

**Merlin Navigator Limited
Terms and Conditions**

1. Definitions and Interpretation

1.1 In these terms and conditions the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"We, Us or Our" means Merlin Navigator Limited;

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between Us;

"Contract" means the contract for the provision of the Services;

"Intellectual Property Rights" means trade marks, service marks, patents, designs, design rights, trade and business marks, copyright, trade secrets, know how or any other intellectual property rights (whether registered or not and including any application for registration of the same) and all rights of protection similar to the same existing anywhere else in the world;

"Licence Fee" means the fee payable by You to Us for continued use of Merlin Navigator Materials in accordance with clause 3;

"Merlin Navigator Materials" means program software, algorithms, Merlin Toolbox contents, and/or materials and course materials, documents, literature or similar training materials, course notes and/or similar course materials provided by Us to you whether or not for the sole purpose of the Contract;

"Services" means the services which We are to supply to You in accordance with these Conditions and more particularly set out at schedule 1;

"Services Commencement Date" means the first date on which the Services are to be provided by Us to You;

"Writing" includes E mail, telex, cable, facsimile transmission and comparable means of communication;

"You or Your" means *[add name of client here as appropriate together with address and company number]*.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that 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. Provision of Services

2.1 We shall provide the Services to You in accordance with any written quotation provided by Us to You which is accepted by You, or any written order submitted by You to Us which is accepted by Us. In either case these Conditions shall govern the Contract for the provision of Services made between Us ("the Contract") to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing between Our authorised representatives.

- 2.3 In entering into the Contract You acknowledge that You do not rely on any representations made by any of Our employees or agents unless the same have been confirmed in writing.
- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Us shall be subject to correction without any liability on Our part.
- 2.5 The timing for, location of and proposed date of delivery of any subsequent Services to You shall be agreed with You and specified in any written quotation provided by Us and accepted by You or in any written order submitted by You and accepted by Us in accordance with clause 2.1 above.
- 2.6 Delivery of the Services to You shall be deemed acceptance by You of the Conditions.
- 2.7 If as part of the Services We provide Merlin Navigator Materials to You for Your use then You acknowledge and agree that We do so subject to these Conditions and that You shall not without Our prior written consent:
- 2.7.1 alter, amend, modify, tamper with or otherwise adapt the Merlin Navigator Materials in any way;
 - 2.7.2 use the Merlin Navigator Materials other than for the purposes of and as part of the Services;
 - 2.7.3 Use the Merlin Navigator Materials without reference to Us;
 - 2.7.4 provide any third party with a copy of or access to the Merlin Navigator Materials;
 - 2.7.5 copy the Merlin Navigator Materials other than in accordance with clause 3 below;

Clause 3 shall apply where You require and agree to pay for on-going Use of the Merlin Navigator Materials.

3. Licence

- 3.1 In consideration of the payment of the Licence Fee for extended use which shall be paid in accordance with clause 6, We grant to You a non-exclusive, non-transferable, revocable, licence to use the Merlin Navigator Materials for the purpose of providing ongoing training to Your employees and such licence is granted subject to the following terms:
- 3.1.1 You may use the Merlin Navigator Materials solely for the purpose of internal training within Your organisation and as notified to Us by You and previously approved in writing by Us;
 - 3.1.2 You shall not procure, provide or make available the Merlin Navigator Materials or any copy of the Merlin Navigator Materials to any third party without Our prior written consent. Only persons who have received Merlin Navigator access codes directly can access Merlin Navigator Materials. The distribution of these access codes to any third party without Our prior written consent is strictly prohibited;
 - 3.1.3 You shall be entitled to make such copies of the Merlin Navigator Materials as are reasonably necessary to exercise Your rights in accordance with the provisions of clause 3.1.1 but shall at all times retain records of all copies taken and details of all individuals retaining such copies and shall produce the same to Us on reasonable request;

- 3.1.4 You shall ensure that all of the Merlin Navigator Materials and all copies of the same used by You in accordance with this clause 3.1 contain such copyright or proprietary notices including any trademarks which appear on the original without amendment;
- 3.1.5 not to use any Intellectual Property Rights owned by Us from time to time other than as permitted in accordance with these Conditions;
- 3.1.6 You shall treat the Merlin Navigator Materials as confidential and in any event in accordance with the provisions of clause 9 and shall ensure and procure that all of Your employees, agents or similar shall be subject to the same requirements of confidentiality;

You shall not alter, amend, modify, tamper with or otherwise adapt the Merlin Navigator Materials in any way.

- 3.2 The Licence provided under the terms of clause 3.1 above for extended use shall continue for a period of 12 calendar months. Any termination to be in accordance with clause 11 and any continuation subject always to the payment by You of the agreed Licence Fee.

4. Orders and Specifications

- 4.1 No order submitted by You shall be deemed to be accepted by Us unless and until confirmed in writing by Our authorised representative or on line system.
- 4.2 No order which has been accepted by Us may be cancelled by You except with Our agreement in writing and on terms that You shall indemnify Us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.

5. Price

- 5.1 The price of the Services shall be Our quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by You, after which time they may be altered by us on notice to You.
- 5.2 We reserve the right, by giving notice to You at any time before delivery, to increase the price of the Services to reflect any increase in the cost to Us which is due to any factor beyond Our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of provision/manufacture), any change in delivery dates, quantities or specifications for the Services which is requested by You, or any delay caused by Your instructions or Your failure to give Us adequate information or instructions.
- 5.3 The price is exclusive of any applicable value added tax, local tax, or country tax which You shall be additionally liable to pay to Us or your local tax authority.

6. Terms of Payment

- 6.1 We shall be entitled to invoice You for the price of the Services in accordance with the provisions set out in schedule 2. In the event that no such special terms of payment are agreed between us and documented in schedule 2 then We shall be entitled to invoice You for the price of the Services on or at any time after delivery of the Services or part of them.
- 6.2 You shall pay the price immediately if an on-line payment of the Services or within 30 days of the date of Our invoice if an invoiced service, and We shall be entitled to recover the price. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3 If You fail to make any payment on the due date then, without prejudice to any other right or remedy available to Us, We shall be entitled to:

6.3.1 cancel the Contract or suspend any further deliveries to You; and

6.3.2 charge You interest (both before and after any judgment) on the amount unpaid, at the rate of four per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6.4 In the event that You cancel Your order for the provision of Services defined as “a face to face training follow up event”, you agree to pay a cancellation charge calculated as follows:

Date of Cancellation (prior to the Services Commencement Date) **Percentage of price payable by You**

0 -20 days	100%
20 – 30 days	50%
30 days or more	no charge

6.5 You will reimburse Us all reasonable expenses incurred by Us and/or Our employees or agents properly incurred in relation to providing the Services defined as “a face to face training follow up event” in accordance with these Conditions.

7. Warranties and Liability

7.1 Except in respect of death or personal injury caused by Our negligence, We shall not be liable to You 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 the Contract, for any indirect, special or consequential loss or damage (or for loss of profits, use, contract, goodwill) or for any costs, expenses or other claims for compensation whatsoever (whether caused by Our negligence, Our employees or agents or otherwise) which arise out of or in connection with the supply of the Services to You.

7.2 Our entire liability under or in connection with the Contract shall not exceed the price of the Services, except as expressly provided in these Conditions.

8. Intellectual Property

8.1 You acknowledge that any and all Intellectual Property Rights which subsist in or arise in connection with the Services and/or the Merlin Navigator Materials anywhere in the world belong to Us (as joint owners) and are Our absolute property (or that of Our joint owners) and that You shall have no right in or to such Intellectual Property Rights in the Services or the Merlin Navigator Materials or the Merlin Navigator Materials themselves save the right to use the same as permitted under these Conditions.

8.2 You acknowledge and agree that in the event that any new materials in which Intellectual Property Rights exist are created during the provision of the Services by Us to You (whether in respect of the Services or the Merlin Navigator Materials or otherwise) that such Intellectual Property Rights shall (unless otherwise agreed in writing between Us) vest in and be owned by Us and You agree to do and procure to be done all such acts and things necessary to effect ownership of such rights by Us.

8.3 You further acknowledge and agree that You shall not (without prejudice to Our rights to challenge the validity of such Intellectual Property Rights) cause or permit any acts

or omission which may prejudice, jeopardise or endanger such Intellectual Property Rights or Our title to them.

- 8.4 If any claim is made against You that the Merlin Navigator Materials infringe or that their use infringes the Intellectual Property Rights of any other person, then unless the claim arises from the use of any specification supplied by You, we shall indemnify You against all loss, damages, costs and expenses awarded against or incurred by You in connection with the claim, or paid or agreed to be paid by You in settlement of the claim provided that We are given full control of any proceedings or negotiations in connection with any such claim and:
- 8.4.1 You shall give Us all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 8.4.2 except pursuant to a final award, You shall not pay or accept any such claim, or compromise any such proceedings without Our consent (which shall not be unreasonably withheld);
 - 8.4.3 You shall do nothing which would or might vitiate any policy of insurance or insurance cover which You may have in relation to such infringement, and this indemnity shall not apply to the extent that You recover any sums under any such policy or cover (which You shall use Your best endeavours to do);
 - 8.4.4 We shall be entitled to the benefit of, and You shall accordingly account to Us for, all damages and costs (if any) awarded in Your favour which are payable by, or agreed with Your consent (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
 - 8.4.5 without prejudice to any of Your duties at common law, We shall be entitled to require You to take such steps as We may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which We are liable to indemnify You under this clause.
- 8.5 Without limitation to clause 8.4, in the event that the use or possession of the Merlin Navigator Materials by You in accordance with clause 3 infringes or in Our opinion is likely to be held to infringe any Intellectual Property Rights belonging to a third party in the UK, We may at Our option and expense:
- 8.5.1 procure for You the right to continue using the Merlin Navigator Materials free from any liability for such infringement;
 - 8.5.2 modify or replace the Merlin Navigator Materials so as to avoid the infringement; or
 - 8.5.3 terminate this Contract immediately on written notice.

For the avoidance of doubt, the provisions of this clause 8.5 shall only apply where You have paid a Licence Fee in accordance with clause 3 above.

- 8.6 Clauses 8.4 and 8.5 state Our entire obligation and liability and Your sole remedy in respect of any infringement or alleged infringement of any Intellectual Property Rights arising from Your use of the Merlin Navigator Materials. All of Our other obligations in relation to infringement or alleged infringement of the Intellectual Property Rights of any person which but for this clause 8.6 would have effect are hereby excluded.

9. Confidentiality

- 9.1 In order to protect the confidentiality of Our affairs, You shall not without Our consent, either during the term of the Contract or thereafter without limit in point of time, whether for Your own purposes or for any purposes other than Our own, or through any failure to exercise all due care and diligence, divulge or communicate and shall

during the continuance of the Contract and thereafter use all reasonable endeavours to prevent the divulging or communication to any person or persons or third party whatsoever, except to those whose province it is to know the same, any secret, confidential or private information, dealings or transactions, reports or research which come to Your knowledge during the course of the Contract including but not limited to:

- 9.1.1 information regarding Our formulae, algorithms, processes, research projects or other technical data;
 - 9.1.2 lists of Our customers and potential customers of, or suppliers and potential suppliers and any other information obtained by You in relation to those customers or suppliers;
 - 9.1.3 new products or Services to be sold or supplied or proposed to be sold or supplied by Us;
 - 9.1.4 Our pricing policies and private terms of business relating to Our customers and suppliers;
 - 9.1.5 any systems, methods or other computer software developed and sold by Us;
 - 9.1.6 Our dealings or transactions or other business affairs, finances or management accounts;
 - 9.1.7 any information which We have access to only by virtue of an obligation of confidence to any third party; and
 - 9.1.8 any information relating to the private affairs or personal details of any of Our employees, shareholders, directors, suppliers or customers or prospective customers;
- 9.2 The obligations contained in this clause 9 shall not apply to information which:
- 9.2.1 is publicly known at the time of disclosure to You;
 - 9.2.2 after disclosure becomes publicly known otherwise than through a breach of the Contract by You;
 - 9.2.3 can be proved by You to have come into Your possession otherwise than being communicated by Us; and
 - 9.2.4 is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by You, provided that, where practicable, We are given reasonable advance notice of the intended disclosure.

10. **Property**

Upon the termination of the Contract for whatever reason You shall promptly deliver up to Us all correspondence, documentation or other working material in all media, and any equipment, disks, tapes, software, computers, passwords or other property belonging to Us including but not limited to the Merlin Navigator Materials which are in Your possession or under Your control on the termination of the Contract and any licence which may have previously been in effect in accordance with clause 3 shall also terminate.

11. **Termination**

- 11.1 We may terminate the Contract forthwith on written notice to You if You:
 - 11.1.1 shall commit any material breach of Your obligations under the Contract;

- 11.1.2 act in any manner which is likely, in Our opinion to bring Us into disrepute;
 - 11.1.3 breach Your obligations under clause 8 and/or 9;
 - 11.1.4 make any voluntary arrangement with Your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
 - 11.1.5 an encumbrancer takes possession, or a receiver is appointed, of any of Your property or assets;
 - 11.1.6 You cease, or threaten to cease, to carry on business; or
 - 11.1.7 We reasonably apprehend that any of the events mentioned above is about to occur in relation to You and notify You accordingly.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to Us, We shall be entitled to cancel the Contract and all monies owing to Us in accordance with the Contract shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. General

- 12.1 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.
- 12.2 No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 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.
- 12.4 You agree that You will not whether directly or indirectly on Your own or in partnership or association with any person, firm or organisation for a period of 12 months from the termination of this Agreement or the completion of the provision of the Services by Us to You whichever is the earlier, solicit or entice away or attempt to solicit or entice away, any employee, agent, consultant or otherwise of Ours who has assisted in providing or provided the Services to You under the terms of this Agreement.
- 12.5 The Contract and these Conditions shall be governed by the laws of England and Wales, and both parties agree to submit to the exclusive jurisdiction of the English courts.

CLIENT
NAME

.....
acknowledges and agrees that by signing these conditions it has read and understood its terms and agrees to be bound by them.

SIGNED ON
BEHALF OF CLIENT

.....

Schedule 1

The Services

Packages available

On Line payments in GBP Euro or US Dollars

- | | |
|---|---------------------------|
| 1. Single usage of the Merlin Navigator Test | £200 per person |
| Merlin Toolbox access and use for 12 months | £2500 |
| 2. Multiple use (reuse) of the Merlin Navigator Test | £350 per person |
| After 12 months renewable for a further 12 months at | £150 per person |
| Merlin Toolbox access for 12 months and renewable for same fee | £2500 |
| 3. Enterprise product for large scale users, multiple use and access
To Merlin Toolbox (12 month contract) | Pricing on
application |
| 4. Personalised bespoke software to match your Company Branding
And Toolbox access (12 month contract) | P on A |
| 5. Access to Consultant to support face to face activity
Separate contract | P o A |
| 6. Two day training packages designed to improve poor performance areas
Separate contract | P on A |

Schedule 2

Payment Terms

On line using secure trading payment systems, as shown on web-site.

30 days from the date of our invoice if invoiced.