

Terms and Conditions

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Standard Terms & Conditions For the Sale of Goods

TERMS AND CONDITIONS OF TRADING

The Customer's attention is particularly drawn to the provisions of clause 14 (limitation of liability).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1

Definitions:

Business Day means a day other than a Saturday, Sunday or public holiday in England;

Commencement Date has the meaning given in clause 2.2;

Conditions means these terms and conditions as amended from time to time in accordance with clause 18.8;

Contract means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions;

Customer means the person or firm who purchases the Goods and/or Services from the Supplier;

Deliverables means the deliverables, if any, set out in the Order produced by the Supplier for the Customer;

Force Majeure Event has the meaning given to it in clause 17;

Goods means the goods (or any part of them) set out in the Order;

Goods Specification means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier;

Group means any company which is a subsidiary of a party or which is a holding company of a party or a subsidiary of such holding company (as those expressions are defined in section 1159 of the Companies Act 2006), in each case from time to time, and **Group Company** shall mean any company which is a member of the Group;

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be;



Quotation means the quotation provided by the Supplier setting out its proposal for the supply of goods and/or services to the Customer;

Services means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification;

Service Specification means the description or specification for the Services provided in writing by the Supplier to the Customer;

Site(s) means the building(s) or property(ies) owned or operated by the Customer at which the Services are to be supplied;

Supplier means Airwave Europe Ltd. a company registered in England and Wales with company number **03000768**;

Supplier Materials has the meaning given in clause 10.1.11; and

Third Party Software means any third party software to be supplied by the Supplier to the Customer as set out in the Order.

1.2

Interpretation:

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its personal representatives, successors and permitted assigns.
- A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- A reference to **writing** or **written** includes email but not fax.

2.

BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.



2.5 Any Quotation given by the Supplier shall not constitute an offer, and unless otherwise specified in the Quotation, is only valid for a period of 3 months from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.3 If for any reason the Customer cancels an Order for the supply of Goods before delivery of the Goods, the Supplier may charge a re-stocking fee calculated as 25% of the price which would have been payable by the Customer for such Goods.

3.4 If, as part of the Services, the Supplier removes old equipment from any Sites then title to that equipment shall pass to the Supplier and (unless otherwise stated in the Quotation) the Supplier shall be responsible for the disposal of such equipment at its own cost or may re-sell such equipment and retain the sale proceeds.

4. DELIVERY OF GOODS

4.1 The Goods may be delivered in one of the following ways:

4.1.1 where the Order relates to Goods only, the Supplier will deliver the Goods to the Customer, unless it is agreed by the parties that the Customer shall collect the Goods;

4.1.2 where the Order relates to Goods and Services, such that the Supplier will install the Goods for the Customer, the Goods may be:

a) delivered to the relevant Site(s) following the Order for installation at a later date;

b) delivered to the relevant Site(s) by the Supplier when they attend the Site(s) to carry out the Services; or

c) kept by the Supplier in storage and drawn down as and when the Supplier requires them for the purposes of carrying out the Services. If the Goods are stored by the Supplier for the Customer then the Supplier reserves the right to charge the Customer a storage fee.

The method of delivery shall be specified in the Quotation or, if the Quotation is silent in relation to the method of delivery, shall be agreed by the parties.

4.2 Where delivery is in accordance with clause 4.1.1 or 4.1.2(a), the Supplier shall:



4.2.1 ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

4.2.2 ensure that it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense; and

4.2.3 if:

a) the Goods are to be delivered by the Supplier, it shall deliver the Goods to the location set out in the Order or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Goods are ready. Delivery of the Goods by the Supplier shall be completed when the Supplier places the Order at the Customer's disposal at the delivery location; or

b) the parties agree that the Customer will collect the Goods, the Customer shall collect the Goods from the Supplier's premises at Lime Place, Rosier Business Park, Billingshurst, West Sussex RH14 9DE, or such other location as may be agreed with the Customer before delivery, within three Business Days of the Supplier notifying the Customer that the Goods are ready for collection.

4.3 Any dates quoted for delivery or collection of the Goods are approximate only, and the time of delivery or availability for collection is not of the essence. The Supplier shall not be liable for any delay in delivery or delay in availability for collection of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Supplier fails to deliver the Goods or make them available for collection (as applicable), its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods or failure to make the Goods available for collection to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.5 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:



4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.5.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for collection or delivery (as applicable) the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.7 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

5.1 Certain of the Goods will come with a manufacturer's guarantee. For details of the applicable guarantee terms and conditions the Customer should refer to the manufacture's guarantee provided with the Goods.

5.2 Save where a manufacturer's guarantee is provided (in which case no guarantee or warranty will be provided in respect of the Goods by the Supplier and the provisions of clause 5.3 do not apply to those Goods), the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (or such other period as is specified in the Quotation) (**warranty period**), the Goods shall:

5.2.1 conform in all material respects with their description and any applicable Goods Specification;

5.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.2.3 be fit for any purpose held out by the Supplier.

5.3 Subject to clause 4, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

5.3.1 the Customer gives notice in writing during the warranty period and within 20 Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 2;

5.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and



5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 2 if:

5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 3;

5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.4.3 the defect arises as a result of the Supplier following any Goods Specification supplied by the Customer;

5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

5.4.6 the defect arises due to accidental damage or misuse by the Customer or a third party; or

5.4.7 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 2.

5.6 The terms set out in these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.

TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery or if the Customer collects the Goods on collection by the Customer.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;



6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery or collection;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 1.2 to clause 15.1.4 (inclusive); and

6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.

6.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 1.2 to clause 15.1.4 (inclusive), then, without limiting any other right or remedy the Supplier may have:

6.5.1 the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and

6.5.2 the Supplier may at any time:

a) require the Customer to deliver up all Goods in its possession; and

b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7.

SUPPLY OF SERVICES

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall be entitled to amend or vary the Services to ensure they comply with applicable statutory or regulatory standards.

7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Customer acknowledges that the Supplier may be delayed in performing the Services as a result of the following:

7.3.1 where the Services are to be carried out at a Site where building works are being carried out, due to a delay in the completion of such building works which prevents the Supplier from carrying out the Services;

7.3.2 power to the Goods (including any TVs and/or modems) to be installed as part of the Services not being available 24/7;



7.3.3 the WIFI signal level in the room(s) where the Goods are to be installed being insufficient to enable the Goods to come online and function correctly;

7.3.4 faults on the IT network, e.g. cabling causing certain hotel rooms or public areas not to work/come online or be intermittent;

7.3.5 the Supplier not having access to all rooms to which it requires access to carry out the Services; and

7.3.6 if any relevant third-party IT provider:

a) provides wrong information on what the network can do; or

b) insists on being in attendance when the Services are carried out.

7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.5 The Supplier reserves the right to amend the Goods Specification and/or the Service Specification if information provided by the Customer for the purposes of the Supplier providing its Quotation is shown to be incorrect or doesn't apply to all Sites and rooms where the Services are to be carried out.

7.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. MAINTENANCE

Where it is agreed that the Supplier will provide on-going maintenance services in respect of the Goods, the parties will enter into a separate maintenance agreement / service level agreement in respect of such maintenance services.

9. HIRE OF EQUIPMENT

Where it is agreed that the Supplier will hire goods to the Customer rather than the Customer purchase the goods from the Supplier, the parties will enter into a separate hire agreement in respect of such hire and the terms set out in these Conditions will not apply to such hire of goods.

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

10.1.1 ensure that the terms of the Order and any other information provided to the Supplier are complete and accurate;

10.1.2 co-operate with the Supplier in all matters relating to the Services;



10.1.3 ensure the full co-operation of the persons in charge of the Site(s) where the Services are to be provided;

10.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Site(s) and the Customer's other premises and facilities as reasonably required by the Supplier to provide the Services;

10.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

10.1.6 prepare the Site(s) for the supply of the Services;

10.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the use of the Goods and the supply of the Services before the date on which the Services are to start;

10.1.8 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any premises where the Services are to be provided (including the Site(s));

10.1.9 comply with all applicable laws, including health and safety laws, and inform the Supplier of any asbestos potential exposure hazards within any premises where the Services are to be provided (including the Site(s));

10.1.10 supply a risk assessment and method statement in respect of the Services to the Supplier before the Services commence;

10.1.11 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

10.1.12 comply with any additional obligations as set out in the Service Specification and the Goods Specification; and

10.1.13 comply with any other requirements set out in the Quotation.

10.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

10.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations, in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;



10.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 2; and

10.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

11. CHARGES AND PAYMENT

11.1 Save as otherwise provided in this clause 11:

11.1.1 the price for Goods (and any applicable delivery charges) shall be set out in the Quotation (as may be amended by the Supplier in accordance with the terms of these Conditions); and

11.1.2 the charges for Services shall be set out in the Quotation (as may be amended by the Supplier in accordance with the terms of these Conditions) and may include survey fees and the provision of accommodation and subsistence for the Supplier's personnel whilst they are carrying out the Services and parking charges.

11.2 The price / charges referred to in clause 11.1 do not include the following unless otherwise specified in the Quotation:

11.2.1 data cabling;

11.2.2 data room wall socket;

11.2.3 patch panels;

11.2.4 cabinets in comms room and patch locations;

11.2.5 mains power; or

11.2.6 containment

11.3 The price / charges referred to in clause 11.1 have been calculated based on the following assumptions (**Assumptions**):

11.3.1 the information provided by the Customer for the purposes of the Supplier providing its Quotation is correct and applies to all Sites and rooms where the Services are to be carried out and is confirmed by the Supplier's survey of the Site(s) (but nothing shall oblige the Supplier to carry out a survey of the Site(s) before the commencement of the Services) or confirmed when the Supplier's personnel commence providing the Services at the Site(s);

11.3.2 the Services will be carried out during the Supplier's normal working hours (9:00am – 5:00pm – Monday to Friday). If the Services are required to be provided outside of the Supplier's normal working hours this must be agreed by the parties in advance and will be subject to additional charges;



11.3.3 the sample rooms surveyed by the Supplier before the commencement of the Services (if such a survey is carried out) are representative of all of the rooms in which the Services are to be provided;

11.3.4 the Customer provides the Supplier with open access to all required Site(s) and all necessary rooms at the Site(s);

11.3.5 the Customer provides the Supplier with access to a secure storage area;

11.3.6 the Supplier can utilise on site waste removal;

11.3.7 power to the Goods (including any TVs and/or modems) to be installed as part of the Services is available 24/7;

11.3.8 the WIFI signal level in the room(s) where the Goods are to be installed is sufficient to enable the Goods to come online and function correctly;

11.3.9 there are no faults on the IT network, e.g. cabling causing certain hotel rooms or public areas not to work/come online or be intermittent;

11.3.10 Sky equipment, cards and subscriptions will not be the responsibility, or at the cost of, the Supplier;

11.3.11 all mains power and compatible IPTV data networks are supplied by third parties and not by the Supplier;

11.3.12 PMS interface computer or IP integration are supplied by third parties and not by the Supplier;

11.3.13 UPS is not included;

11.3.14 conditional access systems equipment assumes compatibility with DRM TV's (where applicable); and

11.3.15 that any other assumptions set out in the Quotation are correct.

If any of the Assumptions prove to be incorrect (whether before or after delivery of the Goods and whether before or during the supply of the Services) or the Customer's requirements or specifications change, the prices / charges payable by the Customer shall be adjusted by the Supplier and revised prices / charges notified to the Customer in writing.

11.4 The cost of the Services will increase in the event that lack of room access results in the Supplier's personnel having to stay on site longer than anticipated by the Supplier for the purposes of producing its Quotation.

11.5 In order to complete the Services the Supplier has to interface with a third-party IT network and as a result a prerequisite document must be completed by the Customer before the Services can commence. However difficulties can still be incurred if any relevant third-party IT provider:



11.5.1 has given wrong information on what the network can do;

11.5.2 requires payment from the Supplier that the Supplier had not previously been aware of or provided for in its Quotation; or

11.5.3 insists on being in attendance when the Services are carried out.

If any of the above occur and increase the Supplier's costs of supplying the Goods and/or Services the prices / charges payable by the Customer shall be adjusted by the Supplier and revised prices / charges notified to the Customer in writing.

11.6 The Supplier reserves the right to increase the price of the Goods or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier or the supply of the Services by the Supplier that is due to:

11.6.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

11.6.2 any request by the Customer to change the collection or delivery date(s), quantities or types of Goods ordered, or the Goods Specification or the dates for the supply of the Services or the Service Specification; or

11.6.3 any delay caused by any instructions of the Customer in respect of the Goods and/or the Services or the failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or the Services.

11.7 In respect of the supply of Goods only, the Supplier shall invoice the Customer on or at any time after the Commencement Date. The Supplier reserves the right to withhold delivery until its invoice has been paid in full.

11.8 In respect of the supply of Goods and Services, the Supplier shall invoice the Customer in accordance with the payment terms set out in the Quotation or if no terms are set out in the Quotation:

11.8.1 the Supplier shall invoice the Customer on or at any time after the Commencement Date in respect of all Goods and the Supplier reserves the right to withhold delivery until its invoice has been paid in full; and

11.8.2 the Supplier shall invoice the Customer for 50% of the charges due in respect of the Services on or at any time after the Commencement Date and the balance due to the Supplier shall be payable on completion of the Services. If the Supplier (acting reasonably) determines that it has achieved practical completion of the Services but is unable to fully complete the Services because of: (i) the Customer's breach of the Contract (including any failure of your IT network to support the Goods and Services provided by the Supplier under the Contract); (ii) any of the events referred to in clause 7.3 (Supply of Services); or (iii) any of the events referred to in clause 11.5, then the Supplier can deem the Services to be complete and invoice the Customer for the balance of the charges.



11.9 Unless otherwise agreed by the parties all prices quoted will be in pounds sterling and all invoices shall be raised in pounds sterling. If the Supplier agrees to provide a Quotation in a currency other than pounds sterling then the Quotation shall be calculated by the Supplier in the same way as it would produce a quotation in pounds sterling and then it shall convert the pricing into the required currency (typically euros or dollars). The Supplier shall calculate the exchange rate by reference to the daily spot exchange rate published by the Bank of England at the following website: bankofengland.co.uk for the relevant currency. When the Supplier raises its invoice in respect of the Goods and/or Services (or any part of them) if the exchange rate has changed since the date of the Quotation the price shall be re-calculated and its invoice raised based on the current exchange rate (calculated using the method set out above).

11.10 The Customer shall pay each invoice submitted by the Supplier:

11.10.1 in the currency specified on the invoice;

11.10.2 within 30 days of the date of the invoice unless otherwise specified in the Quotation; and

11.10.3 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

11.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services and/or Goods at the same time as payment is due for the supply of the Services and/or Goods.

11.12 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15(*Termination*), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 12 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.13 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12.

THIRD PARTY SOFTWARE

12.1 If Third Party Software is to be supplied to the Customer in accordance with a Contract:



12.1.1 the charges payable in respect of the Third Party Software will be set out in the Quotation;

12.1.2 the charges may include one off, monthly, annual and/or three yearly fees; and

12.1.3 the parties will enter into a separate software licence which will set out the terms on which the Customer may use the Third Party Software.

13.

CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (**Confidential Information**), except as permitted by clause 2.

13.2 Each party may disclose the other party's Confidential Information:

13.2.1 to its (and in respect of the Supplier also its Group's) employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its (and in the respect of the Supplier also its Group's) employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

13.4 The Customer acknowledges that, where Goods are installed by the Supplier to create an operational system, the design and layout of that system is the Supplier's Confidential Information (**System Layout**).

13.5 All Intellectual Property Rights in or arising out of or in connection with the Services including the System Layout and any Deliverables (but excluding Intellectual Property Rights in respect of Third Party Software) shall be owned by the Supplier.

14.

LIMITATION OF LIABILITY

The Customer's attention is particularly drawn to this clause 14.

14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with these Conditions and the Contract including liability in contract, tort (including negligence), misrepresentation, restitution, deliberate default or otherwise.

14.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

14.2.1 death or personal injury caused by negligence;



14.2.2 fraud or fraudulent misrepresentation; and

14.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.3 Subject to clause 14. 2, the Supplier's total liability to the Customer shall not exceed the Total Charges. For the purposes of this clause 14.3 **Total Charges** means all sums paid by the Customer and all sums payable by the Customer under the Contract in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Customer.

14.4 Subject to clause 14. 2, the following types of loss are wholly excluded by the Supplier:

14.4.1 loss of profits;

14.4.2 loss of sales or revenue (including inability to rent hotel rooms to guests at all or at full price);

14.4.3 loss of business (including inability to rent hotel rooms to guests at all or at full price);

14.4.4 loss of agreements or contracts;

14.4.5 loss of anticipated savings;

14.4.6 loss of use or corruption of software, data or information;

14.4.7 loss of or damage to goodwill; and

14.4.8 indirect or consequential loss,

in each case, however caused, even if foreseeable.

14.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Conditions and the Contract.

14.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14.7 The limits and exclusions in this clause 14 reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.



14.8 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so;

15.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, the Supplier may:

15.2.1 terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or

15.2.2 terminate the Contract by giving the Customer 7 days' written notice.

15.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract, or any other contract between the Customer and the Supplier, if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 1.2 to clause 15.1.4 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract:

16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and



16.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17.

FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

18.

GENERAL

18.1 Assignment and other dealings

18.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

18.2 Notices

18.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or airmail at its registered office (if a company) or its principal place of business (in any other case).

18.2.2 Any notice shall be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- c) if sent by airmail, at 9.00am on the fifth Business Day after posting or at the time recorded by the delivery services.



18.2.3 A notice given under these Conditions and/or any Contract is not valid if sent by email or fax.

18.2.4 Clauses 2.1 to 18.2.3 (inclusive) do 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.

18.3 Severance If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.3 shall not affect the validity and enforceability of the rest of the Contract.

18.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6 Entire agreement.

18.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

18.6.3 Nothing in clauses 6.1 or 18.6.2 shall limit or exclude any liability for fraud.

18.7 Third parties rights.

18.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

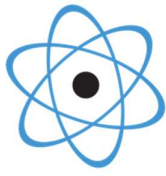
18.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).



18.9 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.

18.10 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.





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