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## **WESTBURY CONTROL SYSTEMS LIMITED**

### **TERMS AND CONDITIONS OF SALE OF GOODS**

## 1. Interpretation

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

**“BUSINESS DAY”** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**“BUSINESS HOURS”** the period from 8.00 am to 4.30.00 pm on any Business Day.

**“COMPANY”** means **WESTBURY CONTROL SYSTEMS LIMITED** (registered in England under number 03888243) whose registered office is at Regent Street, Narborough, Leicestershire, LE19 2DT;

**“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;

**“CONTRACT”** means any contract for the supply of Goods by the Company to the Customer;

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

<b>“GOODS”</b>	means the goods and/or materials including but not limited to any Software, and any instalment of the goods or any parts for them which the Company has agreed to supply under the Contract;
<b>“INCOTERMS”</b>	means the rules for the explanation and interpretation of commonly used trade terms published by the International Chamber of Commerce that are in force at the date when the Contract is made;
<b>“INTELLECTUAL PROPERTY RIGHTS”</b>	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;
<b>“INTERNATIONAL SUPPLY AGREEMENT”</b>	the type of contract described in Section 26(3) of the Unfair Contract Terms Act 1977;
<b>“QUOTATION”</b>	the quotation issued by the Company to the Customer in connection with the supply of the Goods;

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

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

- 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 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, Contracts 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 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 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 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 3.5. 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 the time or period for delivery of the Goods or otherwise is based on the relevant conditions and information known to the Company at the time and does not constitute an offer.
- 3.3 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.
- 3.4 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.
- 3.5 Each order for Goods by the Customer shall be deemed to be an offer by the Customer to purchase Goods 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 to the Customer.
- 3.6 The quantity and description of the Goods and any specification for them shall be as set out in the Quotation or in the acceptance of order issued by the Company. In the event of a conflict between the two the acceptance will prevail.
- 3.7 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 described in them and will not form a representation or be part of the Contract.

- 3.8 Without prejudice to clause 2.1 and 2.4 any advice or recommendation given by the Company, its employees or agents to the Customer or its employees or agents as to the storage, 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.
- 3.9 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 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 to such specification, instruction or design.
- 4.2 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable standards, statutory or legal requirements which do not materially affect their quality or performance.
- 4.3 It is the Customer's responsibility to ensure that the Goods comply with the standards and/or statutory or legal requirements that apply in the country where the Goods are to be used.
- 4.4 The Customer shall supply details of briefs and specifications and any necessary information relating to the Goods in reasonable time to enable

the Company to complete design development and production in respect to the Goods within the time period quoted by the Company pursuant to clause 7.3.

- 4.5 Where the Company in its absolute discretion deems it appropriate detailed plans and drawings and/or prototypes of the Goods will be issued for the Customer's approval after the receipt of the Customer's brief and/or specifications.
- 4.6 Any plans, drawings, and/or prototypes, descriptions, illustrations, dimensions or particulars submitted by the Company to the Customer pursuant to clause 4.5 are approximate only and are only issued for the sole purpose of giving an approximate idea of the Goods 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**

- 5.1 Without prejudice to clause 3.2 the price of the Goods 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, to increase the price of the Goods 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 applying 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 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.

## **6. Terms of payment**

- 6.1 Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the Goods on or at any time after the Customer places its order and the Company will be permitted to submit invoices for the Goods in one lump sum or in instalments at the Company's sole discretion.
- 6.2 The Customer shall pay the price of the Goods and (where applicable) any charges under clause 7.6.1 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 (or the goods 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 any other provision.

## **7. Delivery**

- 7.1 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 arrange transport for 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 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 are so specified, delivery will be within a reasonable time. The Goods may be delivered by the Company in advance of the quoted delivery 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 Ex Works Incoterm rule definition from the edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between the Ex Works Incoterm and any express term of the Contract the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979.
- 7.5 The Customer will take delivery of the Goods within 28 days of the Company giving it notice that the Goods are ready for delivery.
- 7.6 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:
- 7.6.1 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;

- 7.6.2 save where clause 7.6.4 applies the risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
- 7.6.3 save where clause 7.6.4 applies, the Goods will be deemed to have been delivered;
- 7.6.4 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. Safe working environment**

The Customer warrants that if the Company's representatives, employees, agents or sub- contractors attend the Customer's premises or any other premises or site in connection with the supply of Goods to the Customer then the Customer will provide or ensure there is provided a safe working environment for the Company's representatives, employees, agents or sub- contractors and will supply or secure the supply to the Company such access and services as it might require.

## **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 unless a 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.
- 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 within a reasonable time of the date of receipt of the notice given under 9.2 above and/or, at the Company's sole discretion, issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.

**10. Risk and Title**

10.1 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 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 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.

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 of all other goods 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;
- 10.4.5 give the Company such information as the Company may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer; and
- 10.4.6 hold the proceeds of the insurance referred to in clause 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 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 date of delivery the Goods will either:
  - 11.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 or
  - 11.3.2 where the Goods are made in accordance with a specification, instruction or design submitted by the Customer will comply in all material respects with that specification instruction or design.
- 11.4 The Company shall not be liable for breach of either of the warranties in clause 11.3 unless:
  - 11.4.1 the Customer gives written notice (whether or not delivery is refused by the Customer) to the Company of the defect (where the defect was apparent on reasonable inspection) within 7 days after discovery of the defect but in any event no later than 12 months from delivery Date; and
  - 11.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods.
- 11.5 The Company shall not be liable for a breach of either of the warranties in clause 11.3 and shall be under no liability under any other warranty, condition or guarantee if:
  - 11.5.1 any defect in the Goods arises from any drawing, design, instructions or specification supplied by the Customer;
  - 11.5.2 any defect in the Goods 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;
  - 11.5.3 any defect arises from fair wear and tear, wilful 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;

- 11.5.4 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;
  - 11.5.5 the Customer makes any further use of such Goods after giving notice under clause 11.4;
  - 11.5.6 the Customer alters or repairs such Goods without the written consent of the Company;
  - 11.5.7 the Customer misuses, alters, processes or repairs such Goods, Software without the written consent of the Company.
- 11.6 Subject to clauses 11.4 and 11.5 if any of the Goods do not conform with any of the warranties in clause 11.3 the Company shall at its option either repair or replace the Goods (or the defective part) free of charge or, at the Company's sole discretion, refund to the Customer the price of such Goods 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.

## **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.

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.

**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 12.2, 12.3, and 12.4**

- 12.2 **Subject to and without prejudice to clauses 9, 11.3, and 11.6 the Company's total liability in contract, tort (including negligence or breach of statutory duty or where the Goods 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.**
- 12.3 **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 additional transport costs 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 (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or the use or resale of the Goods by the Customer.**
- 12.4 **The Company accepts no responsibility or liability where the Goods 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 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.
- 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 and in any drawings, photographic material of any description, catalogues, blueprints, software including without limitation the Software and any programs written on the Software (except for Software or programs 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 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 generated by the Company 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;
  - 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 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 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**

Where the Goods are supplied for export from England and Wales 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, the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

## **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, 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 damages for any loss suffered in consequence of such termination. Where the Goods have been delivered 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 becomes due;
  - 17.3.2 breach by the Customer of any of the terms and conditions of the Contract;
  - 17.3.3 the Customer's financial position deteriorates to the extent that in the opinion of the Company's directors the Customer's ability to give effect to the terms of the Contract is in jeopardy.
  - 17.3.4 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
  - 17.3.5 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Customer; or
  - 17.3.6 the Customer ceases, or threatens to cease, to carry on business; or
  - 17.3.7 the Company reasonably believes 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 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.

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.

**20. Notices.**

**(a)** Any notice given to a party under or in connection with the Contract shall be in writing and addressed to a director and shall be:

- (i)** delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii)** sent by email to the following addresses (or an address substituted in writing by the party to be served):

**(b)** Any notice shall be deemed to have been received:-

- (i)** if delivered by hand, at the time the notice is left at the proper address;
- (ii)** if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting or
- (iii)** if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

**(c)** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**21 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

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