



# General Terms and Conditions for the Business Class Portal

of StorageCraft UK Limited. July 2011

General Terms and Conditions of StorageCraft UK Limited ["we", "us", "our"] for commercial customers ["customer" or "you", "yours",...]

## 1. Preamble.

All our services are provided on the basis of these Terms and Conditions. These Terms and Conditions shall exclusively apply, save as varied by express agreement accepted in writing by both parties. All our offers or acceptances of orders of customers are conditioned upon the terms contained herein. Any conditional or different terms proposed by you are objected to and will not be binding upon us unless assented in writing by us.

These terms and conditions shall also govern any future contract between us and any customer.

## 2. Offers and Orders; Contract.

Our offers to customers are not offers in a legal sense but an invitation to you to place an order. Normally you will get a notice that we received your order, which will not constitute a contract. A contract is concluded by our written explicit confirmation of your order.

Regarding our MSP-Partners we are also entitled to not declare a formal acceptance of your offer. In these cases it is sufficient to express the acceptance of your offer in any convenient way towards you. Normally this will be done by activating your access to our MSP Portal or by extending an already existing access to our MSP Products. Therefore you will be given via email or phone call the login credentials (username, password, etc.).

## 3. Intellectual Property Rights.

All our software products are subject to the intellectual property rights of us or StorageCraft Technology Corporation, Utah, USA, or when indicated of third parties such as Microsoft Corporation. "Intellectual Property Rights" means all of StorageCraft's or StorageCraft USA's ownership rights associated with intellectual property and the Licensed Software, including but not limited to patents, copyrights, trademarks, service marks, and trade secrets, and any and all rights to exclude existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, trademark law, unfair competition law, or other similar rights.

You are obliged to respect these Intellectual Property Rights and to oblige your own customers to respect these Intellectual Property Rights as well.

## 4. Terms of Payment.

The prices specified in our acceptance of offer are effective; otherwise it's the prices of our current price list. You shall pay all invoices on or before ten (10) days following receipt of the invoice.

## 5. Electronic Invoicing (eBilling) .

We may send our invoices to you by electronic means. This must take place under consideration of the tax regulations of the United Kingdom including VAT regulations. In line with the current status of the laws of the United Kingdom, we shall send electronic invoices with an advanced or qualified electronic signature.

Upon receipt of the invoice, you shall be responsible for complying with the tax regulations that apply to it concerning this invoice,

especially the archiving of the invoice according to law. If necessary according to law, you shall generate/transmit a confirmation of receipt for electronic invoices. In the event that you are not (only) subject to the tax laws of the United Kingdom, it may also be responsible for complying with any further regulations of relevant tax laws concerning electronic invoices.

We are under no obligation to send electronic invoices. If the invoices are issued electronically, we may return to issuing the invoices in the conventional way (paper). We may likewise change the way of issuing and/or transmitting electronic invoices if this appears to be useful or necessary due to changes in law or for economic/technical reasons. In such cases, we shall inform you of the changes early enough in advance in writing.

## 6. Voluntary service by StorageCraft.

StorageCraft shall archive the electronic invoices and audit reports free of charge for the Licensee in Switzerland on the basis of Swiss law. Online access to these data is ensured for the recipients of the electronic invoices on a long-term basis and until revocation. StorageCraft may discontinue this voluntary service after reasonable advance notice; in such a case, the Licensee will be given due opportunity to retrieve any needed data from StorageCraft and store them internally.

## 7. Limitation on Warranties.

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL OUR SOFTWARE PRODUCTS ARE PROVIDED AND LICENSED "AS IS" AND WITH ALL FAULTS. THERE ARE NO WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, OR OTHERWISE, REGARDING IT, OR ANY OTHER PRODUCT OR SERVICE PROVIDED HEREUNDER OR IN CONNECTION HERewith. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY (IF ANY) WARRANTIES OR CONDITIONS OF OR RELATED TO: MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, NONINFRINGEMENT, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT, AND LACK OF NEGLIGENCE. ALSO, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THERE IS NO WARRANTY, DUTY, OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, OR NONINFRINGEMENT. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF OUR SOFTWARE PRODUCTS REMAINS WITH YOU AS END USER, AND YOUR CUSTOMERS.

NO AGREEMENTS VARYING OR EXTENDING THE FOREGOING WARRANTIES OR LIMITATIONS WILL BE BINDING ON EITHER PARTY UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BOTH PARTIES.

YOU SHALL NOT GIVE OR MAKE ANY WARRANTIES OR REPRESENTATIONS ON BEHALF OF US AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE



OR PURPOSE, OR ANY FEATURES OF OUR SOFTWARE PRODUCTS. YOU SHALL NOT INCUR OR PURPORT TO INCUR ANY LIABILITIES, OBLIGATIONS, OR COMMITMENTS ON BEHALF OF US

#### **8. Government Regulations.**

You understand that StorageCraft USA is subject to U.S. export jurisdiction and regulation by agencies of the U.S. government, including the U.S. Department of Commerce, which prohibits export or diversion of certain technical products to certain countries. You warrant that you will comply in all respects with the export and re-export restrictions applicable to the technology and documentation licensed hereunder. You warrant that you shall comply with all applicable international and national laws and regulations that apply to our software products, including without limitation the U.S. Export Administration Regulations ("EAR"), as well as importation, manufacturing, end user, end-use, and destination restrictions issued by U.S. and other governments. Further, you warrant that you will not export, or re-export, directly or indirectly, any product to any country outlined in the EAR, nor to any person or entity on the DOC Denied Persons, Entities and Unverified Lists, the U.S. Department of State's Debarred List, or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers, or Specially Designated Terrorists. Furthermore, you agree not to export, or re-export, licensed products to any military entity not approved under the EAR, or to any other entity for any military purpose, nor will you sell any Licensed Software for use in connection with chemical, biological, or nuclear weapons or missiles capable of delivering such weapons. You are responsible at your own expense for any local government approvals required.

#### **9. Force Majeure.**

Neither Party shall be responsible for any delay or failure in performance of any part of an agreement, except for obligations to make payment hereunder, to the extent that such delay or failure is caused by fire, flood, explosion, war, terrorism, embargo, government requirement, civil, or military authority, act of God, act

or omission of carriers, or other similar causes beyond its control. If any such event of force majeure occurs and such event continues for thirty (30) consecutive days or more, the Party delayed or unable to perform shall give immediate notice to the other Party, and the Party affected by the other's delay or inability to perform may elect to terminate the respective agreement upon the agreement of both Parties. If such condition continues for sixty (60) consecutive days or more, the Party affected by the other's delay or inability to perform may, in its sole discretion, elect to terminate the respective agreement.

#### **10. Written form.**

There are no oral side agreements; if so they are not valid until written affirmation by both parties. All amendments to this Agreement must be made in writing and be signed by the Parties. This also applies to the waiver of this requirement for written form.

#### **11. Severability.**

Any term or provision of these Terms and Conditions held to be illegal or unenforceable shall, if possible, be interpreted so as to be construed as valid, but in any event the validity or enforceability of the remainder hereof shall not be affected, provided that the general purposes of these Terms and Conditions are still reasonably capable of being accomplished.

#### **12. Governing Law, Venue, Provisional Relief.**

Any agreement between us shall be governed and construed in accordance with the laws of the United Kingdom without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than the United Kingdom, including any action for provisional relief concerning this Agreement or the Parties' relationship hereunder.

The place of jurisdiction is London, England.