Terms & Conditions of Service for Nocturna IT Ltd

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Registered in England & Wales
Company Number: 16934964
Registered Office: 20 Wenlock Road, London, N1 7GU

Nocturna IT Ltd – Terms & Conditions v1.10			
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Nocturna IT Ltd - Terms & Conditions

Overview

These Terms & Conditions govern the provision of services by Nocturna IT Ltd ("Nocturna", "we", "us") to business customers only. They apply to all Services provided unless otherwise agreed in writing.

These Terms operate alongside any applicable:

- Service Level Agreement ("SLA")
- Pricing Schedule
- Data Processing Agreement ("DPA")

In the event of conflict, the Order of Precedence set out below applies.

1. Definitions & Interpretation

- These Terms apply to business customers only and do not apply to consumers.
- "Agreement" means these Terms together with any applicable SLA, Pricing Schedule, and DPA.
- "Services" means remote IT support services provided by Nocturna.
- "Customer" means the organisation receiving the Services.
- "MSP" means any third-party Managed Service Provider appointed by the Customer.

Patch Execution

"Patch Execution" means the execution of operating system or software updates strictly in accordance with Customer-approved policies, schedules, scope limitations, and rollback instructions. Patch Execution does not include patch selection, approval, testing, monitoring, remediation, validation, or ongoing system maintenance.

Order of Precedence

In the event of conflict:

1. Pricing Schedule (fees)
2. SLA (service delivery)
3. DPA (data protection matters only)
4. These Terms & Conditions (all other matters)

Public Sector & Framework Procurement

Where Services are procured via a framework:

- The Customer must notify Nocturna in writing at or before order.
- Nocturna's terms apply unless Framework terms are expressly accepted in writing.
- Framework terms override only to the extent strictly required.
- Commencement of Services does **not** imply acceptance of Framework terms.

2. Nature of Services

- Nocturna provides **IT support services only** and does not provide fully managed services unless expressly agreed.
- System ownership, configuration, licensing, architecture, security posture, and strategic planning remain the Customer's responsibility.
- Nocturna operates as an out-of-hours and overflow support provider.
- Execution of authorised actions does not transfer ownership or ongoing responsibility.
- Services do not constitute consultancy, assurance, or advisory services.
- The Customer retains all operational and business risk except where directly caused by Nocturna's negligence.

Where Nocturna communicates with end users, it does so solely as agent of the Customer or its MSP. No duty of care, reliance, or contractual relationship is created with end users.

Patch Execution

Where expressly agreed:

- Patch Execution is a limited operational task only
- It does not constitute patch management, system maintenance, or managed services
- No responsibility for system integrity, performance, security, or availability transfers to Nocturna
- No outcome or success is guaranteed

3. Service Availability & SLAs

- Services are provided during SLA-defined out-of-hours periods.
- SLAs define targets only; all services are best endeavours.
- No guarantee of resolution or uninterrupted availability is given.

- Service credits apply only where expressly stated.

Certain services, including Patch Execution, may:

- Be restricted to specific tiers
- Be chargeable add-ons
- Be subject to Pricing Schedule terms

Nocturna is not responsible for delays caused by third parties, Customer actions, MSPs, access issues, or circumstances outside its control.

4. Authorisation & Change Control

- No material system changes are made without prior authorisation.
- Emergency mitigation may occur to address immediate security risk but does not constitute permanent remediation or system management.

4A. Patch Execution

Patch Execution is provided only where expressly agreed in writing.

Nocturna does not:

- Select patches
- Approve patches
- Test updates
- Validate outcomes
- Monitor post-deployment
- Assume responsibility for compatibility or stability

Rollback actions are limited strictly to Customer-supplied documentation.

Negligence does not include inherent risks associated with vendor-supplied updates when executed in accordance with Customer instructions.

Server patching may be subject to additional limitations, authorisation requirements, or pricing.

5. Backup & Data Responsibility

- Nocturna is not responsible for backups unless expressly agreed.
- Backup monitoring does not transfer recoverability responsibility.
- Customers confirm tested backups exist before Patch Execution.

6. Subcontracting & Third Parties

- Nocturna may use vetted subcontractors.
- Data protection obligations remain enforced.
- No third-party gains enforcement rights.

7. Customer Responsibilities

The Customer is responsible for:

- Accurate information
- Licensing and vendor support
- Patch policies and approvals
- Secure access
- Supported systems

The Customer determines whether Patch Execution is appropriate and remains responsible for business continuity.

8. Fees, Payment & Suspension

- Fees are charged per the Pricing Schedule.
- Fees exclude VAT unless legally required.
- Patch Execution is charged separately unless expressly included.
- Services may be suspended for overdue invoices following notice.

9. Cyber Security & Business Impact

- No guarantee of cyber security is provided.
- Nocturna is not responsible for business impact except where directly caused by negligence.

- Server patching carries materially higher risk, which the Customer accepts.

10. Education Safeguarding

For education customers, Nocturna provides technical support only and does not assume statutory safeguarding responsibilities.

11. Data Protection

- The Customer is Data Controller; Nocturna is Data Processor.
- Processing is governed by the DPA.
- Liability remains subject to clause 16.

12–15. Legal & Contractual Provisions

- Compliance with laws
- Anti-bribery obligations
- Insurance maintained at appropriate levels
- Contract forms upon acceptance of quotation or instruction

16. Limitation of Liability

- Liability is capped at fees paid in the preceding 12 months.
- No liability for indirect or consequential loss.
- Claims must be brought within 12 months.

17–18. Confidentiality & Termination

- Confidentiality obligations survive termination.
- Immediate termination permitted where risk arises.

19–28. Standard Legal Clauses

Includes:

- Force majeure
- Notices

- Entire agreement
- Variation
- Intellectual property
- Assignment
- Third-party rights exclusion
- Indemnity
- Survival
- Governing law (England & Wales)