



**TERMS AND CONDITIONS OF
MEDICATION MANAGEMENT SOLUTIONS LIMITED**

The Customer's attention is particularly drawn to the provisions of clauses 8 and 12.

1. INTERPRETATION

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

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| Business Day: | a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business. |
| Conditions: | these terms and conditions. |
| Contract: | the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions. |
| Customer: | the person or firm who purchases the Goods and/or Services from the Supplier. |
| Goods: | the goods (or any part of them) described in the Order. |
| Goods Specification: | the specification and characteristics of the Goods set out in the Order. |
| Intellectual Property Rights: | all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. |
| Manufacturer: | The company that makes the equipment being sold |
| Order: | the Customer's order for the supply of Goods and/or Services, as set out on the Supplier's order form. |



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| Software: | means the software supplied loaded into the Goods for use with the Goods. |
| Services: | the services, including installation of the Goods, attending the Customer's premises under Warranty and any training of the Customer's staff requested by the Customer, supplied by the Supplier to the Customer, but not including a Support Contract. |
| Supplier: | Medication Management Solutions Limited, registered in England and Wales with company number 5122410, whose registered office is at Unit 33, Melford Court, Warrington, WA1 4RZ. |
| Support Contract: | a separate contract between the Supplier and the Customer for the servicing, maintenance and updating of the Goods and their Software. |

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

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

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 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.



- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's website or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by the Manufacturer or any applicable statutory or regulatory requirements.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:



- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 14 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell, rent out or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price or rental charges of the Goods or charge the Customer for any shortfall below the price or rental charges of the Goods.
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

New Goods

- 5.1 The Supplier warrants in respect of new Goods only that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with the Goods Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for the purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, or the Customer pays the Supplier's current standard hourly fee rate for the Supplier's technician to attend at the Customer's premises, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;



- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises because the Customer fails to take out a Support Contract or make it's own provision to a standard considered satisfactory by the Supplier for the servicing, maintenance and updating of the Goods and their Software;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from their description in the Goods Specification as a result of changes made to ensure they comply with the requirements of the Manufacturer or applicable statutory or regulatory standards; or
- (g) the defect arises as a result of the Customer's employees, agents or sub-contractors or any other person acting under the instruction of the Customer inserting medicines which are not compatible with or capable of being processed by the Goods into the Goods.

5.4 Except as provided in clause 5.2, the Supplier shall have no liability to the Customer in respect of the failure of new Goods to comply with the warranty set out in clause 5.1.

Used Goods

5.5 The warranties set out in clause 5.1 above do not apply to second hand Goods. The Supplier gives no warranty in relation to second hand goods, which are supplied on a 'sold as seen' basis. In the event that any second hand goods remain within the residue of the period of the Manufacturer's warranty to the Supplier, the Customer will be entitled to the benefit of any warranty given by the Manufacturer to the Supplier for the remainder of the period of the Manufacturer's warranty to the Supplier.

6. TITLE AND RISK

6.1 The risk in Goods sold to the Customer shall pass to the Customer on delivery.

6.2 Title to Goods sold to the Customer shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 The risk in Goods rented to the Customer shall pass to the Customer on delivery. The Goods shall remain at the sole risk of the Customer during any period when the rented Goods are in the possession, custody or control of the Customer until such time as the Goods are redelivered to the Supplier (**Possession Period**).



- 6.4 Goods rented to the Customer shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these Conditions) except from any time at which the Customer subsequently purchases the rented Goods.
- 6.5 Until title to the Goods has passed to the Customer in the case of a sale of Goods to the Customer, and throughout any Possession Period, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,
- but the Customer may use the Goods in the ordinary course of its business.
- 6.6 If before title to the Goods passes to the Customer in the case of a sale of Goods to the Customer, or during any Possession Period, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 The Supplier shall provide the Services to the Customer described in the Order in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.



8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall in the case of all Goods and Services supplied by the Supplier:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
 - (c) provide the Supplier, its employees, agents and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the Customer's premises for the supply of the Goods and/or Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Services are to start or the Goods are to be delivered;
 - (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - (h) ensure that all Goods delivered to it by the Supplier are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;
 - (i) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Goods are at all times safe and without risk to health when they are being used, cleaned or maintained by a person at work; and
 - (j) ensure that it makes adequate provision for servicing, maintaining and updating the Goods and their Software, through a Support Contract with the Supplier, or if the Customer does not take out a Support Contract with the Supplier it is the Customer's responsibility at its own risk and cost to make provision satisfactory to the Supplier for the servicing, maintenance and updating of the Goods and their Software.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):



- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or suspend deliveries of Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3 In addition to the obligations set out in clause 8.1 above, the Customer shall in the case of all Goods rented to the Customer by the Supplier:

- (a) maintain at its own expense through a Support Contract the Goods in good and substantial repair in order to keep them in as good an operating condition as they were at the time they were delivered (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Goods;
- (b) make no alteration to the Goods and shall not remove any existing component(s) from the Goods without the prior written consent of the Supplier. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in the Supplier immediately upon installation;
- (c) keep the Supplier fully informed of all material matters relating to the Goods;
- (d) keep the Goods at all times at the Delivery Location and shall not move or attempt to move any part of the Goods to any other location without the Supplier's prior written consent;
- (e) permit the Supplier or its duly authorised representative to inspect the Goods at all reasonable times and for such purpose to enter upon the Delivery Location or any premises at which the Goods may be located, and shall grant reasonable access and facilities for such inspection;
- (f) maintain operating and maintenance records of the Goods and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- (g) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- (h) not without the prior written consent of the Supplier, attach the Goods to any land or building so as to cause the Goods to become a permanent or immovable fixture on such land or building. If the Goods do become affixed to any land or building then the Goods must be capable of being removed without material injury to such land or building and the Customer



- shall repair and make good any damage caused by the affixation or removal of the Goods from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- (i) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Goods and, where the Goods have become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Goods, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Goods and a right for the Supplier to enter onto such land or building to remove the Goods;
 - (j) not suffer or permit the Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Goods are so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Goods and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation; and
 - (k) deliver up the Goods at the end of the agreed period for rental of the goods set out in the Order (**Rental Period**) or on earlier termination of the Contract at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Delivery Location or any premises where the Goods are located for the purpose of removing the Goods.
- 8.4 The Customer acknowledges and agrees:
- (a) that certain medicines are not compatible with, or capable of being processed by, the Goods. It is the Customer's responsibility to ensure that medicines inserted into the Goods by the Customer's employees, agents or sub-contractors or any other person acting under the instruction of the Customer are compatible with and capable of being processed by the Goods; and
 - (b) that the Goods are not a replacement for a qualified pharmacist and the Customer shall ensure that all medicines packaged by the Goods shall be subjected to both a clinical check and an accuracy check by a qualified pharmacist; and
 - (c) that it is the Customer's responsibility to prepare and adhere to a Standard Operating Procedure in respect of the Goods which is compliant with the requirements of the Medicines and Healthcare products Regulatory Agency (**MHRA**);
and the Customer shall indemnify the Supplier 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 or incurred by the Supplier arising out of or in connection with the Customer's failure to ensure that both a clinical check and an accuracy check are conducted by a qualified pharmacist of all medicines packaged by the Goods, the Customer's failure to prepare and adhere to a Standard Operating Procedure in respect of the Goods which is compliant with the requirements of the MHRA, and/or the Customer's employees, agents or sub-contractors or any other person acting under the instruction of the Customer inserting medicines or other things which are not compatible with or capable of being processed by the Goods into the Goods. The Customer shall be solely liable to pay for any repair to the Goods required as a result of the Customer's employees, agents or sub-contractors or any other person acting under the instruction of the Customer inserting medicines or other things which are not compatible with or capable of being processed by the Goods into the Goods and such repairs are not covered by the Warranty.

- 8.5 The Customer acknowledges and agrees that, save in respect of installation of the Goods and attending the Customer's premises under Warranty to fit parts, the Contract does not cover servicing, maintenance and updating of the Goods and their Software, in respect of which it is the Customer's responsibility to obtain a Support Contract, failing which it is the Customer's responsibility at its own risk and cost to make provision satisfactory to the Supplier for the servicing, maintenance and updating of the Goods and their Software.

9. CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in the Order. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 The Customer acknowledges that, in order to supply the Goods to the Customer, the Supplier must make certain payments to the Manufacturer, including a deposit. The Customer shall make payment of the deposit set out in the Order (**Deposit**) to the Supplier within 5 Business Days of the Commencement Date. The Deposit is non-refundable except in the case that the Supplier terminates the Contract, in which case the Supplier shall use its reasonable endeavours to obtain some refund of the amount of deposit it has paid to the Manufacturer and return any such refund it receives to the Customer. The Customer acknowledges that the provisions of this clause 9.2 are reasonable taking into account the Supplier's obligations to the Manufacturer.
- 9.3 The charges for Services shall be on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Order;



- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.3(b); and
 - (d) 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 price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) 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);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.5 In respect of Goods, the Supplier shall invoice the Customer on the Commencement Date in respect of the Deposit and:
- (a) where Goods are being sold to the Customer, for the remainder of the price of the Goods on completion of delivery; or
 - (b) where Goods are being rented to the Customer, at the times set out in the Order, or if there are no times set out, at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 9.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) on or before the date(s) stated on the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in



respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

- 9.8 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Barclays Bank's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9 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. SOFTWARE LICENCE AND INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Supplier grants to the Customer a non-exclusive licence to use the Software in object code form for the purpose of operating the Goods for:
- (a) in the case of Goods rented by the Supplier to the Customer, the Rental Period; or
 - (b) in the case of Goods sold by the Supplier to the Customer, the period during which the Goods remain owned by the Customer without encumbrance.

The Customer may not use the Software other than as specified in this clause 10.1 (and in particular may not install the Software on any other equipment) without the prior written permission of the Supplier.

- 10.2 The Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- 10.3 The Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, de-compilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action under a Support Contract or otherwise at a reasonable commercial fee, and the Customer shall request the Supplier to carry out such action before undertaking any such reduction.
- 10.4 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 10.3 to create any software



whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

10.5 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.

10.6 The Customer shall permit the Supplier to inspect and have access to any premises and to the Goods at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

10.7 The Customer acknowledges that, in respect of the Software, the Customer's use of the Software is conditional on the Supplier obtaining and maintaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

10.8 Save in respect of the Software, all Intellectual Property Rights in or arising out of or in connection with the provision of the Goods and/or Services shall be owned by the Supplier, including in particular:

- (a) all Intellectual Property Rights in operating manuals, user instruction manuals, maintenance manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier to the Customer in connection with the Goods; and
- (b) all training materials in human-readable and/or machine readable forms supplied by the Supplier to the Customer in the course of training the Customer's employees, agents or sub-contractors in the use, maintenance and operation of the Goods.

10.9 All Supplier Materials are the exclusive property of the Supplier.

11. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the



Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

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

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate amount of all charges paid by the Customer to the Supplier in respect of Goods and Services during the twelve month period immediately prior to the date the loss arose.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being



- an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other persons or the solvent reconstruction of that other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
 - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business or operating activities; or
 - (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- (a) by giving the Customer three months written notice;
 - (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.



13.3 The Customer may terminate the Contract by giving the Supplier not less than three months written notice.

13.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Goods which:
 - (i) if sold to the Customer have not been fully paid for; or
 - (ii) if rented to the Customer remain in the Customer's possession, custody or control. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. GENERAL

15.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.



- (b) 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.
 - (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than eight 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.
- 15.2 Assignment and subcontracting:
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.3 Notices:
- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
 - (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
 - (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 15.4 Waiver and cumulative remedies:
- (a) 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.



- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15.5 Severance:
- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.6 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.
- 15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 15.9 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.