

GROSVENOR TECHNOLOGY LIMITED

Conditions of Sale

The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
- Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
- Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.6 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing by the Supplier.
- Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
- Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.
- Goods:** the goods, equipment, materials, Software (or any part of them) set out in the Order.
- Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
- Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Licence Fee:** (where applicable) shall be included in the price of the Goods unless specifically stated otherwise by the Supplier in writing.
- Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation, or the written acknowledgement of the order sent to the Customer by the Supplier, as the case may be.
- Services:** the services including but not limited to installation and integration services, supplied by the Supplier to the Customer as more particularly set out in the Service Specification.
- Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer, whether set out in the Order or otherwise provided.
- Software:** all the computer programs or codes whether stored in programmable read only memory or otherwise which constitute the operating and executive instructions of the Goods, whether designed for generic or specific use, together with all service software and other programs or codes and all supporting documentation relating thereto supplied by the Supplier to the Customer from time to time pursuant to these Conditions or ancillary thereto.
- Supplier:** Grosvenor Technology Limited registered in England and Wales with company number 2412554.

- 1.2 Construction. In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms including, include or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence.
- 2.3 Where the Supplier issues a quotation which is expressed to be capable of forming a contract upon written acceptance by the Customer the Contract shall be subject to these Conditions and shall come into existence when the Customer provides its written acceptance of such quotation to the Supplier.
- 2.4 The Contract constitutes the entire agreement between the parties to the exclusion of any other terms that the Customer seeks to incorporate, or which

are implied by trade, custom, practice or course of dealing. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.5 No Order which has been accepted by the Supplier in accordance with clause 2.2 may be cancelled by the Customer except with the prior written agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 Any typographical, clerical or other error or omission made by the Supplier or Customer (including, without limitation, an inaccurate price entry) in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier or Customer shall be subject to correction by the relevant party without any liability on the part of the other. The correcting party shall notify the other in writing as soon as reasonably practicable after the correction is made.
- 2.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.9 Subject to clause 9.4, any quotation given by the Supplier shall not constitute an offer unless it expressly stated otherwise on the face of the quotation and is only valid for a period of 90 days from its date of issue or until earlier acceptance by the Customer after which time it may be altered by the Supplier without giving notice to the Customer.
- 2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in the Goods Specification save that the Supplier reserves the right to make changes to the Goods Specification, provided such changes do not negatively affect the installation or performance of the Goods in a material way.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification and the Customer warrants that such Goods do not infringe any third party intellectual property rights. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier may amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

- 4.1 Deliver of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises or if some other place for delivery is agreed by the Supplier (**Delivery Location**) by the Supplier delivering the Goods to the Delivery Location, at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- 4.3 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 Notwithstanding clause 12.2, if the Supplier fails to deliver the Goods for any reason other than a Force Majeure Event or the Customer's fault and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest possible market) of similar goods to replace those not delivered over the price of the Goods.
- 4.5 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Supplier's fault) then without prejudice to any other right or remedy available to the Supplier the Supplier may:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

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- 5. QUALITY OF GOODS**
- 5.1 Subject to clause 5.2, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with the Goods Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
 - (d) the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs or permits any other person to alter or repair such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods have not been paid for in full (in cash or cleared funds);
 - (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 If a defect has arisen because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice, any repair work carried out by the Supplier shall be chargeable at the Supplier's current rates and shall include all materials. The Supplier shall be entitled to charge a call out fee.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery at the Delivery Location or if the Goods are to be collected by the Customer from the Supplier's premises, at the time the Supplier notifies the Customer that the Goods are ready for collection.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business subject to clause 16.4.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the Customer's premises for the supply of the Goods and/or Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Goods are delivered or the Services are due to start;
 - (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. CHARGES AND PAYMENT**

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- 9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.
- 9.2 The charges for Services shall be the price set out in the Order.
- 9.3 Subject to clause 9.4, where Goods are supplied for export from the United Kingdom the Supplier's published export price list shall apply.
- 9.4 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.5 Except as otherwise stated under the terms of any quotation, Order or in any price list of the Supplier and unless agreed in writing between the Customer and Supplier, all prices are given by the Supplier on an ex works basis and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 9.6 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 9.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.8 If the Goods comprise or are intended to comprise part of a system (**System**) which is to be or has been supplied by any other party than the Supplier and/or the Goods are integrated into the System by any other party than the Supplier, the Customer shall not be entitled to withhold payment of all or part of the price of the Goods as a result of any failure or non-performance of the System unless prior to delivery the Supplier has confirmed in writing its approval of the System and of the use of the Goods in the System and (where applicable) the Supplier has integrated the Goods into the System.
- 9.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.10 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the then current Barclays Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 All Supplier Materials are the exclusive property of the Supplier.
- 11. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid to the Supplier by the Customer under the terms of the Contract.
- 12.3 The Supplier's responsibility for design is limited to its proprietary products. The Supplier will offer advice, if requested to do so by the Customer, about the application of its products to the Customer but the suitability of all applications and products as regards any applicable legislation is the sole responsibility of the Customer and the Supplier shall have no liability whatsoever in relation thereto.
- 12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 This clause 12 shall survive termination of the Contract.
- 13. TERMINATION**
- 13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

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- enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- (a) by giving the Customer a months' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3 The Customer may terminate the Contract by giving the Supplier not less than a months' written notice.
- 13.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15. FORCE MAJEURE**
- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 16. EXPORT TERMS**
- 16.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 16.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 16 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provisions of these Conditions.
- 16.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 16.4 Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered FCA the air or sea port of shipment and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 16.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 16.6 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier, or if the Supplier has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of Barclays Bank in England as may be specified in the bill of exchange.
- 17. SOFTWARE LICENCE**
- 17.1 The Supplier hereby agrees to grant to the Customer upon payment of the Licence Fee (which is included in the price for the Goods unless otherwise specifically stated by Supplier in writing) a non-exclusive and non-transferable licence to use the Software in connection with the Goods or any other equipment supplied by the Supplier to the Customer by way of improvement repair or replacement of the Goods or otherwise.
- 17.2 Save as provided herein the Customer shall not disclose transfer or otherwise make available the Software to any third party nor per-permit any third party to use or have access thereto, and the Customer shall not duplicate modify or amend any of the Software or any part thereof save with the prior written consent of the Supplier.
- 17.3 Title to ownership of and all proprietary rights in the Software and all copies thereof shall at all times remain vested in the Supplier.
- 17.4 If the Customer wishes to resell any of the Goods the Customer shall ensure that the buyer of such Goods shall accept the obligations of the Customer contained in this Clause 16 as if such buyer was bound by these conditions and the Customer shall indemnify the Supplier against any loss or damage it may suffer by reason of such buyer not complying with such obligations (whether or not it has confirmed its acceptance of them).
- 17.5 Where the Software has not been licenced to the Customer in a one off Licence Fee and should the Contract be terminated for whatever reason or should any of the circumstances in clauses 13.1 (b) to (l) arise in respect of the Customer then the Supplier shall have the right to terminate or limit as it shall see fit the Software licence granted by virtue of clause 16.1 by giving 14 days' written notice to the Customer. In the event that the Software licence granted by virtue of clause 16.1 is terminated by the Supplier then the Customer shall at the expense of the Supplier (at the election of the Supplier) return all parts of the Goods in which the Software is stored or otherwise contained to the Supplier at such address in the United Kingdom as the Supplier may direct or destroy such parts of the Goods, and (in the latter case) certify in writing to the Supplier that such parts of the Goods have been effectively destroyed and are thus not capable of further use.
- 18. GENERAL**
- 18.1 Assignment and subcontracting.**
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 Notices.**
- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or

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(in any other case) its principal place of business, or sent by fax to the other party's main fax number.

- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 18.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

Waiver. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18.3 Severance.

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.5 **Third parties.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.6 **Variation.** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

18.7 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.