

## SMAR-TECHNOLOGY LIMITED'S GENERAL TERMS AND CONDITIONS OF SALE ("Conditions")

THESE CONDITIONS CONTAIN PROVISIONS EXCLUDING AND LIMITING LIABILITY. THE CUSTOMER IS REFERRED IN PARTICULAR (BUT NOT EXCLUSIVELY) TO CONDITIONS 2, 5 10, 11 AND 12.

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Condition 1 shall apply to these Conditions.
- 1.2 The following words and expressions shall have the meanings assigned to them below except where the context requires otherwise:
  - "Account" means the credit facility or account (if any) provided to the Customer from the Company;
  - "Company" means SMAR-TECHNOLOGY LIMITED (Registered Office: 531, Denby Dale Road West, Calder Grove, Wakefield, West Yorkshire WF4 3ND (Registered number: 04244048));
  - "Contract" means any contract between the Company and the Customer for the sale and purchase of Goods and/or Services in accordance with and subject to these Conditions;
  - "Customer" means the person, company, partnership or other type of business or organisation that enters into a Contract;
  - "Goods" means any goods ordered by the Customer from the Company under a Contract; and
  - "Services" means any services ordered by the Customer from the Company under a Contract.
  - "System" means any combination of equipment supplied and/or installed by the Company.
  - "Completion" in relation to installation of Goods and Systems, is deemed to have taken place on the date shown on the Handover/Completion documentation and/or Certificate and/or the date of the related invoice.
  - "Notification", "Notice" and "Service of Notification" is the formal communication between the Customer and the Company and vice versa which is only deemed effective if carried out by email or in writing by registered post to the "Contact Address".
  - "Contact Address" is an email address and/or postal address specified for the "Service of Notifications" between the Customer and the Company and vice versa. Any changes to these "Contact Address" details must be confirmed by the Customer and Company to each other, and agreed with each other, in writing.
- 1.3 References to the masculine include the feminine and the neuter, and the singular include the plural and, in each case, vice versa. Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.
- 1.4 Headings do not affect the interpretation of the Conditions.

### 2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.2 the Conditions shall apply to all Contracts to the exclusion of all other terms and conditions. No terms or conditions of the Customer (whether endorsed on, delivered with, or contained in the Customer's purchase order or other documents) shall form part of any Contract and, subject to Condition 2.2, any attempt by the Customer to exclude, vary or limit any Conditions shall be void.
- 2.2 Any variation to the Conditions, and any representations about the Goods and/or Services, shall have no effect and shall not form part of the Contract unless agreed in writing by the Company. No person has the authority on behalf of the Company to vary any of these Conditions except a Director of the Company and then only in writing signed by him.
- 2.3 The Company may provide the Customer with an oral or written quotation. A quotation so provided is an invitation to treat by the Company to sell Goods and/or provide Services, subject to the Conditions, to the Customer. A quotation is valid for 30 days from its date, provided that the Company has not previously withdrawn it.
- 2.4 An acceptance of a quotation or the placing of an order by the Customer shall be deemed to be an offer, subject to the Conditions, to purchase the Goods and/or Services stated therein from the Company. No quotation accepted or order placed by the Customer shall be deemed to be accepted by the Company until the Company confirms acceptance in writing or, if earlier, delivers the Goods and/or provides the Services.
- 2.5 Subject to Condition 4.2, no binding Contract will come into existence until an order acknowledgement is given by the Company in accordance with Condition 2.4 or, if earlier, by the Company delivering the Goods and/or providing the Services.
- 2.6 Once the Contract arises between the Company and the Customer, in accordance with Condition 2.5, the Customer cannot cancel or vary the same except with the prior written consent of the Company and then only upon the Customer indemnifying the Company against any loss, liability, loss of profit (direct and indirect) and any additional administrative and other costs incurred.

### 3. DESCRIPTIVE MATTER AND ILLUSTRATIONS

- 3.1 All statements, descriptions, representations, specifications, performance figures, drawings particulars, weights and dimensions in any quotation, catalogue, advertisement, price list, leaflet or other publication or document issued by the Company are approximations and for information purposes only, should not be relied on by the Customer as precise or construed literally and shall not be construed as varying or overriding these Conditions or of forming part of any Contract.
- 3.2 The property and copyright in all the materials referred to in Condition 3.1 shall remain vested in the Company.
- 3.3 The Company reserves the right to alter any materials referred to in Condition 3.1 at any time without notice and, in particular (but without limitation), the Company reserves the right to update any specification of Goods (including any spare parts supplied) without notice to the Customer provided that the specification shall not be reduced nor changed from any specifically agreed specification.

### 4. CUSTOMER CREDIT

- 4.1 The Customer acknowledges and agrees that the Company may (whether to process an Account application, check the identity or creditworthiness of the Customer or otherwise) request bank and/or trade references from the Customer, may make any enquiries of credit reference agencies and any other third parties which it deems necessary and may disclose information about

the conduct of the Customer's Account to any such credit reference agencies and third parties. The information obtained from or provided to credit reference agencies or other third parties may be used when assessing further applications for credit by the Customer or for debt collection, tracing and fraud prevention purposes.

- 4.2 If the Company notifies the Customer before or on entering into a Contract that the Company requires references for the Customer, the Company's acceptance of the Contract shall be conditional upon the receipt by the Company (within the time period specified by the Company in writing or if no such time period is specified within 14 days of the Contract coming into existence in accordance with Condition 2.5) of the references requested. If any such references are not forthcoming within such period, or if the Company notifies the Customer within that period that any references received or credit checks or other enquiries undertaken are not satisfactory, the Company's acceptance of the Contract shall be automatically withdrawn, no binding Contract shall be deemed to have come into existence and neither party shall be under any further liability to the other in respect of such Contract.

- 4.3 If the Company decides to grant credit facilities to the Customer (by arranging for an Account to be opened), the Customer acknowledges and agrees that any orders made with the Company and the use of the Account shall be governed by and subject to these Conditions.

## **5. DELIVERY AND RISK**

- 5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business (i.e. on an Ex Works basis) and delivery of the Services shall take place at the location agreed to in writing by the parties under the Contract ("Delivery Point").
- 5.2 Goods shall be deemed to have been delivered to the Customer when the Company notifies the Customer that the Goods are ready for collection.
- 5.3 All actions carried out by the Company in relation to delivery of the Goods which extends beyond Conditions 5.1 and 5.2 (i.e. Ex-Works) shall be done as the Customer's agent and at the Customer's risk and expense.
- 5.4 If the Company is requested by the Customer to act as its agent for the purposes of Condition 5.3 this shall be limited to placing the Goods in the post or arranging for the Goods to be delivered to the Customer by a carrier and, in such circumstances, the Goods shall be deemed to have been delivered to the Customer when the Goods are placed in the post or collected by a carrier on behalf of the Customer.
- 5.5 The risk in the Goods shall pass to the Customer when they are delivered in accordance with either Condition 5.2 or 5.4 (as the case may be).
- 5.6 Any dates specified or agreed to by the Company for delivery of the Goods and Services are intended to be an estimate only and are not a term of the Contract between the Customer and the Company and the Company shall not therefore be liable for any delay in delivery of the Goods and Services or for any consequential or other loss arising therefrom howsoever such delay may be caused. Time for delivery shall not be, nor shall it be made by notice, of the essence.
- 5.7 It is the responsibility of the Customer to check the Goods upon receipt to ensure that they conform to the Contract and the Customer's requirements and, in particular, to check for any damage, shortfall or other deficiency in the Goods which may require remedy by the Company.
- 5.8 The Company shall not be liable for delivering the wrong Goods or for any non-delivery of or shortfall in the Goods (even if caused by the Company's negligence) unless the Customer notifies the Company in writing within 2 days of the agreed delivery date.
- 5.9 The Company's liability for claims under Condition 5.8, as a result of the Company complying with the notice requirements, is limited to, at the Company's option, replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate.
- 5.10 The Company's record of the delivery date and quantity and description of Goods delivered to the Customer shall be conclusive evidence of such, unless the Customer can provide conclusive contrary evidence.
- 5.11 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, wishes to delay delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 5.11.1 the Goods will be deemed to have been delivered for the purposes of these Conditions; and
- 5.11.2 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.12 The Company shall take reasonable care to ensure that the Goods are delivered to or collected by the postal authorities or other carriers (or by the Customer's nominated carrier where appropriate), in a deliverable condition but, subject thereto, the Company accepts no liability for damage to or loss or shortage of any Goods occurring after delivery has taken place under these Conditions (i.e. whilst the Goods are in transit to the Customer) or for any loss or damage (including loss of profits (direct and indirect) and any indirect, special or consequential loss) arising directly or indirectly therefrom.
- 5.13 Any claim in respect of any loss or theft of or damage to the Goods in transit must be made by the Customer to the appropriate postal authorities and/or carrier within the relevant time period required by such postal authorities or carrier. Without prejudice to the foregoing provisions of this Condition 5.13, the Company shall provide the Customer with all reasonable assistance in connection with any such claim provided that the Customer notifies the Company in writing within two days of receipt of the Goods by the Customer.
- 5.14 The Customer shall pay the cost of delivering the Goods and costs of packaging the same in addition to the purchase price of the Goods and shall be responsible for all import or export duties, charges or levies.

## **6. INSTALMENTS**

- 6.1 Except where otherwise expressly agreed in writing by the Company, the Company shall be entitled to deliver the Goods by one or more instalments. Where the Goods are delivered in instalments, whether at the Company's election or at the request of the Customer, each such instalment shall be treated as a separate contract for the purpose of these Conditions and shall be invoiced

and paid for separately. No cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

- 6.2 Where the Goods are delivered to the Customer by instalments or over a period and the Customer has failed to pay on its due date any invoice for Goods and/or Services already delivered, the Company shall be entitled (without prejudice to any other rights it may have) to, at its absolute discretion, suspend delivery of further instalments of Goods or provision of Services until all amounts outstanding to the Company from the Customer have been paid in full or to terminate the relevant Contract and any or all other Contracts.

## **7. PRICE**

- 7.1 Unless otherwise agreed by the Company in writing, and subject to Condition 7.4, the price for the Goods or Services shall be the price stated in the Company's quotation or in any order acknowledgement provided by the Company to the Customer in accordance with Conditions 2.4 and 2.5 ("Price").
- 7.2 Unless otherwise agreed by the Company in writing the Price shall exclude Value Added Tax and the cost of packaging and delivery, which shall be charged by the Company to the Customer as part of the Contract and shall be payable by the Customer as additional costs in accordance with the payment terms set out in Condition 8.
- 7.3 Unless otherwise agreed by the Company in writing the Price shall exclude any and all other applicable taxes and duties. The Customer shall be responsible for payment of all such costs.
- 7.4 The Price is based on the cost of materials, labour, transport, taxes and duties and all other relevant costs at the date of the quotation and/or order acknowledgement. The Company reserves the right to vary the Price to take account of any variation (howsoever arising) in these costs or the imposition of any new taxes or duties between the date of the quotation and/or order acknowledgement and the delivery date.

## **8. PAYMENT AND INTEREST**

- 8.1 For Customers with an Account that has not reached its credit limit the Price and all other sums due under the Contract shall be paid by the Customer in UK pounds sterling within 30 days of the date of the relevant invoice, unless otherwise stated by the Company in writing.
- 8.2 For Customers without an Account the Price and all other sums due under the Contract shall be paid for by the Customer in UK pounds sterling at the time of the order or on delivery, as directed by the Company.
- 8.3 For Goods and/or Systems installed by the Company, the Company reserves the right to receive from the Customer 25% of the Price of the Goods and Services prior to supply and installation with the balance of that Price to be paid within 14 days of completion of the installation or from the invoice date, whichever is sooner.
- 8.4 The Company will limit the value of Goods supplied to the Customer on a credit basis (credit limit) according to the perceived credit worthiness of the Customer, the previous payment history of the Customer and any appropriate third party reports or recommendations in respect of the Customer.
- 8.5 The Company reserves the right to exercise its absolute discretion and cancel the Account by notice and the Company reserves the right to suspend the Account if it decides, for whatever reason, that it requires further security from the Customer, other than that already provided (if any), for the performance and discharge of the Customer's obligations under any Contract or for any other reason it considers reasonable. The Customer agrees to use its best endeavours to ensure that any additional security required by the Company (including, but not limited to, a third party providing additional guarantee) is provided. The Company may decide to reinstate the Account if the Customer provides the additional security required or meets any other conditions required to be satisfied by the Company.
- 8.6 If the Company exercises its right to cancel or suspend the Account, in accordance with Condition 8.5, all sums owed to the Company by the Customer at the date of cancellation or suspension shall be payable on demand and the Company may continue trading with the Customer on the basis set out in Condition 8.2 for Customers without an Account.
- 8.7 Time for payment shall be of the essence.
- 8.8 No payment shall be deemed to have been received until the Company has received cash or cleared funds and all sums payable to the Company under a Contract shall become due immediately on its termination, howsoever arising.
- 8.9 The Customer shall make all payments due under the Contract in full 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.
- 8.10 Without prejudice to any of its other remedies, if any amount due from the Customer is not paid in accordance with these Conditions the Company may (at its option) do all or any of the following:
- 8.10.1 treat any or all Contracts as repudiated by the Customer;
  - 8.10.2 without notice suspend or cancel delivery of the Goods and/or Services and any Warranty cover under the Contract, and any other Contract, until the Customer pays the outstanding amount in full;
  - 8.10.3 appropriate any payment made by the Customer under any other Contract with the Company to pay for any outstanding amounts as the Company may, in its sole discretion, think fit;
  - 8.10.4 charge interest (accruing from day to day) at the rate of 8% per annum plus the Bank of England base rate for the time being on all sums overdue for payment by the Customer hereunder and all such interest so charged shall be payable by the Customer to the Company on demand.
- 8.11 The Company reserves the right to claim statutory interest under The Late Payment of Debts (Interest) Act 1998.

## **9. TITLE TO THE GOODS**

- 9.1 Full legal beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though the Goods have been delivered and risk has passed to the Customer) until:

- 9.1.1 payment in full, in cash or cleared funds, of the Price and all other sums due under the Contract has been received by the Company; and
- 9.1.2 all other sums which are due to the Company from the Customer.
- 9.2 Until title to and property in the Goods passes to the Customer in accordance with Condition 9.1:
  - 9.2.1 the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
  - 9.2.2 the Customer shall 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 the Goods remain readily identifiable as the Company's property;
  - 9.2.3 the Customer shall not remove, destroy, deface or obscure any identifying mark or packaging in relation to the Goods
  - 9.2.4 the Customer shall maintain the Goods in satisfactory condition, keep the Goods insured on the Company's behalf for their full value against all risks and provide the Company with a copy of the insurance policy on request; and
  - 9.2.5 the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so.
- 9.3 The Company may at any time demand and without prior notice require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 17.1 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other Contract is not paid when due.
- 9.4 For the purposes of this Condition 9 the Company, its employees and agents are granted an irrevocable licence at any time to enter any premises owned, occupied or controlled by the Customer and/or any other premises or location where any of the Goods are situated or stored without prior notice.
- 9.5 The Company shall be entitled to maintain an action against the Customer for the Price and all other sums due under the Contract notwithstanding that title to and property in the Goods has not passed to the Customer.
- 9.6 The Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers provided that any sale of the Goods is a sale of the Company's property on the Customer's own behalf, acting as principal, in the Customer's ordinary course of business and at the full market value.
- 9.7 The Customer's right to possess, use and/or sell the Goods shall automatically cease on the occurrence of any event set out in Condition 17.1 and/or if any sum owed to the Company by the Customer is not paid when due.
- 9.8 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 limiting any other right or remedy of the Company) forthwith become due and payable.
- 9.9 In the event that the Company repossess any Goods or the Customer delivers up any Goods in accordance with this Condition 9 the Contract in respect of those particular Goods is rescinded.
- 9.10 The Company's rights and remedies set out in this Condition 9 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.
- 10. CUSTOMER'S OBLIGATIONS AND WARRANTIES**
- 10.1 The Customer shall pay the Price and any other amounts due under the Contract and these Conditions in accordance with Conditions 7 and 8.
- 10.2 The Customer warrants that it has the necessary authority to enter into the Contract. The Customer warrants that all the information provided to the Company is true and accurate and acknowledges that the Company is relying upon such information in relation to the provision of the Goods and/or Services.
- 10.3 The Customer agrees to co-operate fully with the Company and provide any assistance required to supply the Goods and/or Services, in particular, but without limitation, the Customer agrees to do the following at its own expense:
  - 10.3.1 provide adequate and appropriate equipment and suitably trained and competent personnel at the Delivery Point and/or upon receipt by the Customer to unload and load the Goods and any other materials necessary to perform the Services; and
  - 10.3.2 provide the Company with all information, co-operation and support reasonably required by the Company to enable the Company to deliver the Goods and/or perform the Services in accordance with the Conditions including, but without limitation, all information relating to the hazards and risks to the Company at the Customer's premises; and
  - 10.3.3 take such steps as the Company requires to prepare the Customer's site or premises for delivery of the Goods and/or Services and providing such equipment as the Company reasonably requires; and
  - 10.3.4 carry out all reasonable instructions of the Company on all matters required to be undertaken in respect of the Goods and/or Services; and
  - 10.3.5 not to do anything, or omit to do anything, which could or would detrimentally affect the Goods and/or the performance of the Services;
  - 10.3.6 provide the Company with access at all reasonable times and otherwise as requested by the Company to its site or premises to allow the Company to supply the Goods and/or Services; and
  - 10.3.7 ensure that all health and safety requirements are maintained and complied with and any licences (including import or export licences) and consents required from any government body or authority have been obtained; and
  - 10.3.8 ensure that the Company and its employees, agents, and sub-contractors are always subject to a safe working environment.
- 10.4 If Goods are supplied under a Contract for use in conjunction with the Customer's existing equipment and/or structures the Customer shall be entirely responsible for ensuring that such equipment and/or structures are in all respects suitable and adequate for the purpose and properly installed.
- 10.5 The Customer is responsible for ensuring that any Goods and/or Systems supplied and/or installed are maintained in good working order, are regularly tested by the Customer to ensure their functionality and are not misused or damaged by the Customer, their employees or any other third party.
- 10.6 The Customer agrees to contact the Company as soon as is reasonably possible and also by sending written Notification to the Company, if the Customer becomes aware of:
  - 10.6.1 any damage to or fault with the Goods and/or any System installed;

- 10.6.2 any changes and/or alterations to the environment in which the Goods or System(s) are sited and/or installed which may affect their operation, functionality or performance.
- 10.7 The Customer shall be liable to pay the Company, on written demand, for, and indemnify the Company against, all reasonable costs, expenses, charges and losses sustained or incurred by the Company (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation, damage to property, loss of opportunity to deploy resources elsewhere, legal costs on an indemnity basis, and any costs arising from injury to, or death of, a person) arising directly or indirectly from the Customer's fraud, negligence or failure to comply, or unreasonable delay in complying, with any of the Conditions.
- 11. WARRANTIES AS TO QUALITY**
- 11.1 The Company warrants that the Services will be provided with reasonable skill and care, subject to the Customer complying with Condition 10. This warranty shall be the only warranty given in respect of the Services.
- 11.2 For Services, the Company's sole liability in respect of defective Services is to re-supply the Services and/or rectify the Service output supplied where possible or if the Company is unable to do so then to repay or credit the Customer with an appropriate adjustment to the Price to reflect the degree of failure. This liability is subject to the Customer notifying the Company in writing as soon as possible after the Customer becomes aware of a failure of the Services and providing any appropriate opportunity to the Company to re-supply the Services or rectify the defect.
- 11.3 Subject to Condition 11.4, if the Goods supplied under a Contract prove to be defective within 12 months from the date of delivery the Company may, at its option, repair or replace such Goods (or the defective part(s)) or provide the Customer with a credit note for the Goods provided that:
- 11.3.1 the Goods are proved to be defective to the reasonable satisfaction of the Company; and
- 11.3.2 the Company is the manufacturer of the Goods; and
- 11.3.3 the Customer gives written notice of any defect in the Goods to the Company within 14 days of the date the Goods were delivered where the defect would have been apparent upon a reasonable inspection by the Customer (whether or not such inspection takes place) of the Goods or, in all other cases, within 3 months of the delivery date; and
- 11.3.4 the Company is given a reasonable opportunity, after receiving such notice, to inspect and examine the relevant Goods and the Customer (if asked to do so by the Company) returns the Goods, or the part(s) of such Goods, which the Customer believes to be defective, to the Company's place of business at the Customer's cost.
- 11.4 Condition 11.3 shall not apply if:
- 11.4.1 the Customer makes any further use of the Goods after giving notice; or
- 11.4.2 the defect arises as a result of normal wear and tear, as a result of damage following delivery, or the Customer's negligence or the Customer's failure to comply with the Conditions (and, in particular, Condition 10) or the Customer's failure to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods (including, but without limitation, the Customer's misuse of the Goods or interference with the Goods, or other third party's misuse of the Goods, use in 'abnormal' situations, exposure to chemicals, use of excessive electrical power or other foreign matter) or (if there are none) the Customer's failure to follow good trade practice; or
- 11.4.3 the defect arises as a result of an inherent defect in a specification supplied by the Customer to the Company or out of the fact that the Goods have been used outside the Company's design specification for those Goods and/or the Goods have been used in conjunction with or in combination with other equipment which the Company does not consider to be appropriate or compatible with the Goods supplied by the Company.
- 11.4.4 the Customer alters, modifies, mishandles or repairs such Goods.
- 11.5 The Company's reasonable opinion as to the cause of the defect shall be final and binding unless the Customer can provide conclusive evidence to the contrary.
- 11.6 In the event that the Goods are not defective, the Customer shall reimburse the Company's reasonable costs of inspection, any related call out charges and any subsequent costs relating to the return of the Goods to the Customer.
- 11.7 Where the Company is not the manufacturer of the Goods, the Company will endeavour (but does not guarantee) to transfer to the Customer the benefit of any warranty or guarantee given to the Company in relation to the Goods by the relevant manufacturer or supplier.
- 11.8 If the Company complies with Condition 11.3 it shall have no further liability in respect of such Goods. Any defective parts replaced by the Company under Condition 11.3 shall become the sole property of the Company.
- 11.9 The Company does not provide any warranty in relation to batteries or other consumable items unless this is specifically stated within any written service or preventative maintenance agreement made between the Customer and the Company.
- 12. LIMITATION OF LIABILITY**
- 12.1 Subject to the other Conditions (in particular Conditions 5 and 11) this Condition 12 sets 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 respect of any breach of the Conditions, any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract.
- 12.2 Save as set out in these Conditions all guarantees, representations, conditions and warranties as to merchantability, quality, condition, workmanship, fitness for any purpose or otherwise, whether expressed or implied by statute or common law, are to the fullest extent permitted by law hereby expressly excluded from the Contract PROVIDED THAT the provisions of this Condition 11.8 shall not apply so as to exclude or purport to exclude the liability conferred on a seller by the provisions of Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 and the related provisions of the more recent Consumer Rights Act 2015.



- 12.3 Any radio-linked emergency alert and notification Systems and related Goods supplied and/or installed by the Company are not designed or intended to be 'safety critical' and should therefore be considered only as an aid and support to, and to be used in conjunction with, the Customer's own existing safety/protection/security/lockdown or other related policies, practices and procedures. These Goods and/or Systems are intended only as an aid to assist the Customer in reducing risk and do not in any way guarantee to prevent or eliminate any part of such risk.
- 12.4 The Company agrees only to supply the Customer with the quantities and type of Goods and/or Systems and/or Services as specifically requested in writing and/or formally ordered (by way of a Purchase Order) by the Customer. It is therefore the Customer's sole responsibility to ensure that any Goods and/or Systems and/or Services ordered by them from the Company are appropriate to their needs and are installed in accordance with their needs.
- 12.5 The Company does not warrant or represent that any of the Goods, Services and/or Systems it supplies and/or installs are incapable of being compromised, neutralized, bypassed or otherwise rendered inoperative by the Customer, trespassers, intruders or other unauthorized persons or other third parties or by some other means. In any such event, the Company shall not be liable for any direct or indirect loss or damage suffered by the Customer, occupants, intruders or other unauthorized persons or any other third party or for any related claims and the Customer acknowledges and accepts the limitation of the Company's liability in relation to this clause.
- 12.6 Without prejudice to the generality of the foregoing the Company shall not be liable for:
- 12.6.1 any failure of the Goods or System to transmit data from the installation site;
  - 12.6.2 any failure in the telecommunications network, internet, telephone lines, power supplies, utilities or other services provided by a service provider or utility or any other condition beyond the Company's control that prevents the Goods or System from in any way performing or the Company from being able to perform part or all of the Services;
  - 12.6.3 any loss, damage, costs, expenses or any other claims for compensation arising from incomplete, inaccurate or corrupted data transmissions being received by the Company;
  - 12.6.4 any loss, damage, costs, expenses or any other claims for compensation arising from delays in installation or Services caused by circumstances beyond the control of the Company.
- 12.7 Subject to the other provisions of this Condition 12:
- 12.7.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of this Contract shall be limited to and shall not exceed the price paid by the Customer for the Goods and/or Services in respect of which the Customer suffered or incurred such loss or damage; and
  - 12.7.2 the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, loss of revenue, loss of production, loss or depletion of goodwill or other economic loss (in each case whether direct, indirect or consequential) or for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused).
- 12.8 No liability for damages shall accrue in circumstances where a default is remediable until such time as the Customer has given to the Company 30 days' written notice to remedy and the Company has failed to do so.
- 12.9 The price of the Goods and/or Services has been calculated on the basis that the Company will exclude or limit its liability as set out in this Condition 12 and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions and the Contract and the Company shall have no further liability to the Customer.
- 12.10 Nothing in these Conditions shall operate to exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraud or fraudulent misrepresentation.
- 12.11 The Customer may not bring any action under a Contract against the Company more than one year after the date of delivery of the Goods concerned.
- 13. CUSTOMER INSTALLATIONS AND/OR CUSTOMER RESALES**
- 13.1 Where the Customer elects to install the Goods or Systems independently of the Company the Customer undertakes to be responsible for ensuring that the Goods or Systems are installed and commissioned in line with the Company's installation manual and/or installation instructions for the Goods or System(s).
- 13.2 Where the Customer sells or otherwise transfers the Goods or any part of the Goods to third parties or arranges to install the Goods and/or System(s) independently of the Company the Customer shall:
- 13.2.1 be responsible for inspecting and testing the Goods and/or System(s) so as to ensure that the Goods and/or System(s) are safe and appropriate for their intended use and comply with any relevant laws, directives or regulations which are in force at the time of resale; and
  - 13.2.2 be responsible for inspecting any documents, drawings or other written specifications supplied by the Company in order to ensure that as far as is reasonably possible these documents, drawings and specifications accurately represent the Goods and/or System(s) as have been tested and inspected (as set out in Condition 13.2.1); and
  - 13.2.3 be responsible for ensuring that the Goods and/or System(s) are installed to a high standard by appropriately trained and competent engineers who have a proven record of competence and are experienced in installing the Goods and/or System(s) or equivalent equipment which uses the same acoustic magnetic technology or other appropriate technology, as is applicable to the Goods and/or System(s); and
  - 13.2.4 be responsible for ensuring that the competence of the installation engineer and resulting quality of installation serve to protect the performance and integrity of the Goods and/or System(s); and
  - 13.2.5 be responsible for carrying out appropriate site surveys at proposed installation sites prior to installation of the Goods and/or System(s) to ensure the suitability of that site for installation of the Goods and/or System(s) and to identify and eradicate any sources of interference (electrostatic, electromagnetic or otherwise) which might serve to interfere with the performance of the Goods and/or System(s); and

- 13.2.6 be responsible for any after sales repair or maintenance service as required; and
  - 13.2.7 be responsible for all warranty and guarantee claims made by its third party customers; and
  - 13.2.8 be responsible for all product liability claims made by its third party customers; and
  - 13.2.9 not represent itself as an agent of the Company for any purpose; and
  - 13.2.10 not pledge the Company's credit; and
  - 13.2.11 not give any condition or warranty or make any representation on the Company's behalf; and
  - 13.2.12 not commit the Company to any contracts.
- 13.3 The Customer undertakes to maintain appropriate up-to-date and accurate records to enable the immediate recall of any batches of the Goods or any of them. These records shall include records of deliveries to third parties (including details of batch numbers, delivery dates, names and addresses of the third parties, and telephone numbers, fax numbers and email addresses if available).
- 13.4 In the event of the resale of the Goods being to a country outside the United Kingdom, the Customer shall:
- 13.4.1 be responsible for obtaining any necessary import licences or permits required for importing the Goods into a particular country or state or region of that country and selling or transferring these Goods to third parties.
  - 13.4.2 ensure that the Goods comply with all laws and regulations affecting the sale, packaging, labelling and instructions of and for the Goods which are in force from time to time within the country or state or region of that country in which the Goods are resold including but not limited to those relating to safety, preventing injury and protecting the environment ("Local Regulations") and the Customer agrees to give the Company as much notice as possible in writing of any prospective changes in Local Regulations that may require the Company to modify the Goods their labelling, instructions and packaging when supplying those Goods on future orders.
- 13.5 The Customer shall obtain and maintain adequate and appropriate product liability insurance with a reputable insurer for an adequate amount to provide cover against any successful claim made by a third party or other party which relates to the Goods following the resale of those Goods and by so doing provide the Company with indemnity against any such claim. The Customer shall obtain and maintain such other appropriate insurance to cover its risk and liability under the Contract. The Customer shall provide a copy of the relevant insurance policies and proof of payment of the current premium to the Company upon request.
- 14. PERFORMANCE CLAIMS**
- 14.1 Performance of the Goods may be adversely affected by external or internal electromagnetic or electrostatic interference or similar (e.g. from lights, televisions, computers etc.). Where an adequate site survey has not been conducted by the Customer or their installing engineer(s) on the Customer's behalf in advance of the installation of the Goods this interference may not become apparent until after installation of the Goods and the Company will not be held responsible for any resulting effect on the Goods or their performance.
- 14.2 The Customer accepts and agrees that the Company shall not have any liability in respect of any loss or damage, theft or damage of stock, fixtures or fittings or any other losses or damages resulting from failure of the Goods to perform as claimed or intended howsoever arising.
- 14.3 Where the Goods include batteries any battery-life specified is for guidance purposes only and will be dependent upon level of usage by the Customer and therefore the Company does not provide any warranties in respect of battery-life.
- 15. PATENTS, TRADE MARKS , LABELLING, LOGOS ETC**
- 15.1 The Customer shall not claim ownership of any patents trademarks trade names copyrights knowhow or designs (registered or unregistered) in relation to or as created pursuant to the Goods or Services and shall not take any action which might infringe any patent trademark trade name copyright design or other form of protection for any invention discovery improvement design mark or logo in relation to the Goods and the Customer shall not directly, or through any other third parties, attempt to copy or reproduce any aspect of the Company's products, or product designs and any related knowhow and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities proceedings damages and expenses arising directly or indirectly as a result of any breach of the foregoing obligation by the Customer.
- 15.2 The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions claims or demands in relation to any patent trade mark trade name copyright design or other form of protection for any invention discovery improvement design mark or logo in relation to the Goods or Services and the Customer shall provide the Company at the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods and if so requested by the Company in relation to any claim or action brought against the Customer shall authorise the conduct of the same and all negotiations for the settlement of the same by the Company at the Company's expense.
- 15.3 The Customer shall not, through its agents, third parties or otherwise, allow the re-housing or re-packaging of any of the Goods and/or Systems supplied by the Company or any part of those Goods and/or Systems and shall not allow any of the Company's labels, logos or other similar identification marks on any of the Goods and/or Systems supplied by the Company to be obscured, covered, defaced or removed from those Goods and/or Systems.
- 15.4 The Customer undertakes not to attempt to pass off as its own any of the Goods and/or Systems supplied by the Company.
- 16. FORCE MAJEURE**
- 16.1 The Company reserves the right to defer the date of delivery or delay the performance of its obligations under the Contract or cancel the Contract (without liability to the Customer), if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental action, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (other than in relation to the Company's own workforce), or restraints or delays affecting suppliers or carriers, or labour shortages, work delays or stoppages, power utility or energy failures or shortages of appropriate materials or an inability to or delay in obtaining supplies of adequate or suitable goods and materials or machinery or equipment breakdown, transportation

- embargoes or delays, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 16.2 For the avoidance of doubt, non-payment of money shall not be capable of being excused by force majeure unless the same is directly prevented by operation of law or government action.
- 17. TERMINATION BY THE COMPANY**
- 17.1 The Company may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Services or delivery of the Goods or stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:
- 17.1.1 the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - 17.1.2 the Customer fails to remedy a breach of its obligations under the Contract which is capable of remedy or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days;
  - 17.1.3 any distress execution or diligence is levied upon any of the Customer's goods or property and is not paid out within 7 days of its being levied;
  - 17.1.4 the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy;
  - 17.1.5 the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed (other than for a bona fide solvent amalgamation or reorganisation where the resulting company agrees to be bound by or to assume the obligations imposed on the Customer under the Contract) or the Customer seeks any form of protection from its creditors or the Customer has an administrative receiver or receiver or manager appointed to the whole or any part of the Customer's business, undertaking, property or assets or if a notice of intention to appoint an administrator is given by the Customer or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) (as inserted by section 248 of the Enterprise Act 2002));
  - 17.1.6 the Customer ceases, or threatens to cease, to carry on business; or
  - 17.1.7 the Company reasonably believes that any of the events specified in Conditions 17.1.1 to 17.1.6 (inclusive) is about to occur in relation to the Customer.
- 17.2 Notwithstanding any such termination or suspension in accordance with Conditions 16 or 17.1 above or otherwise the Customer shall pay the Company at the Contract rate for all Goods delivered and/or Services provided up to and including the date of suspension or termination. The termination of the Contract or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum owing or to become owing to the other.
- 18. DISPUTE RESOLUTION AND LAW & JURISDICTION**
- 18.1 If a dispute or difference arises out of the Conditions, except any dispute or difference that relates to non-payment of any sum due to the Company from the Customer and without prejudice to any rights either party may have, the parties agree to attempt to settle any such dispute or difference first by negotiation. If the parties have not settled such dispute within 21 days of the commencement of negotiations the parties will attempt to settle it by referring the matter to their respective senior officers (or other relevant senior manager or owner as may be agreed by the parties) who will attempt to resolve such dispute. If such dispute cannot be resolved by negotiations then the remaining provisions of this Condition 18 shall apply.
- 18.2 The parties agree that the Contract and any dispute or claim arising out of or in connection with it or its subject matter or its formation, existence, construction, performance, validity and all other aspects of the Contract (including non-contractual disputes or claims) shall be as far as legally possible governed by and construed in accordance with the laws of England and Wales.
- 18.3 The parties agree that Conditions 18.2 and 18.4 shall be applied without regard to the principles of conflict of laws and without regard to the CISG UN Convention.
- 18.4 Where the Customer is based within the EU, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, claim or difference arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) and shall be subject to English law (in accordance with Condition 18.2).
- 18.5 Where the Customer is not based within the EU the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or difference that relates to non-payment of any sum due to the Company from the Customer and the parties irrevocably agree that any other dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination or the legal relationships established by the Contract and any non-contractual disputes or claims, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Condition 18.5. It is agreed that:
- 18.5.1 the arbitration tribunal shall consist of 1 arbitrator;
  - 18.5.2 the seat of the arbitration shall be London;
  - 18.5.3 the language of the arbitration shall be English; and
  - 18.5.4 the governing law shall be English law in accordance with Condition 18.2.
- 19. GENERAL**
- 19.1 If any provision of the Contract is found by any court 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 the Contract, and the remainder of such provision, shall continue in full force and effect. In the event that such court or administrative body of competent jurisdiction decides that such provision is not severable, the parties agree to substitute the relevant provision with a legal, valid, enforceable and reasonable provision which achieves, to the greatest extent possible, the same effect as the original provision.
- 19.2 The Customer shall not be entitled to delegate, assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.
- 19.3 The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person.
- 19.4 The Company shall have the right to amend and vary these terms and conditions by notice to the Customer and the Customer shall be deemed to have accepted any such new terms and conditions unless it has objected to the variations in writing within 14 days of such notice. If the Customer so objects, the Company shall be entitled to terminate this Contract and if the Company does so terminate the Contract it shall be entitled to full payment of any outstanding invoices which must be paid in full by the Customer without any right of set-off whatsoever, within 14 days of the said notice of termination by the Company.
- 19.5 A person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or subcontractor of either party) shall not have the right to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of both the Company and the Customer and the Contracts (Rights of Third Parties) Act 1999 shall not apply for the benefit of any third party save that the benefit of these Conditions shall apply equally to any company which is the Company's ultimate holding company or subsidiary company or subsidiary of the Company's ultimate holding company which may be involved in the provision of the Goods and/or Services.
- 19.6 Unless otherwise stated, a right or remedy described in these Conditions is in addition to, and does not prejudice or affect, any other terms, rights or remedy implied by or available under these Conditions or by statute or at law.
- 19.7 Any notice to be given under these Conditions may be sent by first class registered post (or where applicable airmail) addressed
- 19.7.1 (a) (in the case of a notice to the Company) to its address stated above or (as the case may be) on its quotation or (if none is so stated) to its registered office or by email to an up-to-date email address for the director of the Company;
- 19.7.2 (b) (in the case of notice to the Customer) to its address stated on its order or (or as the case may be) any document accepting the Company's quotation or (if none is so stated) either to its principal place of business or its registered office for the time being or by email to the email address normally used for the sending of invoices and other official documents; or
- 19.7.3 (c) (in either case) to such other address as the Company or the Customer shall have notified to the other for this purpose. Any notice so given shall be deemed to have been received and given forty-eight hours (or if sent by airmail 10 days) after the same was posted.