



We are an ISO 9001:2015 and
ISO 14001:2015 accredited
company.

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Dear Customer

Please find attached a copy of our terms and conditions of sale which apply to all orders we have received and may receive from you for the supply of goods and services.

WESTBURY CONTROL SYSTEMS LIMITED

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions, unless the context otherwise requires the following expressions shall have the following meanings:

“COMMISSION DATE” means the date on which any purchasers/dealers to whom the Customer has sold the Goods delivers such Goods to its purchasers;

“COMPANY” means **WESTBURY CONTROL SYSTEMS LIMITED** (registered in England under number 03888243) whose registered office is at 6 Cartwright Court, Cartwright Way, Bardon Hill, Leicestershire. LE67 1UE

“CONDITIONS” means the standard terms and conditions of sale set out in this document and any other terms and conditions specified by the Company on its acknowledgement of order;

“CONFIDENTIAL INFORMATION” means any and all information (whether written, oral or on magnetic or other media) which is now or at any time hereafter given by the Company to the Customer or comes into the Customer’s possession which relates to the Company including without limitation commercial, financial, marketing or technical information, data, know-how, processes, designs, intellectual property, customer lists, drawings, samples and specifications and any other material bearing or incorporating any information relating to the Company or its goods or services;

“CONTRACT” means any contract for the supply of Goods and/or the provision of Services by the Company to the Customer;

“CUSTOMER” means the individual, firm, company or other party with whom the Company contracts;

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 2 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

“GOODS”	means the goods and/or materials including but not limited to any Software, and any installment of the goods or any parts for them which the Company has agreed to supply under the Contract;
“INCOTERMS”	means the International rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
“INTELLECTUAL PROPERTY RIGHTS”	means any and all trademarks, rights in design, get up, trade, business or domain names, copyrights, future copyrights, patents, rights in databases (whether registered or not), and any applications to register or rights to apply for registration of any of the foregoing, rights in inventions, software know-how, trade secrets, and other confidential information and all other intellectual property rights of a similar or corresponding nature which may now or in the future subsist in any part of the world;
“INTERNATIONAL SUPPLY AGREEMENT”	the type of contract described in Section 26(3) of the Unfair Contract Terms Act 1977;
“PREMISES”	the premises at which the Company agrees to perform any Services;
“QUOTATION”	the quotation issued by the Company to the Customer in connection with the supply of the Goods and/or Services;
“SERVICES”	those services which the Company has agreed to provide under the Contract (including but not limited to the installation of the Goods and the carrying out of all work done in or in connection with the design, manufacture, development, production, processing, treatment, testing, delivery, erection, repair or servicing of any Goods);

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 3 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

“SOFTWARE” means the computer software embedded in or forming an integral part of the Goods;

“WRITING” includes telex, cable, facsimile transmission and comparable means of communication but excluding email.

- 1.2 Any reference in these Conditions to a statute or any provision of a statute shall unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, re-enacted, consolidated, modified, replaced or extended.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 References to clauses are to clauses of these Conditions, unless stated otherwise.
- 1.5 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

2. Contract Terms, Variations and Representations

- 2.1 All Contracts shall be subject to these Conditions and except as provided in clause 2.4 no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into a Contract except on the basis of these Conditions.
- 2.2 Unless otherwise agreed in writing by a director of the Company pursuant to clause 2.4, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or pre-contract negotiations) or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 2.3 Acceptance of delivery of the Goods or provision of Services shall be deemed conclusive evidence of the Customer’s acceptance of these conditions.
- 2.4 These Conditions apply to all of the Company’s sales and any variation to these Conditions and any representations about the Goods and/or the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.5 For the avoidance of doubt, where the Company has not given a

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 4 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

written acknowledgement of the Customer's order these Conditions will nonetheless apply to the Contract.

3. Quotations

- 3.1 No order in pursuance of any Quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company pursuant to clause 3.4. If the Company so requires verbal orders shall be confirmed by the Customer in writing.
- 3.2 Any Quotation given by the Company relating to the price of the Goods and/or Services and the time or period for delivery of the Goods and/or Services or otherwise is based on the relevant conditions and information known to the Company at the time and does not constitute an offer. Unless previously withdrawn or otherwise agreed in writing, any Quotation shall be valid for a period of 14 days, or if different, for the period stated in the Quotation. However all Quotations and orders are subject to withdrawal or alteration in whole or in part by the Company at any time.
- 3.3 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including but not limited to loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.4 Each order for Goods and/or Services by the Customer shall be deemed to be an offer by the Customer to purchase Goods and/or Services on these Conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods and/or Services to the Customer.
- 3.5 The quantity and description of the Goods and/or Services and any specification for them shall be as set out in the Quotation or in the acceptance of order issued by the Company.
- 3.6 Except when incorporated in the Quotation by specific reference all specifications, drawings, particulars of weight, shapes, descriptions, illustrations, prices and other advertising material contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services described in them and will not form a representation or be part of the Contract.
- 3.7 Without prejudice to clause 2.1 and 2.5 any advice or recommendation given by the Company, its employees or agents to the Customer or its employees or agents as to the storage,

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 5 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

- 3.8 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 Company shall be subject to correction without any liability on the part of the Company. Furthermore, the Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

4. Specifications, Instruction or Design

4.1 If the Goods are to be made or the Services are performed by the Company in accordance with a specification, instruction or design submitted by the Customer or any third party on behalf of the Customer then:

4.1.1 the suitability, accuracy and completeness of any terms of any order, the specification, instruction or design will be the Customer's responsibility;

4.1.2 the Customer will indemnify the Company against any infringement or alleged infringement of any third party Intellectual Property Rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country;

4.1.3 the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made and/or the Services being performed to such specification, instruction or design.

4.2 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods and/or Services are to be supplied to the Company's specification, which do not materially affect their quality or performance.

4.3 The Customer shall supply details of briefs and specifications and any necessary information relating to the Goods and/or Services in reasonable time to enable the Company to complete design development and production in respect to the Goods and/or Services within the time period quoted by the Company pursuant to clause 7.3.

4.4 Where appropriate, detailed plans and drawings and/or prototypes of

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 6 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

the Goods and/or Services will be issued for the Customer's approval after the receipt of the Customer's brief and/or specifications.

- 4.5 Any plans, drawings, and/or prototypes, descriptions, illustrations, dimensions or particulars submitted by the Company to the Customer pursuant to clause 4.4 are approximate only and are only issued for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They must not be taken as binding in detail and the Company will not be liable for any error or omission.

5. Price of the Goods and/or Services

- 5.1 Without prejudice to clause 3.2 the price of the Goods and/or the Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price which has been agreed between the parties in Writing prior to formation of the Contract and for which the Company invoices the Customer in accordance with clause 6.1 hereof.

- 5.2 The Company reserves the right and shall be entitled, by giving notice to the Customer at any time before delivery of the Goods and/or performance of the Services, to increase the price of the Goods and/or the Services to take account of any increase in the cost to the Company which is due to any factor beyond the control of the Company, including, without limitation, currency regulation, any increase in the costs to the Company of labour, purchasing or supplying goods, materials or services or other costs of manufacture or installation, (including but not limited to any such increase arising from any error, inadequacy or change to any specification, instructions, information or design provided by the Customer and whether requested by the Customer, another third party or otherwise), any change in delivery dates or quantities, or any delay caused by any instructions or failure of the Customer to give the Company adequate information or instructions or any change in taxes, customs duties, freight charges, insurance premiums or exchange rates. Such increased prices ruling at the date of delivery of the Goods by the Company shall be substituted for the previous Contract price.

- 5.3 The price for the Goods and/or Services are exclusive of any value added tax, and all taxes, duties and other government charges and all costs or charges in relation to loading, unloading, carriage and insurance, all of which amounts the Customer will pay in addition when it is due to pay for the Goods and/or Services.

6. Terms of payment

- 6.1 Subject to any special terms agreed in Writing between the

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 7 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

Customer and the Company, the Company shall be entitled to invoice the Customer for the Goods and/or Services on or at any time after the Customer places its order and the Company will be permitted to submit invoices for the Goods and/or Services in one lump sum or in installments at the Company's sole discretion.

- 6.2 The Customer shall pay the price of the Goods and/or Services and (where applicable) any charges under clause 7.8.1 within 30 days from the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery and/or performance may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.4 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 6.4.1 suspend any future performance of the Contract or any other Contracts with the Customer;
 - 6.4.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
 - 6.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum above National Westminster Bank base rate from time to time or at the rate applicable under the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6.5 The Customer shall make all payments due under the Contract or under any other contract with the Company without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 6.6 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 8 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

any other provision.

7. Delivery

- 7.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business, and the Company will notify the Customer when the Goods are ready for collection. Where the Company agrees to deliver the Goods to an address stated on the order or otherwise agreed in Writing by the Company, the Company shall specify the mode of delivery and the carrier and except where the parties agree otherwise, the carrier shall be deemed to be the Customer's agent and not the agent of the Company and delivery shall still be deemed to take place at the Company's place of business.
- 7.2 The Customer will provide at its expense, at the place of delivery adequate and appropriate equipment and manual labour for loading and unloading the Goods.
- 7.3 Any dates quoted or specified by the Company for delivery of the Goods and/or performance of the Services are approximate only and time for delivery and/or performance shall not be of the essence or made of the essence by notice. If no dates for delivery and/or performance are so specified, delivery will be within a reasonable time. The Goods may be delivered or the Services performed by the Company in advance of the quoted delivery/installation date upon giving reasonable notice to the Customer.
- 7.4 If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Company shall be under no obligation to give the Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1979.
- 7.5 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 7.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these Conditions or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.7 The Customer will take delivery of the Goods within 28 days of the

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 9 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

Company giving it notice that the Goods are ready for delivery.

- 7.8 If for any reason the Customer fails to take or will not accept delivery of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then without prejudice to any other right or remedy available to the Company:
 - 7.8.1 the Company may store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance) and the Company will be entitled to invoice the Customer for such costs and expenses monthly in arrears;
 - 7.8.2 save where clause 7.8.4 applies the risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
 - 7.8.3 save where clause 7.8.4 applies, the Goods will be deemed to have been delivered;
 - 7.8.4 the Company may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

8. Performance of the Services

- 8.1 In the absence of prior written agreement between the Company and the Customer the Company shall be allowed such access as it deems necessary to the Premises to perform the Services and the Customer shall furnish the Company without charge and within a reasonable time with all information available to it relating to the Services and/or Premises. The Customer warrants that it shall make all necessary preparations to the Premises and shall give such assistance without charge and at its own expense provide such facilities at the Premises including but not limited to the provision of access, light, electricity, security and other services as shall reasonably be required by the Company to enable it to exercise its obligations under the Contract.
- 8.2 The Company shall not carry out or be responsible for the removal of doors, widening of entrances or any other structural work of any description for the purpose of installing the Goods, which work shall be undertaken by the Customer at its own expense prior to delivery.
- 8.3 If in the reasonable opinion of the Company it is reasonably necessary to remove or otherwise disconnect any of the Customer's

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 10 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

existing equipment at the Premises in order to carry out the installation of the Goods, then the Customer shall permit and obtain all necessary consents for, such removal and/or disconnection and shall give the Company all necessary assistance to enable such work to be carried out.

8.4 The Customer warrants that it will provide a safe working environment for the Company’s employees, agents or sub-contractors, suitable protection of the Goods from the time of delivery and any necessary consents or permits to enable the Company to perform its obligations; and further warrants that the Company shall not be delayed in the performance of its obligations by any matter referred to in this clause or clause 8.1.

8.5 The Company will indemnify the Customer in respect of any direct damage to the Premises caused in the course of providing the Services by the negligence of the Company or the negligence or willful default of its servants, agents or sub-contractors provided that the Company’s liability hereunder shall be subject to clause 12, and in particular the financial limit on liability set out in clause 12.4.

9. Non-Delivery, Late Delivery and Short Delivery

9.1 The quantity of any consignment of Goods as recorded by the Company at the time of collection from the Company’s place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

9.2 The Company shall not be liable for non-delivery, late delivery or short delivery of the Goods or non-performance of the Services unless caused by the Company’s negligence and only then if written notice is given to the Company within 3 days of the date when the Goods should in the ordinary course of events have been ready for collection or the Services performed.

9.3 Any liability of the Company arising pursuant to clause 9.2 shall at the Company’s option be limited to replacing and/or delivering the Goods and where applicable performing the Services within a reasonable time and/or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods and/or Services.

10. Risk and Title

10.1 Except in the case of an International Supply Contract the risk of damage to or loss of the Goods shall pass to the Customer:

10.1.1 on delivery; or

10.1.2 on the date on which the Customer defaults (which

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 11 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

expression shall have the meaning set out in clause 10.2);
or

10.1.3 on the date on which the Goods being ready for delivery, delivery or performance of the Contract is postponed at the Customer's request;

whichever shall first occur. For the avoidance of doubt delivery of the Goods shall be deemed to be completed before off-loading of the Goods.

10.2 For the purpose of clause 10.1.2 "default" shall mean if the Customer fails to take delivery of the Goods on the due date or fails to provide an address for delivery of the Goods as required or fails to allow or make arrangement for the Services to be performed on the due date.

10.3 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions and subject to the provisions of clauses 15.2 and 15.3, ownership of the Goods shall not pass to the Customer and shall remain with the Company until the Company has received in full (in cleared funds) payment in full of the price of the Goods and/or Services and of all other goods and/or services sold or agreed to be sold by the Company to the Customer for which payment is then due under any contract whatsoever. Payment in full shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Customer.

10.4 Until such time as ownership of the Goods has passed to the Customer, the Customer must:

10.4.1 hold the Goods on a fiduciary basis as the Company's bailee;

10.4.2 keep the Goods (at no cost to the Company) separate from all other goods of the Customer or any third party and properly stored, protected and insured in such a way that they remain readily identifiable as the Company's property;

10.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.4.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and on request the Customer shall produce the policy of insurance to the Company; and

10.4.5 hold the proceeds of the insurance referred to in clause

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 12 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

10.4.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

10.5 The Customer may resell the Goods (but not the Software) before ownership has passed to it solely on the following conditions:

10.5.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

10.5.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

10.6 Until such time that ownership in any of the Goods has passed from the Company to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods and the Customer grants and agrees to procure that its customer and any purchaser of the Goods from its customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are, or may be stored, for this purpose. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

10.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

11. Warranties and Liability

11.1 Where the Company is not the manufacturer of the Goods, or where the Services are performed by another third party on behalf of the Company, the Company will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

11.2 The warranty in clause 11.3 shall only apply for a period of 12 months following the date of delivery of the Goods by the Company to the Customer.

11.3 Subject to clause 11.2 and the other provisions of these Conditions, the Company warrants that upon delivery and for 12 months from the delivery Date the Goods will:

11.3.1 be of satisfactory quality within the meaning of the Sale of

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 13 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

Goods Act 1994; and

- 11.3.2 comply in all material respects with the Company's specification.
- 11.4 Subject to the other provisions of these Conditions, the Company warrants that the Services will be performed with all reasonable care and skill.
- 11.5 The Company shall not be liable for breach of any of the warranties in clauses 11.3 and 11.4 unless:
 - 11.5.1 the Customer gives written notice (whether or not delivery is refused by the Customer) to the Company of the defect (where the defect was not apparent on reasonable inspection) within 7 days after discovery of the defect but in any event no later than 12 months from delivery Date save that this clause 11.5.1 will not apply where the Goods and/or Services are supplied for export outside the United Kingdom in which case clause 16.6 shall apply; and
 - 11.5.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and/or Services which are defective and for this purpose the Customer shall provide authority for the Company's representatives or agents to enter on to its premises to inspect any defective Goods and/or Services within 14days of a request being made by the Company.
- 11.6 The Company shall not be liable for a breach of any of the warranties in clauses 11.3 and 11.4 and shall be under no liability under any other warranty, condition or guarantee if:
 - 11.6.1 any defect in the Goods and/or Services arises from any drawing, design, instructions or specification supplied by the Customer;
 - 11.6.2 any defect in the Goods and/or Services arises because the Goods have been incorrectly installed where such installation has not been carried out by the Company or a sub-contractor of the Company's;
 - 11.6.3 any defect arises from fair wear and tear, willful damage, negligence, or abnormal working conditions or because the Customer has failed to follow the Company's instructions (whether oral or in writing), including but not limited to as to the storage, installation, commissioning, use or maintenance of the Goods or Software or (if there are none) good trade practice;

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 14 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

- 11.6.4 any parts, materials or equipment are not manufactured by the Company, in which case the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;
 - 11.6.5 the Customer makes any further use of such Goods after giving notice under clause 11.5;
 - 11.6.6 the Customer misuses, alters, processes or repairs such Goods, Software and/or Services without the written consent of the Company.
- 11.7 Subject to clauses 11.5 and 11.6 and where applicable, clause 16.6] if any of the Goods and/or Services do not conform with any of the warranties in clauses 11.3 and 11.4 the Company shall at its option either repair or replace the Goods and/or re-perform the Services (or the defective part) free of charge or, at the Company's sole discretion, refund to the Customer the price of such Goods and/or Services at the pro rata Contract rate or such other sum as the Company may agree with the Customer provided that if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 11.8 If the Company complies with clause 11.7 it shall have no further liability for a breach of any of the warranties in clauses 11.3 and 11.4 in respect of such Goods and/or Services.

12. Limitation of Liability

- 12.1 Subject to clause 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in connection with and/or arising out of these Conditions including without limitation in respect to:
- 12.1.1 any breach of these Conditions or the Contract; and
 - 12.1.2 any representation, statement or tortious act or omission including but not limited to negligence arising under or in connection with the Contract.
- 12.2 Save as expressly provided in these Conditions all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 15 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation or liability to consumers for defective products under the Consumer Protection Act 1987.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 12.4, 12.5 and 12.6

12.4 Subject to and without prejudice to clauses 9, 11.3, 11.4, and 11.8 the Company's total liability in contract, tort (including negligence or breach of statutory duty or where the Goods and/or Services breach, infringe or make unauthorized use of third party rights), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall not exceed 10% of the Contract price that the Customer has paid to the Company for the supply of the Goods and/or Services.

12.5 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract or for any loss of profits or for any indirect, special or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), costs or expenses or other claims for compensation whatsoever (howsoever caused) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or the Services in accordance with the Contract or at all) or the use or resale of the Goods by the Customer.

12.6 The Company accepts no responsibility or liability where the Goods and/or Services cannot be provided as a result of any act or omission of the Customer and in such event the Customer shall still be liable to pay the Company for the Goods and/or Services as if the same had been duly delivered.

13. Force Majeure

13.1 In this clause "Force Majeure" means in relation to the Company any Act of God, governmental actions, war or national emergency, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock outs, strikes or other labour disputes, (whether or not relating to either parties workforce), restraints or delays affecting carriers or inability to or delay in obtaining supplies of adequate or suitable materials or late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, import or export regulations or embargos, power failure or breakdown in machinery and acts, restrictions, regulations, bylaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, or any other event beyond the control of the Company.

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 16 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

- 13.2 If the Company is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 13.3 The Company shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of its obligations under the Contract if the delay or failure is due to Force Majeure and the time for performance of the obligations under the Contract shall be extended accordingly. If the Force Majeure event continues for a continuous period in excess of 6 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. Intellectual Property and Confidential Information

- 14.1 In the absence of contrary written agreement between the Customer and the Company, all Intellectual Property Rights in the Goods, the Services and in any drawings, photographic material of any description, catalogues, blueprints, software including without limitation the Software and any programmes written on the Software (except for Software or programmes owned by any third party) or other documentation or materials supplied by the Company to the Customer or produced for the purpose of producing the Goods and/or providing the Services shall vest in and remain vested in the Company and upon receipt of a written request from the Company the Customer agrees to execute any document the Company deems necessary to give effect to this clause.
- 14.2 The Customer acknowledges that all Intellectual Property Rights in any drawings, specifications, documents and materials are and will remain the property of the Company and that the Customer shall not acquire any title, right or interest in any such Intellectual Property Rights.
- 14.3 Subject to clause 14.4, the Customer shall treat the Confidential Information that it may acquire as strictly confidential and shall not disclose it to any third party except as provided in clause 14.4 and the Customer will only use the Confidential Information exclusively for the purpose of the Contract and not for any other purpose at any time.
- 14.4 The Customer may disclose the Confidential Information:
 - 14.4.1 if and to the extent required by law or any regulatory or governmental body;
 - 14.4.2 to its employees who need to know the same provided that such employees are bound by like obligations of confidentiality as bind the Customer;

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 17 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

14.4.3 if the information is in the public domain other than as a result of a breach of clause 14.3.

15. Availability of materials, licences etc

- 15.1 All Contracts arising out of orders accepted by the Company will be subject to availability of materials and to the Company being able to obtain any necessary authorisation or licences including but not limited to software licences and the same remaining valid. If the performance of the Contract requires the Company to have any permit or licence from any government or other authority or third party at home or overseas, the order will be conditional on such permit or licence being available at the required time and the Customer will use its best endeavours to assist the Company to obtain such licence.
- 15.2 The parties acknowledge that the Goods and/or Services being supplied may include Software. Where Software and the Intellectual Property Rights therein are owned by a third party (“the Software Owner”), it will be the responsibility of the Customer to enter into and pay for a software licence with the Software Owner and the performance by the Company of its obligations under the Contract is in all respects conditional upon the Customer entering into prior to or on the date of the Contract a licence agreement with the Software Owner or (as the case may be) a sub-licence agreement with the Company (in either case a “Licence Agreement”) governing the use by the Customer of that item of Software as may be required by the Software Owner. The Customer agrees with the Customer as a term of the Contract to be bound and abide by the terms and conditions of each such Licence Agreement.
- 15.3 Where the Software (including without limitation any programs written thereon) and the Intellectual Property Rights therein are owned by the Company:
- 15.3.1 the Customer is purchasing only the media on which such Software is recorded or embedded;
- 15.3.2 nothing contained in the Contract shall be construed as an assignment or transfer of any Intellectual Property Rights in such Software or the programs written thereon, all of which rights are reserved by the Company;
- 15.3.3 the Company hereby grants to the Customer a non-exclusive and (except as provided in clause 15.3.5 below) non transferable licence to use such Software in the form in which it is embedded or integrated into the Goods at the time of delivery to the Customer as an integral part of the Goods for use in conjunction with the remainder of the Goods but subject to the condition that the Goods are used

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 18 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

only for their intended purpose;

- 15.3.4 except as expressly permitted by this clause 15.3.4 and save to the extent and in the circumstances expressly required to be permitted by law, the Customer shall not rent, lease, sub-licence, loan, copy, modify, adapt, merge, translate, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of such Software or use, reproduce or deal in such Software or any part thereof in any way;
- 15.3.5 the Customer shall be entitled to transfer the benefit of the licence granted pursuant to clause 15.3.3 (“the Licence”) and the right to transfer the Licence in terms of this clause 15.3.5 to any purchaser of the Goods provided the purchaser agrees before making such purchase to be bound by the terms of this clause 15 including but not limited to the provisions of this clause 15.3.5. If the purchaser does not accept such terms then the Licence shall automatically and immediately terminate;
- 15.3.6 the Licence shall remain effective without limit in time until it is terminated in accordance with clause 15.3.5 or until the Customer shall terminate by erasing or destroying such Software. The Licence shall also terminate automatically and immediately if the Customer shall fail to abide by the terms of this clause 15.3 or breaches the Contract. Upon termination of the Licence, for whatever reason, the Customer shall deliver up to the Company the media on which such Software is recorded or embedded (and/or copies thereof) if any (in the Customer’s possession) or, at the Company’s option, shall erase or otherwise destroy such Software (and/or copies thereof) if any (in the Customer’s possession) and shall certify to the Company that the same has been done.

16. Export Terms

- 16.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 16.2 Where the Goods and/or Services are supplied for export from the United Kingdom, the provisions of this clause 16 shall apply, (subject to any special terms agreed in Writing between the Customer and the Company) notwithstanding any other provision of these Conditions.

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 19 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

- 16.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods in the country of destination and for the payment of any duties on them.
- 16.4 Unless otherwise agreed in Writing between the Customer and the Company, the Goods shall be delivered to the airport or seaport of shipment at the cost of the Customer and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 16.5 Where the Goods are supplied for export from the United Kingdom, the Company shall submit the Goods for its standard works tests (“the “Works Tests”) before delivery to the Customer.
- 16.6 The Customer or its authorised representative may attend the Works Tests. The Company shall give the Customer at least 7 (seven) days written notice of the date and time at which the Company proposes to carry out the Works Tests. In the event of any delay or failure by the Customer or its authorised representative in attending the Works Tests at such time, the Company reserves the right to proceed with the Works Tests without the Customer. In any event the Customer shall be responsible for arranging for inspection of the Goods at the Company’s premises before shipment. In relation to the Goods supplied for export, the Company shall have no liability pursuant to clause 11.3 for any claims in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit. The Company shall not be liable for any defects discovered by the Customer once the Goods have been exported from the United Kingdom.

17. Termination

- 17.1 For the purposes of this clause a “Default Event” shall mean any such event as is described in clause 17.3.
- 17.2 If there shall be a Default Event the Company may, within a reasonable time thereafter, defer or cancel any further deliveries of the Goods and provision of the Services, stop any Goods in transit and treat the Contract of which these Conditions form part as terminated but without prejudice to its rights to the full purchase price for the Goods delivered and the Services performed and damages for any loss suffered in consequence of such termination. Where the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17.3 A Default Event shall be any of the following:

17.3.1 failure by the Customer to make any payment when it

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 20 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

becomes due;

17.3.2 breach by the Customer of any of the terms and conditions of the Contract;

17.3.3 where the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

17.3.4 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Customer; or

17.3.5 the Customer ceases, or threatens to cease, to carry on business; or

17.3.6 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

17.4 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect:

17.4.1 the accrued rights and obligations of the parties at the date of termination; and

17.4.2 the coming into force or the continuance in force of any provision which is expressly or implied intended to come into or continue in force on or after termination.

18. Assignment and Sub-contracting

18.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

18.2 The Company may assign, transfer or sub-contract the Contract or any part of it to any person, firm or company.

18.3 Where the Company agrees to provide the Goods and/or Services the Company reserves the right to employ a sub-contractor of its choice for that purpose at any time.

19. General

19.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 21 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		

- 19.2 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 19.3 No waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall be considered or be deemed as a waiver of any subsequent breach or default of the same and will in no way affect the other terms of the Contract.
- 19.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it except that Software Owners shall be entitled to enforce all the benefits that they have against the Customer under this Agreement in relation to the Software.
- 19.5 If any provision of these Conditions (or any other conditions or other terms which may be agreed in writing between the Company and the Customer) is held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid, unenforceable, illegal, void, voidable or unreasonable for any reason it shall to the extent of such invalidity, unenforceability, illegality, voidness, voidability, unreasonable or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.

20. Communications

20.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

20.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

20.1.2 (in the case of communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer.

20.2 Communications shall be deemed to have been received:

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 22 of 23
* SHEQ = Safety, Health, Environment, Quality		This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58	

- 20.2.1 if sent by pre-paid first class post, four days (excluding Saturdays, Sundays and Bank and Public Holidays) after posting (exclusive of the day of posting);
 - 20.2.2 if delivered by hand, on the day of delivery;
 - 20.2.3 if sent by facsimile transmission on a working day prior to 4 p.m. at the time of transmission and otherwise on the next working day.
- 20.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.

Editor (Issued / Reviewed by): SHEQ Advisor	Owner (Approved by): Glynn Westbury	Version:02 Last Update: 07.09.17	Page 23 of 23
* SHEQ = Safety, Health, Environment, Quality	This document will be uncontrolled if printed 24 hrs from 07/09/2017 13:58		