

# **MEASUREMENT SOLUTIONS LIMITED**

## **TERMS AND CONDITIONS OF SALE**

**Date of Issue : 18<sup>th</sup> January 2022**

*These Terms and Conditions of Sale supersede all previous terms issued by*

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## 1. INTERPRETATION

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

**Acknowledgement:** the written acknowledgement from the Supplier to the Customer.

**Business Day:** any day excluding a Saturday, Sunday or any public or national holiday that is recognised in the UK.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.9.

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

**Customer:** the person or firm who purchases the Equipment and/or Services from the Supplier.

**Deliverables:** all products and materials developed by the Supplier in relation to the Equipment and/or the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Force Majeure Event:** has the meaning given to it in clause 19.1.1.

**Equipment:** the equipment (or any part of it) set out in the Order or the Acknowledgement (as the case may be) including but not limited to software licences or such other equipment as the Supplier may supply to the Customer in accordance with these Conditions.

**Equipment Specification:** any specification for the Equipment, including any relevant plans or drawings that are agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** 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 without limitation 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.

**Order:** the Customer's order for the supply of Equipment and/or Services, as set out in the Customer's purchase order form or overleaf.

**Services:** any services to be provided by the Supplier under the Contract, including any Deliverables.

**Software:** any computer programs or operating system installed on the Equipment.

**Specification:** the specification of the Equipment as agreed in writing between the Supplier and the Customer from time to time and as set out in the Acknowledgement.

**Supplier:** Measurement Solutions Limited registered in England and Wales with company number 03554724.

**Supplier Materials:** has the meaning set out in clause 8.4.7.

1.2 In these Conditions, the rules of construction set out in this clause 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 reference 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.

1.2.5 A reference to **writing** or **written** includes faxes.

## 2. APPLICATION OF CONDITIONS

2.1 These Conditions apply to the Contract and prevail over any inconsistent terms or clauses 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.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

## 3. QUOTATIONS AND ORDERS

3.1 A quotation shall not constitute an offer and is valid for a period of 30 days only. The Supplier may withdraw a quotation at any time by notice to the Customer.

3.2 The Order constitutes an offer by the Customer to purchase Equipment and/or Services on these Conditions. A Contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues an Acknowledgement or the Supplier delivers the Equipment or begins providing the Services (whichever occurs earlier).

3.3 The Customer shall ensure that its Order is complete and accurate and is accompanied by:

3.3.1 information about the Customer's requirements to enable the Supplier to proceed with the Order;

3.3.2 evidence of any licence or consent required for the sale or delivery of Equipment and/or Services.

3.4 No Order for which an Acknowledgement has been issued 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 without limitation loss of profit), costs (including without limitation 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 shall be as set out in the Acknowledgement.

4.2 The Supplier reserves the right (but does not assume the obligation) to make any changes in the Specification 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. Where the Supplier is not the original 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 to the Supplier.

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

4.4 All samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea

of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.

4.5 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.

## 5. DELIVERY, INSTALLATION AND ACCEPTANCE

5.1 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Acknowledgement, 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 the Supplier is not in any circumstances liable for any delay in delivery, however caused.

5.2 The Equipment may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Customer.

5.3 Delivery shall be made during normal business hours on a business day. The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.

5.4 The Customer shall be responsible (at its own cost) for preparing its premises for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. 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.

5.5 Unless otherwise agreed, the Supplier shall install the Equipment. Upon completion of the installation, the Supplier shall test the Equipment, but such tests shall not be delayed if the Customer fails to attend such tests.

5.6 The Customer shall be deemed to have accepted the Equipment when the Customer has had 3 days to inspect it after delivery and testing.

5.7 The Supplier shall have no liability for redecoration or any other building repair arising from installation.

5.8 The Supplier has no obligation to accept return of any Equipment which is surplus to the Customer's requirements or ordered in error. Any decision by the Supplier to accept return of Equipment for credit does not affect the Customer's obligation to pay the price thereof on the due date of payment, and such credit shall not exceed 80% of the price of the Equipment and shall be conditional upon the Equipment and packaging being returned without any damage or marking within 10 days of the Supplier's invoice.

## 6. TITLE AND RISK

6.1 The Equipment shall be at the risk of the Customer from the time of despatch. Where the Customer has arranged for carriage of the Equipment, delivery to the carrier shall constitute delivery to the Customer.

6.2 Where the Supplier has arranged for carriage of the Equipment on behalf of the Customer, delivery charges shall include insurance from the point of collection to the point of delivery only.

6.3 The Supplier shall not be responsible for any damage, shortage or loss in transit, unless 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. Any remedy under this clause 6.3 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.

6.4 Title to the Equipment shall pass to the Customer on the later of completion of delivery or when the Supplier has received in full in cleared funds all sums due to it in respect of:

6.4.1 the Equipment; and

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

6.5 Until title has passed to the Customer under clause 6.4, the Customer shall:

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

6.5.2 store the Equipment (at no cost to the Supplier) in satisfactory condition 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;

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

6.5.4 keep the Equipment 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 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.

6.6 The Customer's right to possession of the Equipment before title has passed to it shall terminate immediately if any of the circumstances set out in clause 17.1 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.

6.7 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment 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 shall be borne by the Customer.

6.8 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this clause 6 shall remain in effect.

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

6.10 Where the Supplier has arranged for carriage of the Equipment on behalf of the Customer for maintenance and/or calibration services, delivery charges shall include insurance from the point of collection to the point of delivery only, and shall be in the trust of the Supplier during that period only.

## 7. SOFTWARE LICENCE

7.1 If the Supplier refers to a software licence in the Acknowledgement, the price of the Equipment includes the licence fee for the Customer's right to use the Software.

7.2 If the Customer is provided with any software maintenance agreement in respect of the Software, the Customer shall sign and return it to the Supplier within 28 days of installation of the Software.

7.3 If no software licence has been provided to the Customer, the Customer hereby accepts a nonexclusive, non-transferable licence to use the Software on the following clauses:

7.3.1 the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) 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;

7.3.2 the Customer shall not use the Software on any equipment other than the Equipment, and 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; and

- 7.3.3 on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.
- 8. SUPPLY OF SERVICES**
- 8.1 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.4 The Customer shall:
- 8.4.1 provide the Supplier, its employees, agents, consultants and subcontractors, with access to its premises and other facilities as reasonably required by the Supplier to provide the Services;
- 8.4.2 co-operate with the Supplier in all matters relating to the Services;
- 8.4.3 provide the Supplier in a timely manner with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.4.4 prepare the Customer's premises (at its own cost) for the supply of the Services;
- 8.4.5 provide in a timely manner such access to the Customer's premises, data, and such other facilities, as is requested by the Supplier;
- 8.4.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 8.4.7 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good clause until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 9. CHARGES**
- 9.1 All prices (for Equipment and Services) shall be as stated in the Acknowledgement. Unless otherwise agreed, all prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 9.2 The Supplier reserves the right to increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
- 9.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification; or
- 9.2.3 any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment.
- 9.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.4 The Supplier reserves the right to increase the charges for the Service provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 1 week of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 week's written notice to the Customer.
- 9.5 The Supplier shall be entitled to pass on a charge of £10.00 plus VAT (if applicable) to the Customer for returned cheques (returned as unpaid by Customer's bank) or stopped cheques (as instructed by Customer).
- 9.6 The Supplier further reserves the right to charge the Customer additional administration costs reasonably incurred by the Supplier in chasing any overdue payments, including but not limited to, the fees of any debt collection agency or other similar organisation in the recovery of its debts against the Customer.
- 10. PAYMENT**
- 10.1 Unless otherwise specified in the Acknowledgement and provided that the Customer has a valid credit account with the Supplier, the Customer shall pay:
- 10.1.1 for purchase of Equipment (excluding service or software maintenance contracts) with a total value less than £5,000 sterling, 100% of the price and all charges payable in respect of the Equipment within 30 days of delivery;
- 10.1.2 for purchase of Equipment (excluding service or software maintenance contracts) with a total value of £5,000 sterling or above:
- 10.1.2.1 on acceptance of the quotation, 30% of the price, plus VAT if applicable, as a non-refundable deposit to cover the initial costs of the Supplier;
- 10.1.2.2 a further 70% of the price, plus VAT if applicable, when the Equipment are ready for delivery and prior to installation;
- 10.1.2.3 the balance of the price and all charges payable in respect of the Equipment within 30 days of delivery of the Equipment,
- 10.1.3 for annually renewable service or maintenance Contracts, 100% of the price prior to the renewal date of the contract and commencement of any work associated with the Contract.
- 10.2 In the event that the Customer does not have a valid credit account with the Supplier, the Customer shall pay 100% of the price, plus VAT if applicable, immediately upon the date of acceptance of the Order.
- 10.3 The Customer shall not be entitled to any discounts offered for quantity, early payment or any other reason, if payments are not made according to 10.1 or 10.2 or the terms specified in the Acknowledgement.
- 10.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10.5 If the Customer fails to make payment in full on the due date or the Supplier has reasonable grounds for believing that the Customer might fail to make payment in full, the whole of the balance of the full list price (excluding any discounts offered for quantity, early payment or for any other reason) of the Equipment 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:
- 10.5.1 terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
- 10.5.2 appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and the Supplier) as it thinks fit (despite any purported appropriation by the Customer);
- 10.5.3 charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), the Supplier shall be entitled to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 10.5.4 suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- 10.5.5 make a storage charge for any undelivered equipment at its current rates from time to time;
- 10.5.6 stop any Equipment in transit;
- 10.5.7 a general lien on all Equipment 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 or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding; and
- 10.5.8 immediately suspend performance of the Services, without liability to the Customer.
- 10.6 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This clause 10.6 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 10.7 If the Customer wishes to pay for Equipment in foreign currency, the Supplier reserves the right to include an additional administration charge of 1% (and not less than £25) to be added to each invoice which the Customer shall pay in accordance with these Conditions.
- 11. WARRANTY**
- 11.1 The Supplier warrants to the Customer that the Equipment:
- 11.1.1 is free from defects of workmanship and materials; and
- 11.1.2 will comply with the Specification in all material respects.
- 11.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in clause 11.1 unless:
- 11.2.1 the Customer gives written notice of the defect to the Supplier when the Customer discovers or ought to have discovered the defect:
- 11.2.1.1 in the case of any hardware defect, within five days of discovery and in any event, within 12 months from the date of delivery;
- 11.2.1.2 in the case of any reproducible software defect, within 5 days and in any event, within 3 months from the date of delivery;
- 11.2.2 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 for the examination to take place there.
- 11.3 The Supplier undertakes at its own option and at its own discretion to repair or replace any Equipment which is found by the Supplier to be in breach of the warranty in clause 11.1.
- 11.4 The Supplier shall not in any circumstances be liable for a breach of the warranty in clause 11.1 if:
- 11.4.1 the Customer makes any use of Equipment in respect of which it has given written notice under clause 11.2.1; or
- 11.4.2 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
- 11.4.3 the Customer alters or repairs the relevant Equipment without the written consent of the Supplier; or
- 11.4.4 the damage or defect to the Equipment is caused by improper use of the Equipment or use outside its normal application
- 11.4.5 the defect arises due to equipment supplied by the Customer, such as but not limited to computers and their operating systems
- 11.5 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the 12 month period.
- 11.6 To the fullest extent permissible by law, all other conditions, warranties, or other terms, whether express or implied by law, as to the quality of the Equipment or their fitness for any particular purpose or otherwise are hereby excluded and the Supplier shall have no liability, whether arising in contract or otherwise, in respect of any defect in the Equipment or any injury, damage or loss resulting from such defect
- 12. REMEDIES**
- 12.1 The Supplier shall not in any circumstances be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within five days after the scheduled delivery date.
- 12.2 Any liability of the Supplier for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 12.3 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 clause 19.1), 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. INDEMNITY**
- To the fullest extent permitted by law, the Supplier shall have no liability for any loss or damage suffered by any third party caused directly or indirectly by the Customer's use of the Equipment, whether as a result of their operation or otherwise and whether as a result of any defect or otherwise, and the Customer shall indemnify the Supplier from any loss or claim arising from such loss or damage.
- 14. INTELLECTUAL PROPERTY RIGHTS**
- 14.1 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.
- 14.2 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.
- 14.3 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 clause 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.
- 14.4 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.
- 14.5 In relation to the Software:
- 14.5.1 the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- 14.5.2 nothing contained in these Conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- 14.5.3 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.
- 15. CONFIDENTIALITY**
- 15.1 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.
- 15.2 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 clause 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.
- 15.3 This clause 15 shall survive termination of the Contract, however arising.
- 16. LIMITATION OF LIABILITY**
- 16.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 16.1.1 any breach of the Contract howsoever arising; and
- 16.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.
- 16.2 All warranties, clauses and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 16.3 Nothing in these clauses excludes or limits the liability of the Supplier for:
- 16.3.1 death or personal injury caused by the Supplier's negligence; or
- 16.3.2 fraud or fraudulent misrepresentation.
- 16.4 Subject to clause 16.2 and clause 16.3:
- 16.4.1 the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 16.4.1.1 loss of profits; or
- 16.4.1.2 loss of business; or
- 16.4.1.3 depletion of goodwill or similar losses; or
- 16.4.1.4 loss of anticipated savings; or
- 16.4.1.5 loss of Equipment; or
- 16.4.1.6 loss of contract; or
- 16.4.1.7 loss of use; or
- 16.4.1.8 loss or corruption of data or information; or
- 16.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.4.2 the Supplier's total liability in contract, tort (including without limitation negligence and 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 the price payable for the Equipment and/or Services in the 12 months preceding a claim.
- 17. TERMINATION**
- 17.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- 17.1.2 the ability of the Customer to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or
- 17.1.3 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
- 17.1.4 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
- 17.1.5 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
- 17.1.6 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
- 17.1.7 the Customer ceases, or threatens to cease, to trade; or
- 17.1.8 the Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt; or
- 17.1.9 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 or 268 of the Insolvency Act 1986; or
- 17.1.10 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver.
- 17.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- 17.2.1 by giving the Customer 2 months' written notice;
- 17.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 17.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier if:
- 17.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- 17.3.2 the Customer becomes subject to any of the events listed in clause 17.1.1 to 17.1.10, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 18. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- 18.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 18.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 18.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 18.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 19. GENERAL**
- 19.1 Force majeure:**
- 19.1.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport 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 subcontractors.
- 19.1.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 19.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Equipment for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 19.2 Assignment and subcontracting:**
- 19.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 19.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.3 Notices:**
- Any notice required to be given pursuant to these Conditions 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 clauses, 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.
- 19.4 Waiver and cumulative remedies:**
- 19.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 19.5 Severance:**
- 19.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 19.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19.6 No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

19.8 **Entire Agreement:**

19.8.1 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.

19.8.2 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.

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

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

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