

Title: **Standard Terms and Conditions**  
Type of Document: **Apogee External Document**  
Document Number: **AED-TC-02**  
Issue Number: **1**  
Date of Issue: **01.10.04**  
Author: **LC**  
Status: **CONTROLLED**

## **TERMS AND CONDITIONS OF BUSINESS**

### **1 Interpretation**

#### 1.1 Definitions

Capitalised terms used in the Specification have the same meaning when used in these Terms. The following additional definitions shall also apply:

**"Client"** the person named on the Specification sheet for whom APOGEE has agreed to provide the Services in accordance with these Terms;

**"Contract"** the contract for the provision of the Services comprised of the Specification, The Terms and any attachments;

**"Deliverables"** any data, maps, reports or other information in any media provided by Apogee relating to the Project;

**"Input Material"** any data or other information in any format or media provided by the Client relating to the Project;

**"APOGEE"** Apogee Data Consulting Limited (registered number: 5113615) whose registered office is at Flat E, Burnside, Sandhurst Road, Tunbridge Wells, Kent, TN2 3JU;

**"Services"** the services to be provided by Apogee for the Client in undertaking the Project and producing the Deliverables;

**"Specification"** the sheet specifying the Project, the Charges, the Timescale and any other material terms of the Contract to which these Terms are attached;

**"Terms"** the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between APOGEE and the Client.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.3 These Terms shall govern all quotations given, orders received and accepted and work undertaken by APOGEE on behalf of the Client. Acceptance of any quotation or the placing of any order with APOGEE shall be deemed to constitute acceptance of these Terms. These Terms shall supersede any terms of business proffered by the Client. No waiver or variation of these Terms shall be valid unless written and signed by an authorised signatory of APOGEE.

1.4 In these Terms references to the singular include the plural and vice versa where the context requires.

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## **2 Supply of the Services**

- 2.1 APOGEE shall provide the Services to the Client in accordance with the Specification and any attachments and subject to these Terms.
- 2.2 The Client shall at its own expense supply APOGEE with all necessary Input Material, within sufficient time to enable APOGEE to provide the Services in accordance with the Timescale. The Client shall ensure the accuracy and reliability of all Input Material.
- 2.3 Where APOGEE is required to provide the Client with revised or updated versions of any of the Deliverables which supersede or replace the previous version(s), the Client shall, immediately on receipt of such new versions, withdraw and cease using the previous version(s) of such materials.
- 2.4 Where the Project requires APOGEE to obtain a licence of data from any third party the Client authorises APOGEE to apply for and obtain in the Client's name a licence from any such third party and shall indemnify APOGEE in respect of the licensee's obligations contained in any such licence.
- 2.5 APOGEE may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.
- 2.6 When visiting the Client's premises, APOGEE shall at all times obey the lawful orders of any authorised representative of the Client and the requirements of any applicable rules and regulations made known to APOGEE.

## **3 Charges**

- 3.1 The Client shall pay APOGEE the Charges and any additional sums which may be agreed between APOGEE and the Client for the provision of the Services or which, in APOGEE's discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy or unreliability of any Input Material or any delay or other cause attributable to the Client.
- 3.2 APOGEE shall be entitled to vary the Charges from time to time by giving not less than four weeks written notice to the Client.
- 3.3 All Charges are exclusive of any VAT, for which the Client shall be additionally liable at the applicable rate from time to time.
- 3.4 Unless otherwise agreed, APOGEE shall invoice the Client for the Charges in accordance with the payment terms and the Client shall pay the Charges in sterling as directed on the invoices (without any set-off or other deduction) within 28 days of the date of invoice.

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- 3.5 If payment is not made by the due date, APOGEE shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4 % p.a. above the base rate from time to time of National Westminster Bank plc from the due date until the outstanding amount is paid in full.

#### **4 Rights in Input Material and Deliverables**

- 4.1 All copyright and other intellectual property rights in the Deliverables shall, as between the Client and APOGEE belong to APOGEE, but the Client may use the Deliverables for the purposes of utilising the Services. For the avoidance of doubt, all copyright and other intellectual property rights in the software programs and databases and in the tools, components, processes and techniques used by APOGEE to produce the Deliverables shall, as between APOGEE and the Client, belong to APOGEE, save where and to the extent these form part of the Input Materials.
- 4.2 The Client shall not, by any means or in any media, copy, sell, transfer, publish or otherwise disseminate any of the Deliverables, save that where maps are provided in pdf or equivalent electronic format, the Client may print up to five hard copies of each such map (or such higher number as may be specified in the Specification).
- 4.3 The Client warrants that any Input Material and its use by APOGEE for the purpose of providing the Services will not infringe the intellectual property or other rights of any third party, and the Client shall indemnify APOGEE against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.4 Subject to paragraph 4.3, APOGEE warrants that any Deliverables and their use by the Client for the purposes of utilising the Services will not infringe the intellectual property or other rights of any third party.

#### **5 Warranties and Liability**

- 5.1 APOGEE has no involvement or control in the sourcing or compilation of the core data used to produce the Deliverables, but whenever reasonably practicable endeavours to assess its reliability and accuracy. Accordingly, APOGEE gives no warranty or representation in respect of the accuracy or reliability of the Deliverables and excludes any and all liability arising in respect of such matters. APOGEE warrants to the Client that the Services will be provided using all reasonable care and skill and, as far as reasonably possible, in accordance with the Specification.
- 5.2 APOGEE shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, incorrect format or arising from their late arrival or non-arrival, or any other fault of the Client.
- 5.3 Except in respect of fraud, or death or personal injury caused by APOGEEs negligence, APOGEE shall not be liable to the Client by reason of any representation (unless fraudulent), or

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any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of APOGEE, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client, and APOGEE's entire liability under or in connection with the Contract shall not exceed a sum equal to five times the amount of the Charges, except as expressly provided in these Terms.

5.4 APOGEE shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of APOGEE's obligations in relation to the Services, if the delay or failure was due to any cause beyond APOGEE's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond APOGEE's reasonable control:

5.4.1 Act of God, explosion, flood, tempest, fire or accident;

5.4.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

5.4.3 Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

5.4.4 Import or export regulations or embargos;

5.4.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of APOGEE or a third party);

5.4.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

5.4.7 Power failure or breakdown in machinery.

## **6 Termination**

6.1 Either party may (without limiting any other remedy) at any time terminate the Contract before its expiry by giving written notice to the other if the other commits any breach of this Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other commits an act or omission indicative of its insolvency.

6.2 Upon the expiry or earlier termination of the Agreement for any reason, the Client shall pay any outstanding Charges accrued to the date of termination and APOGEE shall, subject to any right of lien and to the provisions of the next sentence, forthwith return the Input Material (and any copies) and deliver any completed or available Deliverables to the Client. APOGEE

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may retain one copy of the Input Materials for archive purposes, subject of course to the confidentiality undertaking contained in Clause 7.1.

## **7 Confidentiality**

- 7.1 APOGEE and the Client shall: preserve the confidentiality of all confidential information of the other which it receives (which include the terms of this Contract); keep such information secure and protected against theft, damage, loss or unauthorised access; not use or disclose such information for any purpose except as contemplated by this Contract; and ensure that these obligations are observed by its employees, officers, agents and contractors. The confidentiality obligations imposed by this clause shall survive the termination of this Contract, but shall not apply to information which: is already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors; is lawfully received by the recipient from a third party on an unrestricted basis; or is legally required to be disclosed by a competent authority.
- 7.2 Subject to Clause 7.1, nothing in this Contract shall preclude APOGEE from using its know-how, skills, techniques and experience for its other clients.

## **8 Non-Solicitation**

- 8.1 For the duration of this Contract and for a further six months after its expiry or termination the Client shall not directly or indirectly, whether for itself or for the benefit of any other person, without the prior written agreement of APOGEE, employ or engage or make to seek to make any offer of employment or engagement to any person currently employed or engaged by APOGEE in connection with the provision of the Services or seek to induce any such person leave their employment or engagement with APOGEE.

## **9 General**

- 9.1 Any notice required to be given under these Terms shall be in writing and given by hand or sent by first class pre-paid post or facsimile to the parties at their principal place of business or such other address as may be notified for this purpose. Any notice given by post shall be deemed to have been given 48 hours after posting and any notice sent by facsimile shall be deemed to have been duly sent upon receipt by the sender of confirmation of transmission.
- 9.2 The Contract constitutes the entire agreement between the parties and supersedes any previous agreement or understanding between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 9.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

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- 9.4 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 Terms and the remainder of the provision in question shall not be affected.
- 9.5 Any dispute arising under or in connection with these Terms or the provision of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of Institute of Electrical Engineers. The parties shall co-operate in providing the arbitrator with such information as he/she reasonably requires to assist in his/her deliberations. The arbitrator shall act as expert whose decision shall, except in the case of manifest error, be final and binding upon the parties.
- 9.6 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts to resolve disputes which do not qualify for resolution under clause 9.5.
- 9.7 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.