

CCA TERMS & CONDITIONS OF SALE & SUPPLY

Interpretation

- 1.1 In these Conditions:
- Company** means Cambridge Cyber Advisers Limited (Co No 10958295) whose principal office is at The Bradfield Centre, Cambridge Science Park, CB4 0GA and any subsidiary or holding company of the Company, where subsidiary and "holding company" have the meanings given in the Companies Act 1985 Section 736 (as amended);
- Conditions** means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company;
- Contract** means the contract for the purchase and sale of the Goods and/or supply of the Services;
- Customer** means the person whose order for the Goods and/or Services is accepted by the Company;
- Distributed Software** means third party software products, including databases and operating systems;
- Documentation** means manuals, handbooks, maintenance libraries, brochures and publications supplied with the Goods which have not been written by the Company;
- Goods** means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with the Contract;
- IncoTerms 2000** means the 2000 version of the international trade terms of the International Chamber of Commerce;
- Intellectual Property Rights** means all patents, topography rights, design rights, trademarks, copyrights, rights in databases, sui generis rights, trade secrets and other confidential information, know-how and all other intellectual property rights of a similar nature in any part of the world and any application of the rights to apply for the protection of any of the foregoing;
- Proprietary Software** means software which is not Distributed Software;
- Services** means the Services to be provided by the Company to the Customer in accordance with the Contract;
- Specific Agreement** means a contractual document relating to the specific subject matter of the Contract distinct from these Conditions which is agreed in writing between the parties and signed by a director of the Company.
- 1.2 References to statutory provisions shall be construed as a reference to that provision as amended, replaced, re-enacted or extended from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.3 The headings in these Conditions are for convenience only and shall not affect the interpretation and construction of the Conditions.
- 1.4 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other gender.
- 1.6 References to "including" and "includes(s)" shall be deemed to mean respectively "including without limitation" and "include(s) without limitation".
2. **Basis of the sale and/or supply**
- 2.1 Subject to the terms of any Specific Agreement, the Company shall sell and the Customer shall purchase the Goods and/or (as the case may be) the Services in accordance with the Contract and the Customer shall receive the Services in accordance with any written order of the Customer which is accepted by the Company upon the terms of any quotation made by the Company to which such order relates, subject to these Conditions, which shall govern the Contract 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 other document).
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Company or 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.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
3. **Orders and specifications**
- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 3.2 Subject to any Specific Agreement, the Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification (as the case may be) for the Goods and/or Services shall be those set out in the Company's quotation.
- 3.4 The Company reserves the right to make any changes in the specification of the Goods and/or the Services which are required to conform with any applicable statutory requirements or which do not materially affect their quality or performance. The Company does not guarantee the availability of the Goods and the Company reserves the right at any time to supply other goods in substitution for those specified provided that any such replacement Goods shall have at least the same level of functionality. If the price of the substituted goods is greater than the price of the Goods the Customer shall be entitled to pass this cost onto the Customer. If the price of the substituted goods is less than the price of the goods the Company may pass this saving onto the Customer or (if the Customer has paid for the Goods) set such saving off such other sums as may be due by the Customer by the Company.
- 3.5 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:
- 3.5.1 loss (including loss of profit, whether direct or indirect); and
- 3.5.2 costs (including the cost of all labour and materials used); and
- 3.5.3 damages, charges and expenses incurred by the Company as a result of cancellation.
4. **Price of the Goods**
- The following provisions apply in relation to the price of the Goods:
- 4.1 The price of the Goods shall be the Company's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Customer without giving notice to the Customer.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to reasonably increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation, and subject to any Specific Agreement, all prices are given by the Company on an ex works basis (EXW as defined in Incoterms 2000), and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
5. **Charges for the Services**
- The following provisions shall apply in relation to the charges for the Services:
- 5.1 Subject to any Specific Agreement, the Customer shall pay the charges shown in the Company's brochure or other published literature relating to the Services from time to time (or if none the normal hourly rates charged by the Company for the personnel providing the Services together with such travel, subsistence and other expenses (of whatsoever nature) as they shall incur in performing the Services) and any additional sums which are agreed between the Company and the Customer for the provision of the Service or which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any documents or other materials, and any data or other information provided by the Customer relating to the Services or any other cause attributable to the Customer.
- 5.2 The Company shall be entitled to vary the Company's charges for the Services from time to time by giving not less than three months' written notice to the Customer.
- 5.3 Additional installation charges may be imposed if the Customer is prevented from installing the Goods on the agreed estimated date except to the extent that installation has been prevented wholly by the Company's default.
6. **Terms of payment**
- 6.1 The price for Goods and all charges for Services are exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.
- 6.2 Unless otherwise expressly stated in writing to the contrary all invoices are payable in pounds sterling. Provision of prices in other currencies shall not of its own constitute an express statement to the contrary.
- 6.3 The price for Goods and all charges for Services shall be paid by the Customer without any set-off or other deduction (including but not limited to retention) by their due date provided that no provision of these Conditions shall have the effect of excluding the rights of any person in relation to fraudulent misrepresentation.
- 6.4 The time of payment of the Company's invoices shall be of the essence of the Contract. Receipts for payment will be issued only upon request following receipt of cleared funds.
- 6.5 The Company reserves the right to require payments on account of the Goods and/or Services and to invoice for these in advance of delivery or performance and to decline to deliver or perform the same until such payment is made or invoice paid.
- 6.6 Notwithstanding that credit terms may have been agreed these are at the entire discretion of the Company who may withdraw these at any time and require payment in advance prior to the performance of Services or delivery of Goods.
- 6.7 If credit terms have been agreed the Customer undertakes to notify the Company of any material or potentially material change in its circumstances, such events to include but not be limited to any change in the information supplied by the Customer to the Company on the 'credit application form'.

Payment for Goods

- 6.8 Subject always to clause 6.5 and any Specific Agreement between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to

invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

- 6.9 The Customer shall pay within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and/or the property in the Goods has not passed to the Customer.

Payment for Services

- 6.10 Subject always to clause 6.5:
- 6.10.1 the Company shall be entitled to invoice the Customer following the completion of the performance of the Services (and in this regard the Company's certification as to whether the services have been completed shall be binding in the absence of manifest error) or at other times agreed with the Customer;
- 6.10.2 the Company may interim invoice for the Services at the end of each month if it sees fit; and
- 6.10.3 the Customer shall pay the Company's charges for the Services within 30 days of the date of the Company's invoice and the Company shall be entitled to recover the charges for the Services notwithstanding that the same may not have been completed.
- 6.11 The Customer shall pay the Company's charges for the Services by such method (including direct debit or standing order) as the Company shall reasonably require and the Company shall be entitled to suspend performance of the Services unless and until the Customer complies with the Company's request.

Consequences of non payment

- 6.12 If the Customer fails to make any payment of any sum due to the Company (or to any company associated with the Company) by its due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to do all or any combination of the following, in any order:
- 6.12.1 cancel the Contract, suspend any further deliveries of Goods or the performance of any Services to the Customer whether under the Contract or any other contract;
- 6.12.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Company and the Company) and/or Services (or any services provided under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 6.12.3 charge the Customer interest (both before and after any judgment) on the amount, unpaid, at the rate of 3 per cent per annum above Barclays Bank plc base rate from time to time or at the statutory rate for the recovery of interest on late commercial debts, whichever is the higher accruing daily and compounding annually, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6.13 If any cheque presented in payment of an invoice by the Customer shall be returned unpaid by the Customer's bank or if any agreed standing order or direct debit arrangement shall fail to operate then the Customer, in addition to all other sums payable under the Contract hereby indemnifies and holds the Company indemnified in full against all costs and expenses incurred by the Company by reason of such dishonour or failure as aforesaid.
- 6.14 The Customer hereby indemnifies and holds the Company indemnified in full against all costs, claims, losses and expenses (including legal costs) which the Company may incur either before, during or after the commencement of any action in connection with the settlement of any claim relating to any debt due by the Customer to the Company, any legal proceedings in respect of any such debt where judgment is given to the Company and the enforcement of any such settlement or judgment. Should the Company assign any such debt it may also assign its rights hereunder in connection with such debt to the extent it is lawful to do so.

7. Timesheets

The Customer agrees to verify and sign the Company's time and/or expense sheets as applicable. Signature of such sheets shall constitute the Customer's irrevocable acceptance that the Services have been supplied for the hours indicated on the timesheets and that such Services have been satisfactorily performed (save where it is not within the Customer's expertise to ascertain whether the Services have been satisfactorily performed).

8. Delivery

- 8.1 Delivery of the Goods shall be made by the Customer or its carrier collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 8.2 Unless otherwise agreed in writing or necessary for the performance of the Services they shall be performed at such place as the Company shall think fit.
- 8.3 Any dates quoted for delivery of the Goods (or the performance of the Services) are estimates only and the Company shall not be liable for any delay in delivery of the Goods (or the performance of the Services) however caused. Time for delivery (or performance of the Services) shall not be of the essence of the Contract nor made of the essence by notice. Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 8.4 Where delivery of the Goods is made by the Company in bulk, the Company reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
- 8.5 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 instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 8.6 If the Company fails to deliver the Goods (or any instalment) (or fails to perform the Services) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods (or services) to replace those not delivered (or not performed) over the price of the Goods (or Services). If the Company shall have any liability to the Customer in accordance with this clause the Customer shall not be entitled to set such liability off against any debts due by it to the Company and the Company shall discharge that liability separately.
- 8.7 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may (without being in any way obliged):
- 8.7.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- 8.7.2 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.
- 8.8 The Customer shall provide such access and assistance as the Company shall reasonably require to enable it to perform the Services. If the Company fails to provide such access and assistance after written request the Company may terminate the Contract and the Customer hereby indemnifies and holds the Company indemnified in full against:
- 8.8.1 all costs and expenses (including legal costs);
- 8.8.2 all loss of profit (direct and indirect); and
- 8.8.3 any direct, indirect or consequential loss caused or incurred as a result of the Customer's failure to provide access and assistance.

9. Risk and property

- 9.1 The Goods are at the risk of the Customer from the time of delivery.
- 9.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 9.2.1 the Goods; and
- 9.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 9.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 9.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 9.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- 9.3.3 affix a label to the Goods stating clearly that "This is the sole beneficial property of Cambridge Cyber Advisers Ltd Tel: +441223 90 11 00" and shall not destroy, deface or obscure any such label or other identifying mark or packaging on or relating to the Goods; and
- 9.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company and if the Customer is unable to provide such policy of insurance on demand the Company shall be entitled, but not required, to insure the Goods and the Customer hereby indemnifies and holds the Company indemnified in full for the cost of such policy including all premiums and other related costs.
- 9.4 The Customer's right to possession of the Goods shall terminate immediately if:
- 9.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 9.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 9.4.3 the Customer encumbers or in any way charges any of the Goods.
- 9.5 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.
- 9.6 The Customer hereby 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 in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 9.7 On termination of the Contract, however caused, the Company's (but not the Customer's) rights contained in this Condition 9 shall remain in full force and effect.

10. Warranties

- 10.1 The Company does not warrant:
- 10.1.1 that the Services will cause the Goods or the Customer's other hardware or software to operate without interruption or error or to be free of problems;
- 10.1.2 that the Goods will prevent all attacks to the Customer's IT systems;
- 10.1.3 that the execution of software shall be uninterrupted or error free;
- 10.1.4 the form or content of Distributed Software or Documentation, which is supplied 'as is'. Distributed Software may be warranted directly to the Customer by the respective licensor as specified in the licence from the respective licensor provided with the Distributed Software.
- 10.2 The Company warrants and represents that it will:-
- 10.2.1 comply with all applicable regulations, laws and requirements of any legal authority in performing its obligations under the Contract; and
- 10.2.2 perform the Services using reasonable skill and care.
- 10.3 The Company shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company by the manufacturer of the Goods.
- 10.4 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Goods shall:
- 10.4.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979/Sale of Goods and Services Act 1982; and
- 10.4.2 be reasonably fit for any purpose for which the Goods are being bought if the Customer had made known the purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 10.5 To the extent that the Customer is an information technology professional or expert ("IT Expert") the Company excludes to the fullest extent permitted by statute any warranty in respect of the fitness for purpose of the Goods implied by section 4(5) of the Supply of Goods and Services Act 1982. Where the Customer is an IT Expert it is the Customer's responsibility to ensure that the Goods are suitable for the Customer's intended use and the Company shall not be liable for any opinions given in connection with such suitability.
- 10.6 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.7 The Company shall not be liable for a breach of the warranty if:
- 10.7.1 the Customer makes any further use of such Goods after giving such notice:
- 10.7.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 10.7.3 the Customer alters or repairs such Goods without the written consent of the Company; or
- 10.7.4 the defect in the Goods arises from any drawing, design or specification supplied by the Customer; or
- 10.7.5 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions; or
- 10.7.6 the total price for the Goods has not been paid by the due date for payment.
- 10.8 Where the Customer is a consumer as defined in the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999 as appropriate, any statutory rights of the Customer shall not be affected by these Conditions.
- 10.9 Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods for a proportionate part of the price), but the Company shall have no further liability to the Customer.
- ## 11. Limitation of Liability
- 11.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer under the Contract, including in respect of:
- 11.1.1 any breach of its contractual obligations arising under the Contract in respect of the Goods or the Services; and
- 11.1.2 any representation, statement, or tortious act or omission including negligence, arising under or in connection with the Contract, or in respect of the Goods or the Services.
- 11.2 Any act or omission on the part of the Company or its employees agents or sub-contractors falling within Condition 11.1 above shall for the purposes of this Condition 11 be known as an **'Event of Default'**.
- 11.3 The Company does not exclude or limit liability to the Customer for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or where liability cannot be excluded or limited as a matter of law (including breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 (as amended) or Section 2 of the Supply of Goods and Services Act 1982).
- 11.4 Subject to the provisions of Condition 11.3 and Condition 10 above, all representations, warranties, and conditions whether implied by statute or otherwise are excluded from the Contract. In the case of representations, warranties, conditions implied by statute these are excluded to the fullest extent permitted by law.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CONDITION 11.5:

- 11.5 Subject to the provisions of Conditions 11.3, 11.7, and 11.10, the Company's entire liability in respect of any Event of Default shall not exceed:
- 11.5.1 £2,000,000 in the case of an Event of Default in respect of sudden and unforeseen damage to the physical property of the Customer resulting from the negligence of the Company or its employees agents or sub-contractors;
- 11.5.2 in the case of any other Event of Default in respect of which the Company is indemnified against any loss or damage suffered by it under the terms of any insurance policy which for the time being it has in force, the amount that the Company is actually able to recover under such policy of insurance in respect of the loss or damage suffered by the Customer in respect of such Event of Default; the case of any other Event of Default, the price of the Goods supplied under the Contract and/or the Charges for the Services performed under the Contract for the 12 months immediately preceding the date of the Event of Default.
- 11.6 Subject to Condition 11.3 above, the Company shall not be liable to the Customer in respect of any Event of Default for any:
- 11.6.1 loss of profits (whether direct or indirect);
- 11.6.2 loss of business;
- 11.6.3 loss of goodwill;
- 11.6.4 loss or corruption of data;
- 11.6.5 loss of anticipated savings;
- 11.6.6 any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.
- 11.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.
- 11.8 The Customer hereby agrees to give the Company not less than 28 days in which to remedy any Event of Default hereunder, and where remedied within such period, such event shall be deemed not to have been an Event of Default.
- 11.9 The Company shall not be liable for any loss or corruption of data, as the Customer agrees that it is its own responsibility to back up all data and material on relevant storage media on a regular basis in accordance with good industry practice, and it is a condition of the Company providing the Services that the Customer complies with the terms of this Condition 11.9.

12. Force Majeure

The Company reserves the right to defer the date of delivery of the Goods or performance of the Services or to cancel the Contract, or reduce the volume of the Goods ordered by the Customer (without liability to the Company) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including: acts of God; governmental actions; war or national emergency; acts of terrorism; protests; riot; civil commotion; fire; explosion; flood; epidemic; lock-outs; strikes or other labour disputes (whether or not relating to either party's workforce); restraints or delays affecting carriers; or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. Termination

- 13.1 The Company may, without prejudice to any of its other rights, stop any Goods in transit and/or suspend further deliveries of Goods or cancel the Services by notice in writing to the Customer without any liability to the Company, and determine any order or Contract immediately if:
- 13.1.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer, or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 13.1.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or ordered against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 13.1.3 the Customer encumbers or in any way charges any of the Goods; or
- 13.1.4 the Customer takes or suffers analogous action or proceedings or becomes insolvent under foreign law; or
- 13.1.5 the Customer commits any material breach of the Contract between the Company and the Customer; or
- 13.1.6 the Customer fails to pay any sum due on the due date or in any other manner.
- 13.2 In the event that any of the circumstances in Conditions 13.1.1 to 13.1.6 occur, without prejudice to any of the Company's other rights, if the Goods have been delivered or Services provided, in whole or in part but have not been paid for the price and/or charges shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. Export terms

- 14.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 14 (subject to any Specific Agreement) shall apply notwithstanding any other provision of these Conditions.
- 14.2 Subject to any Specific Agreement, the Goods shall be delivered Delivery Duty Unpaid (DDU as defined in Incoterms 2000) subject to the following variations:
- 14.2.1 the Customer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the country of origin, and/or the importation of the Goods into the country of destination; and

- 14.2.2 the Customer shall be responsible for the payment of any taxes, duties, levies or charges on them arising as a result of the export of the Goods from the country of origin, and/or the importation of the Goods into the country of destination or otherwise; and
- 14.2.3 the Customer shall be responsible for completing all transfer documents, customs formalities or other paperwork relating to the export of the Goods from the country of origin, and/or the importation of the Goods into the country of destination or otherwise.
- 14.3 The Company reserves the right to insist that payment of all amounts due to the Company shall be made by irrevocable letters of credit opened by the Customer in favour of the Company and confirmed by a bank acceptable to the Company.

15. Warranties by Customer

- 15.1 The Customer warrants that it is the owner of the premises at which any Goods are to be installed and/or the Service is to be provided or otherwise has the authority of all persons necessary for the installation of the Goods and/or the provision of the Service.
- 15.2 The Customer shall be responsible for providing a safe working environment for the Company's employees, agents and subcontractors and appropriate and safe access to all parts of the premises at which the Goods are to be installed and/or the Services provided.
- 15.3 Without prejudice to the above provisions the Customer shall co-operate generally and provide such assistance as is reasonably required to enable the Company to install the Goods and/or provide the Services.

16. Proprietary Rights

- 16.1 The Customer acknowledges and agrees that the Company and/or its licensors own all Intellectual Property Rights in the Proprietary Software and relating to or arising from the Services, including but not limited to the design, format and layout of all reports produced as part of Services. The Customer expressly acknowledges and agrees that it shall gain no rights in the Proprietary Software, nor in any coding resulting from any configuration services, nor in any trade marks relating to the Proprietary Software or to the Services, nor in any Intellectual Property Rights relating to or arising from the Proprietary Software or any of the Services, all of which shall at all times remain in the full ownership of the Company or of its licensors, as applicable;
- 16.2 Except as expressly stated herein, these Conditions do not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Proprietary Software, the Services or any related documentation, including but not limited to the design, format and layout of all reports produced as part of the Services.
- 16.3 The Company confirms that it has all the rights in relation to the Proprietary Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 16.4 Nothing in this Agreement shall prevent or restrict the Company from licensing the Proprietary Software or providing the Services to any third party.

17. General

- 17.1 The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group or through any associated company, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- 17.2 Any notice request instruction or other documents to be given under these Conditions shall be delivered or sent by first class recorded post to the address of the other party to the Contract (or such other address as may have been notified) and such notice or other document shall be deemed to have been served (if delivered) on the second business day after posting. Email and fax notices shall not be valid.
- 17.3 The waiver by the Company of any breach of the Contract by the Customer shall not be considered as a waiver of any subsequent breach of the same or any other provisions nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have under these Conditions operate as a waiver of any breach or default by the Customer.
- 17.4 The Company may assign the Contract or any part of it to any person, firm or company.
- 17.5 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 17.6 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

18. Severability

If any wording in any provision of these Conditions shall be found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of these Conditions, and the remaining wording of such provision, shall continue in full force and effect.

19. Third Parties Contracts Act

No person who is not a party to the Contract (or to these Conditions) is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

20. Non-solicitation

- 20.1 During the term of the Contract, and for six months thereafter, neither party shall employ or solicit to work for any person who is employed by the other party and who has been involved to a material extent in the provision of Services at any time during the preceding 12 months.
- 20.2 If either party is in breach of Condition 20.1 it shall pay the other party a sum equivalent to the gross salary paid by that other party to the relevant employee for the final six months of their employment.
- 20.3 The parties agree that the sum of compensation set out in this Condition 20 represents a reasonable and fair estimate of the cost of recruiting a suitable replacement for the relevant employee