are only accepted subject to, and a Contract shall only be formed upon, these Terms and Conditions to the exclusion of all other terms and conditions (and all previous oral and written representations) including any terms and conditions which the Client purports to apply under any order form, confirmation of order or similar document.
 - 3) Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Client to purchase the Goods or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by SMI, by way of a written or emailed acknowledgement of order. No contract will come into existence until a written or emailed acknowledgement of the order is issued by SMI.
 - 4) Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Client's acceptance of these Terms and Conditions.
 - 5) Prior to delivery of the goods, the Client may only cancel the Contract on the prior written approval of SMI and any agreed cancellation may be subject to a cancellation charge up to 50% of the total Contract price plus any disbursements or monies paid out on behalf of the Client in pursuance of an order.
 - 6) Once goods are delivered to the Client, SMI does not offer or provide a Returns policy under any circumstances.
 - 7) These Terms and Conditions may only be varied or amended in writing signed by an authorised representative of SMI.
 - 8) Any information contained in any printed or written material of SMI is, to the best of its knowledge, accurate at the time, but does not form part of the Contract. SMI does not accept any liability to the Client for any errors or omissions.
 - 9) The quantity and description of the Goods and Services will be as set out in the order form / quotation.
 - 10) Prices charged will be those valid on the date of despatch, supply or installation of order unless a written quotation to the Client is still valid at the time, in which case the quoted price will take precedence. Quotations remain valid for a period of 30 days from the quotation date, or such alternative period that may be agreed in writing.
 - 11) Prices quoted are exclusive of Value Added Tax or other applicable sales tax or duty [and any costs of packaging and carriage of the Goods] which shall be added to the sum in question.
 - 12) Credit terms for account customers are subject to references that are satisfactory to SMI. Where credit terms are granted by SMI, SMI may invoice the Client for the Goods on or any time after delivery and the Services on or at any time after performance commences. Payment terms for new business, business where credit terms are not offered and orders deemed by SMI as major projects will be quoted on an individual basis, but SMI reserves the right to require full payment in advance in its absolute discretion.
 - 13) Subject to clause 11 above, all invoices must be paid within the period agreed, or if no period is agreed then within 30 days of the date of invoice. Time for payment will be of the essence. No payment will be deemed to have been received until SMI has received cleared funds. All sums payable to SMI under the Contract will become due immediately upon termination of the Contract.
 - 14) All payments to be made by the Client under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Client is required by law to make any such deduction or withholding.
 - 15) If any sum payable under the Contract is not paid when due then, without prejudice to SMI's other rights under the Contract, SMI will be entitled to suspend deliveries of the Goods or performance of the Services (or any other goods/services to be supplied by SMI to the Client) until the outstanding amount has been received by SMI from the Client.
 - 16) SMI will use reasonable endeavours to deliver the Goods and/or perform the Services within the time agreed when the Client places an order and, if no time is agreed, then within a reasonable time, but the time of delivery and/or performance will not be of the essence. If, despite those endeavours, SMI is unable for any reason to fulfil any delivery or performance on the specified date for events, matters or reasons beyond the reasonable control of SMI, SMI will not be in breach of the Contract, nor (for the avoidance of doubt) will SMI have any liability to the Client for any delay or failure in delivery and/or performance. Any delay in delivery and/or performance will not entitle the Client to cancel the order, unless the delay exceeds 90 days and is solely due to the fault of SMI.
 - 17) Risk of damage to or loss of the Goods will pass to the Client on delivery. Ownership of the Goods will not pass to the Client until SMI has received in full (in cash or cleared funds) all sums due to it in respect of: the Goods; and all other sums which are or which become due to SMI from the Client on any account [and if the Client purports to sell the goods before payment, the proceeds from the sale shall belong to SMI until payment in full for the Goods has been received by SMI].
 - 18) Until ownership of the Goods has passed to the Client, the Client shall: hold the Goods on a fiduciary basis as bailee for SMI; store the Goods (at no cost to SMI separately from all other Goods of the Client or any third party in such a way that they remain readily identifiable as SMI's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition insured on SMI's behalf for their full price against all risks to the reasonable satisfaction of SMI, and will whenever requested by SMI produce a copy of the policy of insurance.
 - 19) Except to the extent the Goods have been installed for and/or transferred to Client's customer(s), the Client grants SMI, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored where payment for the Goods is overdue, to recover them.
 - 20) The Client undertakes to comply strictly with any licence requirements on software supplied by SMI that are imposed by SMI, the supplier or any third party from whom the software is licensed. [Such licence terms will be provided with the software and are available from SMI upon request.] Software from third parties is supplied by SMI according to the manufacturer's specification. It is the Client's responsibility to confirm that all software, whether manufactured by SMI or by third parties, suit the Client's purposes prior to purchasing them. Software is licensed only and no intellectual property rights shall vest in or be assigned to the Client.
 - 21) Client is expressly prohibited from adapting, modifying, reverse engineering, decompiling or disassembling the Software provided by SMI as part of the Contract provisions.

- 22) SMI accepts no liability to the Client arising from a failure on the part of the Client to adhere to the licensing requirements of any software supplied to it by SMI.
- 23) Risk in the Products shall pass to Client upon delivery. Immediately upon delivery of the software (and modifications) the Client shall promptly carry out appropriate tests to satisfy itself that the software (and modifications) performs in all material respects in accordance with the relevant documentation supplied by SMI. If the software (and modifications) does not perform in all material respects with the relevant documentation supplied by SMI, SMI shall correct or replace the software (and modifications) provided that SMI has received notice of the defect within 30 days of delivery and unless: a) the Client has failed to check that the software (and modifications) meet its requirements before entering into the Contract; b) the failure relates to facilities or functions not included in the relevant documentation supplied by SMI; or c) the defects are caused by unauthorised changes to the software (and modifications), failure to operate the software (and modifications) in accordance with the relevant documentation supplied by SMI or inadequately trained or unauthorised people operating the software (and modifications). If SMI cannot fix the defect SMI's entire liability to the Client for that failure is limited to refunding the fees paid by the Client for the relevant software (and modifications). If SMI refunds such fees, the Client must return the software and all relevant documentation to SMI.
- 24) Save in respect of SMI software (and modifications) (see clause 21) SMI is not the manufacturer or licensor of the Goods and does not warrant the performance or quality of the Goods. SMI shall have no liability to the Client (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of the supply of the Goods, but will endeavour to pass on the manufacturer's warranty. However, it is always recommended that the Client purchase a Hardware and/or Software Maintenance Contract in addition to any warranty.
- 25) SMI warrants that its software and other Goods shall be warranted for a period of 90 days from the date of shipment, unless such SMI software or other Goods are damaged by abuse or act of God. Such warranty rights may be assigned by Client to its customers. SMI warrants that the Services will be provided with such reasonable care and skill as can be expected from a supplier of services of a type similar to the Services. In the event that any part of the Services provided do not conform to this warranty, SMI will, at its discretion, either take such steps as are necessary to remedy the shortcomings as soon as is practicable or refund an appropriate part of the price therefore. This is on the proviso that these remedies will constitute an entire discharge of SMI's liability under this warranty and the liability of SMI shall in no event exceed the price for such Services.
- 25) Client shall indemnify and hold SMI harmless from and against claims, damages, losses and expenses, (including, but not limited to, reasonable attorney's fees), attributable to bodily injury, sickness, disease or death, or to destruction of tangible property, but only to the extent caused by installation, sales or servicing of Goods purchased from SMI or Client's breach of the Contract. SMI shall indemnify and hold Client harmless from and against claims, damages, losses and expenses, (including, but not limited to, reasonable attorney's fees), attributable to bodily injury, sickness, disease or death, or to destruction of tangible property, but only to the extent caused by a malfunction of Goods purchased from SMI by Client or SMI's breach of the Contract. SMI does not exclude its liability (if any) to the Client: for breach of SMI's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982; for personal injury or death or damage to tangible property resulting from SMI's negligence; under section 2(3) Consumer Protection Act 1987; for any matter which it would be illegal for SMI to exclude or to attempt to exclude its liability; or for fraud. Except as expressly provided for in these Terms and Conditions, neither SMI nor Client will be under no liability to the other whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for special, incidental, indirect or consequential loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings and like loss and loss of use or value of any data or software) howsoever caused arising out of or in connection with the Contract, even if that party has been advised of the possibility of such damages.
- 26) Except as set out above, SMI hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these terms and conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Client.
- 27) The Client acknowledges that the above provisions of clauses 25 and 26 are reasonable and reflected in the price which would be higher without those provisions, and the Client will accept such risk and/or insure accordingly.
- 28) It is the Client's responsibility to ensure that adequate backup copies of system, program and data files are taken. On request, SMI may advise on the frequency and method of such backing up, but will not take any responsibility for any problems arising from inadequate backup process or availability.
- 29) It is the Client's responsibility to ensure that power supplied to the computer and ancillary equipment is of a stable nature and not subject to interference from other electrical or electronic equipment. SMI cannot be held responsible for any loss or damage resulting from an insufficient or unstable power supply.
- 30) SMI will not be liable to the Client for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control of SMI including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and SMI will be entitled to a reasonable extension of time for performing such obligations.
- 31) SMI may by written notice terminate the Contract immediately if the Client is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect, or, being a company, has a receiver, manager or administrative receiver appointed over any of its assets, undertaking[s] or income, has passed a resolution for its winding-up, is subject to a petition presented to any Court for its winding-up, has a provisional liquidator appointed, has an administrator appointed in respect of it or is the subject of an application for or a notice of appointment of an administrator or a notice of intention to appoint an administrator, ceases to trade or is the subject of a notice to strike off the register at Companies House. Failure to pay any sums due in accordance with these Terms and Conditions is a material breach of the terms of the Contract which is not capable of remedy. The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Client or SMI accrued prior to termination. **Notwithstanding anything in these Terms and Conditions to the contrary, upon termination of this Agreement by SMI, SMI shall sell and provide to Client Goods sufficient in type and quantity for Client to meet its current legal obligations to third parties existing at the time of such termination.** The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.
- 32) If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 33) No failure or delay by SMI to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 34) The Contract is personal to the Client who may not assign or sub-contract all or any of its rights or obligations under the Contract without SMI's prior written consent (not to be unreasonably withheld).
- 35) The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 36) The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.
- 37) The Client agrees that it will not, without the prior written consent of SMI, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise: (i) solicit or entice, or endeavour to solicit or entice, away from SMI; or (ii) employ, engage or offer employment or engagement to, any person employed by or contracted to SMI during the immediately preceding 12 month period. Should such a person be engaged, employed or otherwise used by the Client in breach of this provision, the Client shall pay the other party a fee equivalent to 50% of the relevant individual's annual remuneration, or of such fee as is likely to be the equivalent thereto.
- 38) When SMI's Annual Support and Maintenance (ASM) service is purchased, terms of use are accepted to be as described in SMI's separate descriptive data sheets for each integration (SMIGlobal_ASM_<system_integration_name>.pdf). Support and software warranty is provided for the first three months after delivery of goods as part of the supply contract. Subsequent to that, purchase of SMI's Annual Support and Maintenance (ASM) service is required to continue with support and maintenance and must be ordered at the same time as devices and software. Therefore, if purchased, this is due for payment three months after delivery of goods and will commence on that date and be effective for one year. Thereafter, ASM will be renewable and due annually on the anniversary of the commencement date of that first years' ASM.