

Open Range Ltd Standard Terms and Conditions

Parties

(1) OPEN RANGE Ltd a company incorporated in England, company registration number 04220643 and having its registered office at 446-450 Kingstanding Road Birmingham B44 9SA ;('the Provider'); and (2) THE CUSTOMER – defined as the party to whom access permissions are issued for the Open Range Get The Spec Service.

Introduction

(A) The Provider delivers and manages product data for I.T. web stores or on-line procurement system from its data centres to multiple users either by a data feed or hosted via the Internet.

(B) The Provider has agreed to provide the Services to the Customer in accordance with the terms and subject to the conditions set out below.

Terms of Agreement

IT IS AGREED THAT:

Definitions

In this Agreement, the following words shall have the following meanings:

'Term'

The period that is covered by the customer's subscription payment

'Updates'

Means any new or updated applications services or tools (including any computer software programs) made available by the Provider as part of the Services.

2. Services

The Customer engages the Provider and the Provider agrees to provide the Services in accordance with the terms of this Agreement.

- 2.1. The Provider agrees to provide the Services with effect from the date that access permissions (user name and password) are issued to the customer (from which date this Agreement shall be deemed to have commenced) until completion of the Term or sooner termination in accordance with the terms of this Agreement.
- 2.2. The Customer agrees to not at any time display the Provider's data without a current subscription in place.
- 2.3. The Customer agrees to place on all pages of any website containing the data supplied a copyright warning of a type acceptable to the Provider but in any case to include the warning that it would be actionable if any person copied the format, layouts and content of the data for any use other than making a purchasing decision.

3. Licences

- 3.1. The Customer is granted a non-exclusive and non-transferable licence to use the Services (including any associated software, Intellectual Property Rights and Confidential Information) during the Term. Such licence shall permit the Customer to make such copies of software or other information as are required for the Customer to receive the Services.
- 3.2. All Intellectual Property Rights and title to the Services (save to the extent incorporating any Customer or third party owned item) shall remain with the Provider and/or its licensors and no interest or ownership therein is conveyed to the Customer under this Agreement. No right to modify, adapt, or translate the Services or create derivative works therefrom is granted to the Customer. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Services.
- 3.3. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Services interoperable with other software (and upon written request by the Customer identifying relevant details of the Services(s) with which interoperability is sought and the nature of the information needed), the Provider will provide access to relevant source code or information. The Provider has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.
- 3.4. Unless otherwise specified in this Agreement, the Services are provided and may be used solely by the Customer as part of the Customer's website; IT based "shop" or internal procurement system. The Customer may not (i) lease, loan, resell or otherwise distribute the Services save as permitted in writing by the Provider; (ii) use the Services to provide ancillary services related to the Services; or (iii) except as permitted in this Agreement, permit access to or use of the Services by or on behalf of any third party.

- 3.5. The Customer warrants and represents that it shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Services granted under this Agreement is limited as set out under this Agreement.

4. Warranties

- 4.1. The Provider warrants that it has the right to license the Services and that the Services will operate to provide the facilities and functions implemented by the Provider. The foregoing warranties shall not (i) cover deficiencies or damages relating to any third party components not furnished by the Provider; or (ii) any third party provided connectivity necessary for the provision or use of the Services.
- 4.2. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose), are hereby excluded to the fullest extent permitted by law. No warranty is made regarding the results of usage of the Services or that the functionality of the Services will meet the requirements of the Customer or that the Services will operate uninterrupted or error free. This clause shall survive the termination of this Agreement.

5. Limitation of Liability

- 5.1. The Provider does not exclude or limit its liability to the Customer for fraud, death or personal injury caused by any negligent act or omission or wilful misconduct of the Provider in connection with the provision of the Services.
- 5.2. In no event shall the Provider be liable to the Customer whether arising under this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising, for any Consequential Loss. 'Consequential Loss' shall for the purposes of this clause mean (i) pure economic loss; (ii) losses incurred by any client of the Customer or other third party; (iii) loss of profits (whether categorised as direct or indirect); (iv) losses arising from business interruption; (v) loss of business revenue, goodwill or anticipated savings; (vi) losses whether or not occurring in the normal course of business, wasted management or staff time and; (vii) loss or corruption of data.
- 5.3. Subject to clauses 6.1 and 6.2, the total liability of the Provider (whether in contract, tort or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution shall not exceed the total Fees (excluding any VAT, duty, sales or similar taxes) paid or payable by the Customer in respect of the provision of this service during the preceding twelve (12) month period or, if the duration of the Agreement has been less than twelve (12) months, such shorter period, as applicable.
- 5.4. In no event shall the Customer raise any claim under this Agreement more than two (2) years after (i) the discovery of the circumstances giving rise to such claim; or (ii) the effective date of the termination of this Agreement. This clause shall survive the termination of this Agreement.
- 5.5. The Customer hereby acknowledges and agrees that in entering into this Agreement, the Customer had recourse to its own skill and judgement and has not relied on any representations made by the Provider, any employees or agents of the Provider. The Customer accepts that in providing the information that it does, the Provider has relied upon information provided by others which it believes to be correct but may not be.

6. Intellectual Property Indemnification

- 6.1. The Customer shall indemnify and hold the Providers and its suppliers or agents harmless from and against any cost, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from (i) any claimed infringement or violation by the Customer of any Intellectual Property Rights with respect to the Customer's use of the Services outside the scope of this Agreement; (ii) any access to or use of the Services by a third party, and (iii) use by the Provider of any Customer provided item.

7. Termination

- 7.1. The Customer agrees to provide Open Range with **written notice** (by E-Mail or by Letter) of termination of the agreement a **minimum of fourteen (14) business days** prior to the next subscription payment due date.
- 7.2. The Provider may immediately terminate this Agreement or the provision of any Services provided pursuant to this Agreement if the Customer has used or permitted the use of the Services otherwise than in accordance with this Agreement.
- 7.3. The Customer shall be entitled to terminate this Agreement at any time without notice if the Provider is prohibited, under the laws of England or otherwise, from providing the Services.
- 7.4. Either party shall be entitled to terminate this Agreement on written notice to the other party if the other party commits a material breach of any term of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within seven (7) business days of receipt by the other party of a notice from the non-defaulting party specifying the breach and requiring it to be remedied.
- 7.5. Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other. Clauses 4, 7, 8, 9 and 10 shall, for the avoidance of doubt, survive the expiration or sooner termination of this Agreement and shall remain in force and effect.
- 7.6. Upon termination the Customer agrees to immediately remove all data supplied by the Provider and any reference to it from their systems.

8. Force Majeure

- 8.1. Except with respect to obligations to pay the Fees or other charges, '**Force Majeure**' means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, [including without limitation where Provider ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data], transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

9. Miscellaneous provisions

- 9.1. This Agreement together with any order form and confirmation letter, if any, is the whole agreement (and such documents are incorporated into this Agreement). You acknowledge that you have not entered into this agreement in reliance upon any statement, warranty or representation made by the Provider or any other person and you irrevocably and unconditionally waive any rights to claim damages and/or to rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) that is not contained in the terms and conditions, order form and payment method instructions.
- 9.2. If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from the other terms and conditions and shall be deemed to be deleted from them.
- 9.3. This Agreement and your use of the Services are governed by English law and you submit to the non-exclusive jurisdiction of the English court.

10. Notices

All notices shall be given:

To us by post at Open Range Ltd, Bordesley Hall, The Holloway, Alvechurch, Birmingham, B48 7QB

or

To you at either the e-mail or postal address you provide during any ordering process.

Notice will be deemed received when an e-mail is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or 3 days after the date of posting.

Schedule 1 - Services

Provision of Access to: High Quality Product Data Sheets and Images, including:

- Enhanced Product Descriptions
- Marketing Text
- Bullet Pointed Features
- Extensive Technical Specifications
- Related Accessory Products
- Processed and Optimised Product Images

Purpose; to display as in your web store, for customer information.

Schedule 2 - Fees and Payments

- As detailed in the Provider's quotation to you, which shall be deemed to be part of this agreement.
- Payments are quarterly in advance, By Direct Debit unless otherwise agreed in writing

Schedule 3 - Customer's details

As per the details entered by the customer in the service registration form, hosted on the Open Range Web site, which shall be deemed to be part of this agreement.