

ALPHATRACK SYSTEMS LTD TERMS & CONDITIONS OF SALE

(please scroll down to view **ALPHATRACK SYSTEMS LTD TERMS & CONDITIONS OF GOODS & PURCHASES**)

GENERAL

Orders are only accepted subject to the General Terms of Business of Alphatrack Systems Ltd Ltd (hereinafter called the "Supplier") as detailed below. Purchasers of Supplier's goods and services will, on accepting delivery, be deemed to have agreed that any printed conditions on their orders or other documents shall be binding where they are not at variance with these terms and conditions. Any Purchaser, who objects to these terms below, must, prior to delivery of goods and services, inform the Supplier of the objections in writing whereupon the order shall be deemed to be cancelled unless any proposed variation is accepted in writing by a Director of the Supplier.

1. PRICES

Charges will unless otherwise specified, be those ruling at date of order acceptance. Quantity rates will apply only to each individual order, orders may not be aggregated to obtain quantity rates. Prices quoted are exclusive of Value Added Tax. All prices quoted and charged are subject to being made within these terms and in the event of payment being overdue by 60 days or more then such prices are liable to recalculation at the Suppliers schedule of rates current at the end of the 60 days.

2. ORDERS

Orders made by telephone must be confirmed in writing before delivery. Written orders (including e-mail) will be acted on immediately. All orders shall be subject to the General Terms of Business then current. The acceptance of orders shall be subject to the Purchaser's credit worthiness as determined by the Supplier.

The Supplier may, in it's sole discretion, limit, modify or cancel the credit of the Purchaser both as to time and amount, and the Supplier shall have the right to cancel any orders placed by the Purchaser or refuse or delay shipment if the Purchaser shall fail to meet payment schedules or other creditor financial requirements established by the Supplier from time to time. Such cancellations, refusal, or delay shall not constitute termination or breach of any order, contract or agreement by the Supplier.

3. DELIVERY

Any dates given for delivery are estimates only and the Company shall not be responsible for any delays. Any delays will be notified to the Purchaser no less than 7 days before the installation date or as soon as possible should the delay occur within 7 days of the installation date and is not the fault of the Supplier.

4. PAYMENTS

Unless the Company shall have previously agreed in writing with the Purchaser that the goods and services shall be supplied on credit, payment for the goods shall be made in full by the Purchaser prior to the goods leaving the Company's premises by credit card, cleared funds, or such other method that may be made by the Company.

The Company has agreed to supply the goods and services on credit. The Company has agreed with the Purchaser to invoice for the provision of goods and services in full upon completion of the installation. The Purchaser agrees to pay in full within 30 days of the invoice date notwithstanding that the property in the goods or services has not passed to the Purchaser.

The time of the payment of the price shall be the essence of the contract. If the Purchaser fails to make payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:

- Cancel the contract or suspend any further deliveries or suspend services to the Purchaser, or require the provision of such financial security as the Company may deem necessary before making further supply.
- Appropriate any payment made by the Purchaser to such of the goods or services as the Company may think fit (notwithstanding and purported appropriation by the Purchaser).
- Charge interest for late payment from the due date until payment in cleared funds is received by the Company at 4% per annum over the base rate for the time being of Barclays Bank PLC such interest to accrue on a daily basis and be payable on demand and after as well as before judgement.
- Charge the Purchaser all the costs incurred by the Company for recovering the debt from the Purchaser.
- The Purchaser shall not be entitled to delay or withhold payment on account of any of any alleged claim.

5. TITLE TO THE GOODS AND SERVICE

Until the Supplier has been paid in full for goods and services comprised in the order or in any other sales contract between the Supplier and Purchaser or until title to goods and services is in terms relinquished to the Purchaser by the Supplier in writing under the personal hand of a Director of the Supplier:

- The goods and services comprised in the order remain the Supplier's property and the Supplier retains the right to dispose of the goods and services or any of them.
- The Supplier may repossess (and for this purpose follow or trace) the goods and services at any time from the Purchaser, if in his possession, if the Supplier considers that the amount outstanding is in excess of the credit limit and overdue for payment. The Supplier, its servants and agents may enter the Purchaser's premises where the Supplier has reason to believe any of the goods and services are situated.
- The Purchaser as bailee undertakes to keep the goods and services safe and in good order and condition and shall not amend, obliterate or remove the identification marks on the Suppliers property.
- Should the Purchaser have passed the goods and services or any of them to a third party (or have incorporated them to work for a third party) this will be deemed to have been done as the Suppliers agent only and any sums received by the Purchaser in respect of such goods and services or such work shall be held in trust for the Supplier until all sums due to the Supplier are discharged.
- Upon the commission of an act of bankruptcy by an individual Purchaser the immediate right to possession of the goods and services shall forthwith automatically re-invest the Supplier.
- All costs (including legal fees) occasioned in the recovery of goods and services shall be paid by the Purchaser.

6. WARRANTY

All product warranty applies only to the first customer purchase from the Supplier or its Dealer/Distributors and where the goods and services are covered by warranty the terms of such warranty shall be deemed to be part of these conditions. Any such product warranties shall be affixed to these Terms and Conditions in the form of an appendix.

The Supplier warrants all goods and services to be free from defects in material and workmanship under normal use provided the goods and services have been operated in accordance with instruction manual. The commencement date for all warranties is the date of delivery to the customer from the Supplier or its Dealer/Distributor. The Supplier makes no other warranty, express or implied with respects to goods and services, their marketability, quality or fitness for any particular use or purpose. In particular but without prejudice to the general provisions of these conditions no responsibility is assumed for incidental or consequential damages by reason of any warranty express or implied.

7. CLAIMS

May be made subject to the Purchaser:

- Examining the goods and services on their delivery for any obvious damage or shortage and reporting any damaged or short delivery in writing to both the Supplier and the carrier within three days of the delivery date.
- Reporting non delivery by e-mail/fax or by phone (and confirmed in writing) to the Supplier within 10 days of the invoice date or expected delivery date.

If the Purchaser fails to give notice or to report in accordance with these terms or shall deal with the goods and services in any manner or if there shall be any conduct by the Purchaser inconsistent with rejection of the goods and services, then the goods and services of the quality specified in the contract shall be deemed to have been delivered to the Purchaser. No claims or rejection properly made pursuant to these conditions of sale in respect of any part delivery of goods and services shall be a ground for cancellation of the contract or order.

8. SPECIFICATION OF GOODS

The Company shall not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specification or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. The Company will use its reasonable endeavours to advise the Purchaser of any such impending variation as soon as it receives any notice thereof from the manufacturer.

Unless otherwise agreed, the goods or services are supplied in accordance with the manufacturer's standard specification as these may be improved, substituted or modified. The Company reserves the right to increase its quoted or listed price, or to charge accordingly in respect of any orders accepted for goods or services of non standard specifications and in no circumstances will it consider cancellation of such orders or the return of the goods or services.

9. RIGHT OF CANCELLATION BY ALPHATRACK SYSTEMS LTD LTD

Will become operable if the Purchaser should fail to meet his obligations as they fall due for any reason or if any distress or execution shall be levied upon the Purchaser's property or if the Purchaser shall commit an act of bankruptcy or being a limited company any resolution or petition to wind-up its business shall be passed or presented (excepting winding up for the end purposes of reconstruction) or if a receiver of such Company's undertaking property or assets shall be appointed.

10. FORCE MAJEURE

The Supplier shall not be responsible or liable for its failure to perform its obligations if such failure is beyond the control of the Supplier, or beyond the control of the suppliers of the Supplier whether caused by acts of God, unavailability or shortage of materials or energy necessary to produce and/or deliver products by usual modes of transportation, fire, flood, war, embargo, strikes, labour disputes, explosions, riots, laws, rules, regulations, restrictions or orders of any governmental authority, or any other cause, other than financial, beyond the control of the Supplier or its suppliers.

11. INDEPENDENT CONTRACTOR

The relationship between the Company and the Purchaser is that of independent contractor. Neither party is the agent of the other and neither party has any authority to make any contract or incur any obligation expressly or implied for the other party, without that party's prior written consent for express purposes connected with the performance of this Agreement.

12. AFFILIATED COMPANIES

In the event that the Purchaser requests the Supplier to supply goods and services to any other company which for the purposes of chapter IV of the Income and Corporation Taxes Act 1988 is deemed to be a member of the same group as the purchase ("the Group Member") and the Supplier accedes to such request and effects such supply accordingly, the Purchaser hereby agrees to be responsible to the Supplier for the price of all such goods and services as may hereafter be supplied in manner aforesaid by the Supplier to such group member and so that this guarantee is to be a continuing guarantee and the liability of the Purchaser under it shall not be in any diminished or affected by the Supplier giving time or any indulgence to such group member in connection with such supply, nor any release or agreement not to sue, composition or arrangement of any description granted or entered into the Supplier to or with such group member and further, the Purchaser shall be liable to the arrangement of such description granted or entered into by the Supplier in respect of any obligation or liability of any such group member in respect of any such supply as aforesaid as if the Purchaser were a principal in respect of such supply and not a surety in respect thereof.

Such guarantee shall continue until notice of revocation thereof is given by the Purchaser to the Supplier, any such notice to be in writing and to become effective only upon its actual receipt by the Supplier at its office at 14 West Place, West Road, Harlow, Essex, CM20 2GY, but so that no such revocation shall in any way diminish or affect the Purchasers liability to the Supplier in respect of any indebtedness of any such group member incurred as aforesaid by reason of any supply effected by the Supplier or contracted prior to receipt of such notice.

13. ARBITRATION

In the event of any dispute not settled by the parties it shall be submitted in London in accordance with and subject to the provisions of the Arbitration Act 1996 (or any amendment or re-enactment thereof currently in force). The contract shall be governed by and construed in accordance with English Law including statute law.

ALPHATRACK SYSTEMS LTD TERMS & CONDITIONS OF GOODS & PURCHASES

INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 1.4.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Customer: Alphatrack Systems Ltd Limited registered in England and Wales with company number 02863196.

Customer's Group: the Customer's ultimate holding company and all subsidiaries and subsidiary undertakings of such holding company (as such terms are defined in section 1159 of the Companies Act 2006 (as amended)).

Customer Materials: has the meaning set out in clause 4.3.9.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a references to a party includes its personal representatives, successors or permitted assigns;

1.2.3 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;

1.2.4 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

BASIS OF CONTRACT

1.3 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

1.4 The Order shall be deemed to be accepted on the earlier of:

1.4.1 the Supplier issuing written acceptance of the Order; or

1.4.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

1.5 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

1.7 The Supplier acknowledges that it is its responsibility to ascertain from the Customer the intended purpose that the Goods and/or Services are to be put to by the Customer (including any applicable deadlines that may affect the Customer in relation to the purchase thereof). The Supplier will immediately notify the Customer if any Goods and/or Services are unsuitable for such intended purpose.

1.8 Any member of the Customer's Group may, upon notice to the Supplier, purchase the Services (on its own behalf and in its own name) pursuant to this clause 2 as though references in these Conditions to the Customer were references to the relevant member of the Customer's Group. In such circumstances, the Supplier shall be obliged to issue its invoice in respect of any such purchases to the relevant member of the Customer's Group but shall otherwise issue its invoice in accordance with the provisions of clause 8.

2 SUPPLY OF GOODS

2.1 The Supplier shall ensure that the Goods shall:

2.1.1 correspond with their description and any applicable Goods Specification;

2.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, or ascertained by the Supplier pursuant to clause 2.5, and in this respect the Customer relies on the Supplier's skill and judgment;

2.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after handover and receipt of all documentation; and

2.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods including all applicable quality standards relating to their sale or supply.

2.2 The Supplier warrants that all claims made by it about the Goods whether in its promotional and advertising material or otherwise, are correct and can be relied upon.

- 2.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 2.4 The Customer shall have the right to inspect and test the Goods at any time before delivery and shall be entitled to access the Supplier's premises on reasonable notice for this purpose.
- 2.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 2.1 and 3.2, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 2.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 2.7 Unless otherwise stated in the Order, the Order shall be deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable the Customer to use them for their intended purpose.

3 DELIVERY OF GOODS

3.1 The Supplier shall ensure that:

3.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

3.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.2 If the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.3 The Supplier shall deliver the Goods:

3.3.1 on the date specified in the Order or, if no such date is specified, then within a reasonable period following the date of the Order;

3.3.2 to such location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**);

3.3.3 during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

3.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.5 If the Supplier:

3.5.1 delivers less than 95 per cent of the quantity of Goods ordered, the Customer may reject the Goods; or

3.5.2 delivers more than 105 per cent of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

3.6 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

3.7 Title and risk in the Goods shall pass to the Customer on completion of delivery save that where the Customer has paid in whole or in part for the Goods in advance, title will pass to the Customer as soon as the Goods have (or, if the Goods are being assembled for the Customer, each successive component of the Goods have) been appropriated to the Contract.

4 SUPPLY OF SERVICES

- 4.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 4.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 4.3 In providing the Services, the Supplier shall:
 - 4.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions and requests of the Customer;
 - 4.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 4.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - 4.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer or ascertained by the Supplier pursuant to clause 2.5;
 - 4.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 4.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials

supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;

- 4.3.7 obtain and at all times maintain all necessary licences and consents (including up to date CRB checks), and comply with all applicable laws and regulations;
- 4.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 4.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 4.3.10 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- 4.3.11 provide all employee instruction, manuals, explanations or certifications necessary to enable the Customer to benefit from the Services for the intended purpose of the Services.

5 SPECIFICATIONS

- 5.1 If before delivery of Goods or completion of the Services, the Customer notifies the Supplier of any required change in the Goods Specification or Services Specification (including as to quality and time frame) the following will apply:
- 5.1.1 the Customer understands that such change may impact the charges or may even be unachievable;
 - 5.1.2 if the change would reduce the charges, the charges in the Contract shall be deemed reduced accordingly to reflect the saving;
 - 5.1.3 if the change will increase the charges, the Supplier shall notify the Customer promptly in writing, of the proposed increase in the Contract charges (which such increase must be fair and proportion reflecting only unavoidable increased costs);
 - 5.1.4 the Customer and the Supplier will then use reasonable endeavours to agree the revised charges (and any associated terms) pending which the variations to the Contract will not take effect;
 - 5.1.5 if the Supplier notifies the Customer that the Contract variation is unachievable it must promptly give the Customer a full explanation of the reasons for this.
- 5.2 Unless the Supplier notifies the Customer pursuant to clause 6.1.3 or 6.1.5, the Customer's proposed change shall be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to the reflect the change in specification with no price increase.

- 5.3 For the purpose of this clauses 6 'prompt' notice will depend on feasibility for the Supplier and urgency for the Customer, but not in any case later than 48 hours (excluding days which are not Business Days).
- 5.4 Notwithstanding any provision of this clause 6 in no circumstances will the Customer be liable to the Supplier in respect of any variation of the Contract for more than a reasonable and proportionate reflect of such increased costs as the Supplier could not reasonably have been expected to avoid. The Contract price will not in any circumstances increase except with the Customer's express written agreement in accordance with clause 17.8.

6 CUSTOMER REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - 6.1.4 where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

- 6.2 If the Goods and/or Services are not delivered by the applicable date, the Customer may, at its option, claim or deduct one (1) per cent of the price of the Goods and/or the Services (as the case may be) for each week's delay in delivery by way of liquidated damages. If the Customer exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late delivery of the Goods and/or Services (as the case may be).
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.3.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.3.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.3.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.3.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
 - 6.3.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 2.1.
- 6.4 Where the Customer rejects Goods, it shall not be bound to return to the Supplier any packaging or packing material, but if any relevant

requirement for packaging recycling applies, the Supplier will take materials back free of charge on request.

- 6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.6 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 6.7 Any goods or materials provided by the Customer to the Supplier on a free issue basis will remain the Customer's absolutely property throughout, and will be at the Supplier's risk while the goods and/or materials are, or are supposed to be, in the Supplier's possession. In this respect:
 - 6.7.1 the Supplier is not permitted to part with possession of the goods and/or materials (save to the Customer) without the Customer's prior express consent;
 - 6.7.2 the Supplier will store such goods and/or materials separately from all other goods and/or materials held by the Supplier so that they remain readily identifiable as the Customer's property;
 - 6.7.3 the Supplier will not remove, deface or obscure any identifying mark or packaging on or relating to those items; and
 - 6.7.4 the Supplier will return such goods and/or materials to the Customer immediately on the Customer's request. If the Supplier fails to do so, the Customer may at any time enter the Supplier's premises where the goods and/or materials are being stored to recover them.
- 6.8 If the Customer is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Goods and/or Services and/or Deliverables provided under the Contract (**Follow On Deliverables**), the Supplier will

provide such Follow On Deliverables or procure them to be provided, for at least thirty six (36) months following completion of the Contract, at fair and reasonable prices which take no advantage of the Customer's dependence on the Supplier for their supply.

If any Goods and/or Services have procured by the Supplier from its own third party suppliers, then any benefits, warranties or indemnities that the Supplier may be entitled to from that third party supplier, will be held on trust for the Customer.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services (where relevant);

7.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

8 CHARGES AND PAYMENT

8.1 The price for the Goods:

8.1.1 shall be the price set out in the Order; and

8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer;

8.1.3 shall be fixed for the duration of the Contract.

8.2 The charges for the Services shall be set out in the Order, fixed for the duration of the Contract, and shall be the full and exclusive remuneration

of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 8.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. No sum may be invoiced more than six months after completion of delivery of the Goods or completion of the Services as the case may be.
- 8.4 Subject to clause 9.5 below, in consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts in Pounds Sterling within 60 days from the end of the calendar month in which the Customer received a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 Where the Services are for the supply and installation of goods supplied by the Customer to the Supplier, the Customer shall be entitled to withhold 15% of the invoice price until the Supplier provides the Customer to the Customer's reasonable satisfaction all operational manuals and associated paperwork needed for the lawful and proper operation of thereof.
- 8.6 The Customer will be entitled to any discount for prompt payment, bulk purchase or similar incentive normally granted by the Supplier in comparable circumstances.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 8.8 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.9 The Supplier shall, during the continuance of the Contract and for at least two (2) years thereafter, maintain complete and accurate records of the time spent and materials used by the Supplier in providing Goods and/or Services, including without limitation, full traceability for all Goods or goods comprised in or used in making any Goods which are in any respect safety critical and records to demonstrate compliance with all legal and regulatory requirements and all other provisions of the Contract together with all relevant training records. The Supplier shall allow the Customer to inspect such records in accordance with clause 17.1.
- 8.10 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 9.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4 Notwithstanding the preceding provisions of this clause 9, if the Order expressly identifies particular rights covered by it where the rights are evidently not unique to the Goods, Services or Deliverables in question (for instance the Supplier evidently supplies the same, in the relevant respect, to others) or if those rights evidently derive from a third party of whom the same would be true (for instance if the Supplier supplies software to the Customer which is proprietary to a third party), in those cases the Customer will not own the Intellectual Property Rights arising but the Supplier will procure an assignable, irrevocable, royalty free licence to the Customer to enable the Customer to obtain the full benefit of the Goods, Services and/or Deliverables in question covering usage for any likely intended purpose.

- 9.5 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.2 and to take the benefit of the provisions of clause 10.4.
- 9.6 All Customer Materials are the exclusive property of the Customer.

10 INDEMNITY

- 10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by the Customer as a result of or in connection with:
- 10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - 10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent

performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

10.1.4 any breach by the Supplier of its obligations under the Contract.

10.2 This clause 10 shall survive termination of the Contract.

11 **INSURANCE**

During the term of the Contract and for a period of one (1) year thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12 **CONFIDENTIALITY**

12.1 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any

governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Contract.

12.3 All Customer Materials are the confidential information of the Supplier and are subject to this clause 13.

13 TERMINATION

13.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:

13.1.1 in respect of the supply of Services, in whole or in part at any time before the commencement of the Services with immediate effect by giving written notice to the Supplier.

13.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract.

The Customer shall have no liability to pay the Supplier any sum should it exercise its rights under this clause 14.

13.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

13.3 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that

breach within 10 days of receipt of notice in writing to do so (for the avoidance of doubt this shall include where the Supplier fails to provide or maintain training records and health and safety records in relation to the Goods and/or Services);

- 13.3.2 the Supplier breaches or otherwise fails to maintain its approval status with the Customer;
- 13.3.3 the Supplier fails to provide up to date CRB approvals to the Customer at any time;
- 13.3.4 the Customer determines, acting reasonably, that there is a conflict of interest with between the Supplier and the Customer's end client in respect of whom the Goods and/or Services are relevant;
- 13.3.5 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 13.3.6 the Supplier 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 or limited liability partnership) 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;
- 13.3.7 the Supplier 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 the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

13.3.8 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

13.3.9 the Supplier (being an individual) is the subject of a bankruptcy petition or order;

13.3.10 accretion or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

13.3.11 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 Supplier (being a company);

13.3.12 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.3.13 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

13.3.14 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect

equivalent or similar to any of the events mentioned in clause 14.3.6 to clause 13.3.13 (inclusive);

13.3.15 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or

13.3.16 the Supplier (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.

13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15 **FORCE MAJEURE**

- 15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).
- 15.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 15.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 10 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

16 **GENERAL**

16.1 **Audit Rights**

- 16.1.1 The Supplier shall allow the Customer (or its professional advisors) to access the Supplier's premises, personnel, systems and relevant records to verify that all charges and any other sums charged to the Customer under a Contract are accurate and to ensure full compliance under the Contract.
- 16.1.2 Subject to the Customer's obligations of confidentiality at clause 13, the Supplier shall provide the Customer (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 16.1.3 The Customer shall provide at least five (5) Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.
- 16.1.4 The Customer and its professional advisers shall have the right to take copies of any records which they reasonably require and

remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge

16.2 Assignment and other dealings.

16.2.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

16.3 Notices.

16.3.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.

16.3.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.3.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 16.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 **Third parties.**
- 16.7.1 The Supplier will procure that none of its associates or sub-contractors behaves in a way which, had the behaviour been the Supplier's, would be a breach of the Contract.
- 16.7.2 Except as otherwise expressly stated in the Order or in these Conditions (including pursuant to clause 17.7.3), the Contract does not confer any rights on any person or party (other than the Customer and the Supplier) under the Contracts (Rights of Third Parties) Act 1999.

16.7.3 In accordance with section 1 Contracts (Rights of Third Parties) Act 1999, the Customer's Group shall be entitled to enforce all of the rights and benefits under the Contract at all times as if the Customer's Group were a party to the Contract. The consent of the Customer's Group is not required for any rescission or variation of the Contract agreed to by the Customer and the Supplier, or any termination of the Contract by the Customer and the Supplier.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by a director or other senior officer of the Customer.

16.9 **Governing law.** The 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 the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).