

**McLAREN APPLIED LIMITED**  
**CONDITIONS OF LICENCE OF SOFTWARE**

**1. Interpretation**

1.1 In these Conditions:

"Claims" means all claims (whether known or unknown to the parties, whether contemplated or not, and whether or not presently known to the law);

"Code of Conduct" means Licensor's code of conduct in relation to human rights and business ethics as amended from time to time a copy of which can be provided on request or at <http://mclrn.co/COCBE>;

"Conditions" means the standard terms and conditions of licence of software set out in this document;

"Contract" means the contract between the Licensor and the Licensee consisting of the Order and these Conditions. Should there be any inconsistency between the documents comprising the Contract, these Conditions shall have precedence unless otherwise stated in the Order;

"Licence" means use of the Software which is supplied to the Licensee by the Licensor in accordance with the Contract;

"Licensee" means the person whose order is accepted by the Licensor;

"License Fee" means the fee payable for the Licence as determined by the Licensor;

"Licensor" means McLaren Applied Limited;

"Order" means the quotation or proposal provided by the Licensor together with any Specifications and any amendments thereto communicated by the Licensor to the Licensee;

"Software" means the software being licensed to the Licensee as set out in the Specification;

"Specification" means the specification for the Licence determined pursuant to the Contract.

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

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

**2. Grant and Scope of Licence**

2.1 In consideration of payment by the Licensee of the Licence Fee or such other consideration provided by the Licensee, the Licensor grants to the Licensee a non-exclusive, non-transferable licence to use the Software, subject to the Conditions.

2.2 By placing an order for the Licence or by using the Software, the Licensor shall be deemed to have accepted the Conditions, which govern the terms and conditions for the Licence of the Software to the Licensee to the exclusion of any other terms and conditions.

2.3 The Licensor shall remain the owner of the Software and instructional documents at all times.

2.4 No variation to the Conditions shall be binding unless agreed in writing by an authorised representative of the Licensor.

2.5 The Licensee may:

(a) install and use the Software for its internal business purposes only;

- (i) on one central processing unit (CPU) if the Licence is a single-user licence or the Software is for single use; or
  - (ii) if the Licence is a multi-user or network licence, by the number of concurrent users agreed by the Licensor;
- (b) provided it is used on only one computer at any one time, transfer the Software from one computer to another; and
- (c) provided the Licensee complies with the provisions in clauses 2.2(a) and (b) make up to one copy of the Software for back-up purposes only.

### **3. Formation of Contract and Specification**

- 3.1 A quotation by the Licensor does not constitute an offer and the Licensor reserves the right to withdraw or revise any quotation at any time prior to the Licensor's acceptance of the Licence.
- 3.2 The Contract for the Licence of the Software shall be formed when the Licensee's order is confirmed in writing by the Licensor's authorised representatives subject to the Conditions.
- 3.3 The description of the Software shall be as set out or referred to in the Specification.
- 3.4 The Licensor reserves the right to make any changes to the specification of the Software which is required to conform with any applicable safety or other statutory requirements, or where the Software is to be supplied to the Licensor's specification, which do not materially affect the quality or performance of the Software.
- 3.5 No order which has been accepted by the Licensor may be cancelled by the Licensee except with the agreement in writing of the Licensor and on terms agreed by the Licensor.
- 3.6 The Licensee shall indemnify and keep indemnified the Licensor fully on demand against any and all losses, damages, costs and expenses incurred by or awarded against the Licensor as a result of the carrying out of any work required to be done to the Software in accordance with the requirements or specifications of the Licensee involving an infringement or alleged infringement of any rights of any third party.
- 3.7 Any typographical, clerical or other error or omission in any documentation issued by the Licensor may be corrected by the Licensor without liability on the part of the Licensor.

### **4. Price**

- 4.1 The price of the Licence shall be the Licensor's quoted price or, where no price has been quoted, the Licensor's standard price for the Software at the date of delivery.
- 4.2 The Licensor reserves the right, by giving notice to the Licensee at any time before delivery, to increase the price of the Licence to reflect any increase in the cost to the Licensor which is due to any factor beyond the control of the Licensor including (without limitation) alterations in taxation, increases in the cost of labour, materials or other costs of manufacture, any change of delivery dates, quantities or specifications of the Licence which are requested by the Licensee, or any delay caused by any instructions of the Licensee, or failure of the Licensee to give the Licensor adequate information or instructions.
- 4.3 The price is exclusive of Value Added Tax and all other taxes and duties (apart from corporation taxes referable to income or capital gains of the Licensor), which shall be payable by the Licensee.
- 4.4 The Licensee shall be responsible for all international and domestic duties, taxes and shipping, with no deduction for any service or any other charges or fees by any bank or any other entity.

### **5. Payment**

- 5.1 The Licensee shall pay the price of the Licence in accordance with the Order or if not specified in the Order in full within 30 days of the date of the Licensor's invoice, notwithstanding that the Software may not have been licenced to the Licensee. The Licensee shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution howsoever arising. The time of payment of the price shall be of the essence.
- 5.2 If the Licensee fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Licensor, the Licensor shall (at its option) be entitled to:
- 5.2.1 treat the Contract as repudiated by the Licensee and suspend any further deliveries to the Licensee, claim damages from the Licensee and charge the Licensee interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base rate from time to time, until payment in full is made; or
- 5.2.2 affirm the contract, claim damages from the Licensee and charge the Licensee interest (in accordance with clause 5.2.1)

## **6. Confidentiality / Publicity**

- 6.1 Any information supplied by the Licensor to the Licensee in connection with the Licence hereunder or the Licensee's business or the business of any associated company of the Licensor shall be treated as confidential information and shall not be disclosed to any third party or used by the Licensee except in accordance with the terms of a Contract or with the Licensor's express written agreement.
- 6.2 The Licensee will not and will procure that no person that directly or indirectly supplies or is supplied by the Licensee will, without first obtaining the written consent of the Licensor (which may be withheld in its absolute discretion), in any way whatsoever advertise or publish the fact that the Licensor has contracted to supply the Licensee the Licence or otherwise publish any material using the Licensor of any associated company's name, or the name and/or image of any car, driver, premises or employee of the Licensor or any associated company of the Licensor.
- 6.3 The Licensee shall keep all confidential information secure and protected against theft, damages, loss or unauthorised access and shall return all such information to the Licensor at the Licensor's request.
- 6.4 The Licensee shall not use the trade name, logo, names, livery or other indicia belonging to the Licensor or any associated company of the Licensor or the image or likeness of any of the Licensor's or any associated company of the Licensor products, drivers, personnel in any form whatsoever without the Licensor's prior written agreement.
- 6.5 The Licensee expressly acknowledges that breach of this clause 6 may result in injury or loss to the Licensor which may be difficult to assess and the Licensee accordingly consents (to the extent permitted by law) to the entry or injunctive or other equitable relief against it to restrain such breach.
- 6.6 The Licensor will not do or authorise any third person to do any act which would or might damage or be inconsistent with the trademarks used by the Licensor in relation to the Licence or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to the Licence. Any advertising, promotion and selling materials supplied by the Licensor to the Licensee shall remain the property of the Licensor and the Licensee shall not permit any other person to make use thereof.

## **7. Restrictions**

Except as expressly set out in the Conditions or as permitted by any local law, the Licensee undertakes:

- (a) not to copy the Software except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up under clause 2.2(c);
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software;

- (c) not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to include any copyright notice featured on the Software on all entire and partial copies the Licensee makes of the Software on any medium; and
- (g) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee's employees without prior written consent from us.

## **8. Intellectual Property Rights**

- 8.1 The Licensee acknowledges that all intellectual property rights in the Software belong to the Licensor, that rights in the Software are licensed (not sold) to the Licensee, and that the Licensee has no rights in, or to, the Software other than the rights to its use in accordance with the Contract.
- 8.2 The Licensor shall have no liability to the Licensee in the event the Software infringes or is alleged to infringe the rights of any third party.

## **9. Limited Warranty**

- 9.1 Due to the complexity of the Software, and in line with usual practice of the software industry, the Licensor makes no warranties, representations or guarantees, either express or implied, statutory or otherwise with respect to the Software or any related technical support including the quality, performance, merchantability or fitness for purpose.

## **10. Limitation of Liability**

- 10.1 The Licensor acknowledges that unless specifically set out in the Specification, the Software has not been developed to meet the Licensee's individual requirements, and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of the Software are described in the instructional documents meet the Licensee's requirements.
- 10.2 The Licensor shall be under no liability in respect of any defect in the Software:
  - 10.2.1 arising from or attributable to any drawing, design or specification supplied by the Licensor;
  - 10.2.2 arising from fair wear and tear, neglect, failure to follow the Licensor's instructions, misuse or improper alteration or repair of the Software; or
  - 10.2.3 if the total price for the Licence has not been paid by the due date for payment.
- 10.3 The Licensor shall not in any circumstances whatever be liable to the Licensee, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:
  - (a) loss of profits, sales, business, or revenue;
  - (b) business interruption;
  - (c) loss of anticipated savings;

- (d) loss or corruption of data or information;
- (e) loss of business opportunity, goodwill or reputation; or
- (f) any indirect or consequential loss or damage.

10.4 In no circumstance save in relation to clause 10.5, shall the Licensor's maximum aggregate liability under the Contract and in connection with the Licence whether in contract, tort (including negligence) or otherwise, in any circumstance exceed a sum equal to 100% of the Licence Fee. This maximum cap does not apply to clause 10.5 below.

10.5 Nothing in this clause 10 or otherwise in the Contract shall exclude or in any way limit the Licensor's liability to the Licensee for: (i) fraud; (ii) death or personal injury caused by the Licensor's negligence (including negligence as defined in s.1 Unfair Contract Terms Act 1977); (iii) breach of terms regarding title implied by s.12 Sale of Deliverables Act 1979 and/or s.2 Supply of Deliverables and Services Act 1982; or (iv) any liability to the extent the same may not be excluded or limited as a matter of law.

## **11. Software Support**

11.1 Where the Software is standard the Licensor will offer support for a period of 1 month after shipment or as otherwise set out in the Specification. Reported faults will be recorded. The Licensor will decide at its discretion, if and when a recorded fault will be fixed in future releases. New releases will not automatically be provided to the Licensee unless set out in the Specification.

11.2 Where the Software is bespoke the Licensor will have faults fixed during any agreed commissioning phase set out in the Specification at the cost of the Licensee. After any agreed commissioning phase time it shall be considered to be standard software and supported as above.

## **12. Termination**

12.1 The Licensor may terminate the Licence immediately by written notice to the Licensee if the Licensee commits a material or persistent breach of the Licence which the Licensee fails to remedy (if remediable) within 10 days after the service of written notice requiring the Licensee to do so.

12.2 Upon termination for any reason:

- (a) all rights granted to the Licensee under the Licence shall cease;
- (b) the Licensee must immediately cease all activities authorised by the Licence;
- (c) the Licensee must immediately pay to the Licensor any sums due to it under the Licence; and
- (d) the Licensee must immediately delete or remove the Software from all computer equipment in its possession, and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software and supplemental documents then in the Licensee's possession, custody or control and, in the case of destruction, certify to the Licensor that the Licensee has done so.

## **13. Force Majeure**

13.1 The Licensor shall not be liable to the Licensee for any loss or damage which may be suffered by the Licensee as a direct or indirect result of the supply of the Licence by the Licensor being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Licensor's reasonable control including (but not limited to) Act of God, war riot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of computer equipment, plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the Licence or of raw materials therefor by the Licensor's normal source of supply or the manufacture of the

Licence by the Licensor's normal means or the delivery of the Licence by the Licensor's normal route or means of delivery.

#### **14. Insolvency of Licensee**

14.1 This clause applies if:

14.1.1 the Licensee makes any voluntary arrangement with its creditors or becomes subject to an administration order (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it;

14.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property assets of the Licensee; or

14.1.3 the Licensee ceases, or threatens to cease, to carry on business; or

14.1.4 the Licensor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Licensee or any other matter which in the opinion of the Licensor may prejudice its rights against the Licensee.

14.2 If this clause applies then, without prejudice to any other right or remedy available to the Licensor, the Licensor shall be entitled to cancel a Contract or suspend any further deliveries under a Contract without any liability to the Licensee, and if the Licence have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **15. Transfer/Assignment**

The Licensee may only transfer its rights and/or obligations under this Licence to another person if permitted in the Specification or if the Licensor agrees (prior to the transfer) in writing.

#### **16. Human Rights and Anti-Bribery**

16.1 The Licensor confirms that the Code of Conduct is in force and applicable in connection with the Licensor's performance under the Contract. The Licensor acknowledges that it is committed to (i) supporting and respecting the protection of human rights; and (ii) ensuring that it is neither causing nor contributing to any adverse impact on human rights, or human trafficking. The Licensee acknowledges this commitment and shall comply with the Code of Conduct where applicable.

16.2 The Licensor shall act in good faith to require its first-tier suppliers to apply the Code of Conduct principles.

16.3 Both the Licensor and Licensee confirm that they at all times shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery including but not limited to the Bribery Act 2010.

#### **17. General**

17.1 Failure by the Licensor to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

17.2 If any provision or part of these Conditions shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.

17.3 Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class registered post to the party concerned at its registered office or principal place of business or such address as may have been notified pursuant to this provision to the party giving the notice. Notices sent by first class registered post shall be deemed to have been given seven days after despatch.

- 17.4 The Conditions shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts provided that Licensor may sue the Licensee in the courts of any country, such proviso being for the sole benefit of Licensor.
- 17.5 Except as necessary for the Licensee's intended use of the Licence as communicated to and agreed by the Licensor, the Licensee shall not, without prior written consent of the Licensor, use the name McLaren Applied Limited (or any shortened form thereof) or the fact that it has purchased the Licence from the Licensor in any manner.
- 17.6 McLaren Services Limited or any subsidiary or associated company of the Licensor may enforce the terms of these Conditions subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as provided in this clause 16.6, a person who is not a party to these Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 17.7 The Conditions and the documents referred to herein contain all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to a Contract. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into a Contract unless such untrue statement was made fraudulently, and that party's only remedies shall be for breach of contract as provided in the Conditions.