



# **Terms and Conditions for IT Equipment**

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

<b>Contract:</b>	the Customer's order and the Supplier's acceptance of it in accordance with condition 3.3.
<b>Customer:</b>	the person, firm or company who purchases Equipment and/or Software from the Supplier.
<b>Equipment:</b>	the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including any part or parts of it).
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation 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.
<b>Software:</b>	any software agreed in the Contract to be purchased by the Customer from the Supplier and/or any software installed on the Equipment.
<b>Supplier:</b>	London Systems UK Limited, a company registered in England and Wales with company number 06580086.
<b>VAT:</b>	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to writing or written includes faxes and e-mail.

1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## 2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

## 3. BASIS OF SALE

3.1 Any quotation is valid for a period of 10 days only, and the Supplier may withdraw it at any time by notice to the Customer.

3.2 Each order or acceptance of a quotation for Equipment and/or Software by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.

3.3 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues a written order acknowledgement to the Customer, or the Supplier delivers the Equipment to the Customer (whichever occurs earlier).

3.4 The Supplier may deliver the Equipment and/or Software by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

3.5 No order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies 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.

## 4. QUANTITY AND DESCRIPTION

4.1 The quantity and description of the Equipment and/or Software shall be as set out in the Supplier's acknowledgement of order or (if there is no acknowledgment of order) quotation.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.

4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4.4 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment and/or Software which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. In respect of the Software and where the Supplier is not the manufacturer of the Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer or third party Software supplier (as the case may be) to the Supplier.

- 4.5 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment and/or Software.

## 5. PRICES

- 5.1 All prices shall be as stated in the Supplier's acknowledgement of order. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 5.2 The price for the Equipment and/or Software is based on the rate prevailing at the date of the Supplier's acknowledgement of the order and the Supplier may increase the price to cover any increases due to market conditions (including, but not limited to, increases in foreign exchange rates relating to the Equipment and/or Software, or in labour, materials, supply or transportation costs) which affect the Supplier at the date of delivery.
- 5.3 The price of the Equipment and/or Software shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's price list current at the date of acceptance of the order. The Supplier's published export price list shall apply to exports of the Equipment and/or Software as appropriate.
- 5.4 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment and/or Software as has not been delivered to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment and/or Software which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

## 6. PAYMENT

- 6.1 Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier may invoice the Customer for the price of the Equipment and/or Software on or at any time after delivery of the Equipment and/or Software, unless:
- 6.1.1 the Equipment and/or Software is to be collected by the Customer; or
- 6.1.2 the Customer wrongfully fails to take delivery of the Equipment and/or Software,
- and in either case the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Equipment and/or Software is ready for collection.
- 6.2 The Customer shall pay the invoice within 15 days of the date of the Supplier's invoice, whether or not delivery has taken place or title in the Equipment has passed to the Customer.
- 6.3 Time for payment of the price shall be of the essence of the Contract.
- 6.4 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment and/or Software then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 6.4.1 terminate the Contract or suspend any further deliveries of Equipment and/or Software (whether ordered under the same contract or not) to the Customer;
- 6.4.2 appropriate any payment made by the Customer to such of the Equipment and/or Software (or the Equipment and/or Software supplied under any other contract between the Customer and the Supplier) as it thinks fit (despite any purported appropriation by the Customer);

- 6.4.3 charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 6.4.4 suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- 6.4.5 make a storage charge for any undelivered Equipment at its current rates from time to time;
- 6.4.6 stop any Equipment and/or Software in transit; and
- 6.4.7 a general lien on all Equipment and/or Software and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to the Supplier. The Supplier shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment and/or Software or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 6.5 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 6.5 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 6.6 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## 7. DELIVERY AND ACCEPTANCE

- 7.1 The Supplier shall use its reasonable endeavours to deliver the Equipment and/or Software on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and/or Software and the Supplier is not in any circumstances liable for any delay in delivery, however caused.
- 7.2 The Equipment and/or Software may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 7.3 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 7.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and/or Software and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment and/or Software. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- 7.5 The Customer shall be deemed to have accepted the Equipment and/or Software when the Customer has had 7 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 12.

7.6 The Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and/or Software and that the Equipment and/or Software has been handled in accordance with the Supplier's stipulations. Any remedy under this condition 7.6 shall be limited, at the option of the Supplier, to the replacement or repair of any Equipment which is proven to the Supplier's satisfaction to have been lost or damaged in transit.

## 8. RISK AND PROPERTY

8.1 The Equipment and/or Software shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Supplier's acknowledgement of order. The Supplier shall off-load the Equipment and/or Software at the Customer's risk.

8.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:

8.2.1 the Equipment and/or Software; and

8.2.2 all other sums which are or which become due to the Supplier from the Customer on any account.

8.3 Until ownership of the Equipment has passed to the Customer under condition 8.2, the Customer shall:

8.3.1 hold the Equipment on a fiduciary basis as the Supplier's bailee;

8.3.2 store the Equipment (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

8.3.4 keep the Equipment and/or Software insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Equipment and/or Software is noted on the policy, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 17 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.

8.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment and/or Software is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment and/or Software shall be borne by the Customer.

8.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 8 shall remain in effect.

8.7 The Supplier may appropriate payments by the Customer to such Equipment and/or Software as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## 9. INSPECTION AND TESTING OF EQUIPMENT AND SOFTWARE

9.1 The Supplier :

9.1.1 may test and inspect the Equipment and/or Software on delivery to ensure that it complies with the requirements of the Contract; and

9.1.2 if so requested by the Customer, shall give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

## 10. SOFTWARE LICENCE

10.1 If the Supplier refers to a software licence in the acknowledgment of order, the price of the Equipment and/or Software includes the licence fee for the Customer's right to use the Software.

10.2 If the Customer is provided with any software licence in respect of the Software, the Customer shall sign and return it to the Supplier within seven days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

10.3 Third party Software supplied by the Supplier is subject to the terms of the relevant third party licence supplied with the third party Software. If the terms of the third party licence agreement conflict or are inconsistent with the terms of these conditions, the terms of the relevant third party licence agreement shall prevail in so far as it relates to the Customer's use of the Software, provided that, for the avoidance of doubt, in relation to payment these conditions shall prevail.

10.4 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:

10.4.1 use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);

10.4.2 "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed;

10.4.3 the Customer may not use the Software other than as specified in this clause 10.4 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;

10.4.4 the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without Supplier's prior written consent;

10.4.5 The Customer shall not:

(a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;

(b) allow the Software to become the subject of any charge, lien or encumbrance; and

(c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier.

- 10.4.6 the Customer shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- 10.4.7 The Customer shall notify the Supplier as soon as it becomes aware of any unauthorized use of the licensed Software by any person;
- 10.4.8 such licence shall be terminable by either party 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
- 10.4.9 on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

## 11. EXPORT TERMS

- 11.1 Where the Equipment and/or Software is supplied for export from the United Kingdom, the provisions of this condition 11 shall (subject to any contrary terms agreed in writing between the Customer and the Supplier) override any other provision of these conditions.
- 11.2 The Customer shall be responsible for complying with any legislation governing:
  - 11.2.1 the importation of the Equipment and/or Software into the country of destination; and
  - 11.2.2 the export and re-export of the Equipment and/or Software,
 and shall be responsible for the payment of any duties on it.
- 11.3 Unless otherwise agreed in writing between the Customer and the Supplier, the Equipment and/or medium on which Software is recorded shall be delivered free on board 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.
- 11.4 The Supplier shall be responsible for arranging for the testing and inspection of the Equipment and/or Software at the Supplier's premises before shipment.
- 11.5 The Customer shall pay the price for the Equipment and/or Software in pounds sterling.

## 12. WARRANTY

- 12.1 The Supplier warrants to the Customer that the Equipment is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this condition 12), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within one month of delivery and installation.
- 12.2 It is acknowledged that the Supplier is trading as a reseller only in relation to third party Software and is not in any way the author, writer, manufacturer or any other developing party of any third party Software supplied by it.
- 12.3 At the request and expense of the Customer, subject to the Supplier first being indemnified and secured to its reasonable satisfaction by the Customer against all costs, liabilities and expenses which it thereby incurs, the Supplier will on the Customer's behalf enforce all warranties, conditions or other rights granted in its favour by the third party Software supplier.
- 12.4 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

- 12.5 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in condition 12.1 unless:
  - 12.5.1 the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and
  - 12.5.2 after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost for the examination to take place there.
- 12.6 The Supplier shall not in any circumstances be liable for a breach of the warranty in condition 12.1 if:
  - 12.6.1 the Customer makes any use of Equipment in respect of which it has given written notice under condition 12.5.1; or
  - 12.6.2 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 Equipment or (if there are none) good trade practice; or
  - 12.6.3 the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.
- 12.7 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the twelve month period.
- 12.8 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

## 13. REMEDIES

- 13.1 The Supplier shall not in any circumstances be liable for any non-delivery of Equipment and/or Software (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within seven days after the scheduled delivery date.
- 13.2 Any liability of the Supplier for non-delivery of the Equipment and/or Software shall in all circumstances be limited to replacing the Equipment and/or Software within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment and/or Software.
- 13.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 18), the Customer shall in all circumstances be liable to pay to the Supplier all reasonable costs, charges or losses sustained by it as a result, subject to the Supplier notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 13.4 In the event of any claim by the Customer under the warranty given in condition 12.1, the Customer shall notify the Supplier in writing of the alleged defect. The Supplier shall have the option of testing or inspecting the Equipment at its current location or moving it to the Supplier's premises (or those its agent or sub-contractor) at the cost of the Supplier. If the Customer's claim is subsequently found by the Supplier to be outside the scope or duration of the warranty in condition 12, the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.

## 14. LIMITATION OF LIABILITY

- 14.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 14.1.1 any breach of the Contract howsoever arising; and

- 14.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 14.3 Nothing in these conditions excludes or limits the liability of the Supplier for:
- 14.3.1 death or personal injury caused by the Supplier's negligence; or
- 14.3.2 fraud or fraudulent misrepresentation.
- 14.4 Subject to condition 14.2 and condition 14.3:
- 14.4.1 the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (a) loss of profits; or
  - (b) loss of business; or
  - (c) depletion of goodwill or similar losses; or
  - (d) loss of anticipated savings; or
  - (e) loss of goods; or
  - (f) loss of contract; or
  - (g) loss of use; or
  - (h) loss or corruption of data or information; or
  - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 14.4.2 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £100,000.

## 15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 If the Supplier manufactures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from the Supplier's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of the Supplier.
- 15.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of the Supplier or (as the case may be) third party rights, owner.
- 15.3 The Supplier shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of the Supplier.

- 15.4 The Supplier's Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of the Supplier, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
- 15.5 In relation to the Software:
- 15.5.1 the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- 15.5.2 nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- 15.5.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

## 16. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

- 16.1 The Customer 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 Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 16.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 16.3 This condition 16 shall survive termination of the Contract, however arising.

## 17. TERMINATION

- 17.1 Without prejudice to any other right or remedy available to the Supplier, the Supplier may terminate the Contract or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment and/or Software has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:
- 17.1.1 the ability of the Customer to accept delivery of the Equipment and/or Software is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or
- 17.1.2 an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Customer; or

- 17.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 17.1.4 a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
- 17.1.5 the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- 17.1.6 the Customer ceases, or threatens to cease, to trade; or
- 17.1.7 the Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.
- 17.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## 18. FORCE MAJEURE

The Supplier reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment and/or Software ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications 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 sub-contractors (Force Majeure Event).

## 19. WAIVER

- 19.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 20. SEVERANCE

If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

## 21. ENTIRE AGREEMENT

- 21.1 Each party acknowledges that, in entering into the Contract and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in the Contract or those documents.

- 21.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

- 21.3 Nothing in this clause shall limit or exclude any liability for fraud.

## 22. ASSIGNMENT

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 23. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## 24. NOTICES

Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## 25. GOVERNING LAW AND JURISDICTION

- 25.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).