

GENERAL TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 In addition to any other terms defined in these Terms and Conditions ("**Conditions**"), unless the context otherwise requires, the following capitalised terms have the following meanings:
- 1.1.1 '**Affiliate**' means any corporation or entity of a party that: (a) is controlled, either directly or indirectly, by such party; (b) is under common control, either directly or indirectly, with such party; or (c) controls such party. For the purposes of this definition, "control" means the beneficial ownership of more than fifty percent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the management of a corporation or entity;
 - 1.1.2 '**Business Day**' means a day other than a Saturday, Sunday or bank or public holiday in England;
 - 1.1.3 '**Buyer**' means the purchaser of Deliverables from the Company and whose details are set out in the Order;
 - 1.1.4 '**Company**' means MARCO Limited, a company registered in England with company number 03495807 and whose registered office is at Block 3 The Industrial Estate, Enterprise Way, Edenbridge, Kent, TN8 6HF and/or its Affiliates which accepts in writing the Buyer's Order;
 - 1.1.5 "**Intellectual Property Rights**" means any and all technology, know-how, trade secrets, inventions, designs, copyrights, trademarks, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights, and in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which the relevant party is or may be entitled; and (vi) in whichever part of the world existing;
 - 1.1.6 '**Contract**' means the contract between the Company and the Buyer for the sale and purchase of the Deliverables incorporating these Conditions and the relevant Order and as may be amended by a Change Order;
 - 1.1.7 '**Deliverables**' means the Goods or Services or both as the case may be;
 - 1.1.8 '**Force Majeure Event**' means any event or circumstance arising after the date of the Contract which prevents or hinders a party's performance of its obligations under the Contract and which is beyond the reasonable control of that party, including but not limited to: flood, fire, earthquake, unavailability or delay in receipt of third party materials, components or other required supplies, labour shortages and/or stoppages, war, invasion, terrorist threats or acts, epidemic or pandemics (whether foreseeable or not) riot or other civil unrest, government order or law, embargoes or blockades, or national or regional emergency, or any effects or conditions resulting from such events, or any governmental or any government or authority orders, requirements or guidelines, or other reasonable measures taken by a party, to address such events;
 - 1.1.9 '**Goods**' means the articles, equipment, software, materials or goods set out in the Order to be supplied by the Company pursuant to the Contract;
 - 1.1.10 '**Order**' means the Buyer's order for Deliverables, incorporating and referencing the relevant Proposal;
 - 1.1.11 '**Proposal**' means the proposal issued by the Company to the Buyer detailing the design of the Goods and the Services provided;
 - 1.1.12 '**Services**' means the services set out in the Order and to be supplied by the Company pursuant to the Contract;
 - 1.1.13 '**Specification**' means the description or specification of the Deliverables set out in or referred to in the Order, as may be amended from time to time by a Change Order;
 - 1.1.14 '**Software**' has the meaning given in clause 13.3; and
 - 1.1.15 '**VAT**' means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.
- 1.2 In these Conditions: (i) a reference to a statute or statutory provision is a reference to it as it is amended, re-enacted or replaced from time to time; (ii) the words "including", "includes" or "for example" are to be construed without limitation; and (iii) clause headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

2. GENERAL AND APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between the Company and the Buyer. They supersede any previously issued terms and conditions of purchase or supply. Any special conditions of the Company in any quotation accepted via a Purchase Order shall prevail to the extent that they are inconsistent with these Terms and Conditions.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Company otherwise agrees in writing.
- 2.3 No variation or purported variation of these Conditions or to a Contract shall bind the Company unless first agreed in writing and signed by a duly authorised employee on behalf of the Company. Any change or amendment to the Contract or any of the Contract documents shall be governed by the provisions of the Contract, including these Conditions.
- 2.4 The Buyer may only submit an Order if it has signed the relevant Proposal to confirm that the design set out in the Proposal is correct and accurate. Each Order submitted by the Buyer to the Company shall be an offer to purchase the Deliverables set out in the corresponding Proposal, subject to these Conditions.
- 2.5 The Company may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
- 2.5.1 the Company's written acceptance of the Order;
 - 2.5.2 the Company delivering or performing the Deliverables or notifying the Buyer that they are ready to be delivered or performed (as the case may be).
- 2.6 A Proposal issued by the Company does not constitute an offer by the Company to sell or supply Deliverables and is incapable of being accepted by the Buyer. A Proposal shall be valid for a period of 30 Business Days.
- 2.7 In the event of conflict of terms, priority shall be given as follows, from highest to lowest priority: (i) the Change Order; (ii) the Order; and (iii) these Conditions.

3. TECHNICAL SPECIFICATIONS

- 3.1 All descriptive and technical specifications, drawings, computer media, illustrations, photographs, catalogues, particulars or weights and/or dimensions and general literature comprising the artwork and information produced or processed by or on behalf of the Company relating to the Deliverables are intended only to present a general guide and shall not be incorporated in or form part of the Contract unless otherwise expressly agreed in writing by the Company. Such materials shall at all times remain the property of the Company. The Buyer shall not copy them without the consent of the Company and shall comply with the Company's reasonable requirements as to their use, return and otherwise.
- 3.2 At any point after formation of the Contract, the Buyer may request, in writing, a change in the Specification of the Deliverables to the Company and the Company may or may not accept the proposed changes. If the Company is able to accept the requested change, it shall notify the Buyer of all additional charges and extended delivery periods which result from the change. If the Buyer accepts such additional costs and extended delivery periods, it shall notify the Company in writing and the terms of the Contract shall be deemed amended accordingly. Where the Buyer does not accept the stated additional charges and extended delivery times, then the original Specification will prevail. Any delays caused by negotiation of the Specification changes will be added to the original Contract delivery time.

4. PRICE AND PAYMENT

- 4.1 The price for the Deliverables shall be set out in the relevant Order, as amended by a Change Order.
- 4.2 Unless otherwise expressly stated in the Order or otherwise agreed in writing by the Company, the price is:
- 4.2.1 exclusive of VAT;
 - 4.2.2 exclusive of delivery and installation costs;
 - 4.2.3 exclusive of packaging costs;
 - 4.2.4 exclusive of insurance costs; and
 - 4.2.5 exclusive of taxes duties, tariffs or charges of any kind imposed by any competent authority in respect of the Contract or its performance.
- 4.3 The Buyer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- Unless otherwise set out in the Order or agreed in writing by the Company, the Company shall invoice the Buyer for the Deliverables on the following terms:
- 4.3.1 a deposit of 40% (forty percent) of the price of the Deliverables ("**Deposit**") on acceptance by the Company of the Buyer's Order; and
 - 4.3.2 50% (fifty percent) of the price of the Deliverables when the Goods are ready for delivery to the Buyer ("**Interim Payment**"). The Buyer may inspect the Goods without delay at the Company's premises prior to making payment but the Goods will not be delivered to the Buyer until such time as Company has made full payment of the Interim; and
 - 4.3.3 10% (ten percent) of the price of the Deliverables within 30 days from delivery of the Goods where the Contract is for Goods only or from completion of the Services where the Contract is for Goods and Services.
- 4.4 The Buyer shall pay all invoices:
- 4.4.1 in full, without any set-off, deduction or withholding; and
 - 4.4.2 in cleared funds, unless otherwise expressly provided in the Order, within thirty (30) days of the date of the invoice.
- 4.5 Where sums due under these Conditions are not paid in full by the due date, the Company may, without limiting its other rights:
- 4.5.1 suspend performance of the Contract; and/or,
 - 4.5.2 charge interest on such sums at the rate of 5 (five) percent per annum above the HSBC Bank PLC's base rate in England in force from time to time, but at 5 percent per annum for any period when the base rate is below 0. Interest shall accrue on a daily basis, and apply from the date the payment became due until actual payment in full, whether before or after judgment; and/or
 - 4.5.3 require payment in respect of any future performance of the Contract and/or new Contracts in advance.
- 4.6 The Company reserves the right to alter the Price of the Deliverables with immediate effect at any time prior to delivery of the Goods or commencement of the Services, by written notice to the Buyer, to reflect any change in cost due to:
- 4.6.1 any factor beyond the control of the Company (including any increase in the cost of labour, materials and other manufacturing costs, foreign exchange fluctuations, or increases in taxes and duties, in connection with the Deliverables);
 - 4.6.2 the Buyer requesting alterations or modifications to the Goods;
 - 4.6.3 any request by the Buyer to change the delivery date or to perform the Services outside the hours provided in the Order; or
 - 4.6.4 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company accurate or adequate information.
- 4.7 If the Buyer claims an exemption from taxes, Buyer shall furnish the Company with evidence of exemption from payment of any such taxes in a form and with content acceptable to the taxing authorities. The Buyer shall assess and remit any applicable tax to taxing authorities not otherwise invoiced by the Company. If any tax in the nature of withholding tax is payable on any sums invoiced under the Contract, the Buyer shall pay Company such amount as is necessary to ensure that the net amount received by Company after such withholding shall be equal to the amount invoiced or otherwise required to be paid herein.
- 4.8 The Buyer shall not be obliged to commence performance of the Contract until payment of the Deposit is received.
- 4.9 If any discount is offered by the Company, then this shall be applicable only if the Deliverables are paid in accordance with this clause 4 and on no account shall any discount be deductible from value added tax.

5. DELIVERY

- 5.1 Time is not of the essence in relation to performance or delivery of the Deliverables. The Company will use reasonable endeavours to meet any date or time for delivery in the Contract but any dates or periods for the delivery of the Goods and/or performance of the Services or any part of them are estimates and are approximate only, based on current projections. The Company may not be able to give an estimated delivery date until the Deposit has been received.

- 5.2** This clause 5.2 applies unless the Contract specifies that the Company will be responsible for carriage of Goods to a location specified by the Buyer. The Company will effect delivery of the Goods by informing the Buyer that they are available for collection by the Buyer from the Company's premises, whereupon the Buyer will promptly arrange for collection of the Goods during the Company's normal business hours. The Buyer is responsible for loading of the Goods at the Company's premises. Where the Buyer is to collect the Goods from the Company at Company's facility, the Company reserves the right to charge for storage of the Goods if they are not collected within 7 (seven) days of the Company notifying the Buyer that they are available for collection.
- 5.3** This clause 5.3 applies if the Contract specifies that the Company will be responsible for carriage of the Goods to a location specified by the Buyer. The Company will arrange carriage of the Goods to that location with a suitable third-party carrier. Delivery of the Goods will be affected upon the Buyer's signature of a delivery or despatch note. If the Buyer fails to provide accurate delivery instructions, or to take or accept delivery of the Goods when presented for delivery at the specified location during normal business hours, then the Company will be entitled to store the Goods at the Buyer's cost (including costs of storage, insurance and demurrage) until re-delivery can be arranged, and the Buyer will pay all such costs on demand. It is the Buyer's responsibility to arrange appropriate manpower and facilities for unloading the Goods at the delivery point.
- 5.4** If the Buyer has not collected or accepted delivery of the Goods (as the case may be) within 21 (twenty one) days of the Buyer first being informed that they are available for collection in accordance with clause 5.2 or of the first delivery attempt by the Company in accordance with clause 5.3 (as the case may be), the Company shall be entitled to:
- 5.4.1** resell or otherwise dispose of all or part of the Goods and charge the Buyer for any shortfall below the price of the Goods; and
- 5.4.2** suspend further performance of the Contract until such time as delivery takes place.
- 5.5** If the Company is prevented or delayed in delivering Goods and/or performing Services as a result of any act or omission of the Buyer, the Company shall be:
- 5.5.1** entitled to invoice the Buyer on the date that the Goods would have been delivery and/or the Services would have been performed, but for the prevention or delay; and
- 5.5.2** invoice the Buyer for any losses arising as a result of the Company being prevented or delayed from delivering the Goods and/or performing the Services.
- 5.6** If requested by the Buyer in writing, the Company may defer delivery and/or performance to a date agreed by the Company in writing and the Company shall be entitled to charge the Buyer for any additional costs incurred as a result of such deferment.
- 5.7** The Company shall have no liability in respect of Goods lost or damaged in transit unless the Buyer or its agent notes such loss or damage on the delivery receipt given to the carrier, detailing the shortage or damage at the time of delivery and written notification of the shortage or damage is given to the Company within 48 (forty eight) hours of the date of delivery of the Goods to the Buyer.
- 5.8** Unless otherwise agreed in writing by the Company, the Company shall not be responsible for freight, transportation (including, without limitation, export or other special packing/crating or transportation charges), insurance, shipping, storage, customs, excise, import duty, brokerage, handling, demurrage, or similar charges, all of which shall be for the account of and paid by the Buyer.
- 6. CHANGE ORDERS**
- 6.1** If the Buyer wishes to make any change to the Deliverables or their Specifications, it shall promptly notify the Company. The Buyer agrees to follow Company's procedures regarding the processing of any changes in or relating to the Deliverables. If the Company is able to make the change requested, the change shall be documented in writing (a "**Change Order**").
- 6.2** The Buyer shall ensure that all Change Orders are properly approved by Buyer's authorised representatives without delay and no Change Order shall become binding until the parties have signed the Change Order and the Buyer has confirmed that it is correct and accurate.
- 6.3** The Buyer shall be responsible for and shall pay the Company all price increases which result from a Change Order and the price for the deliverables shall be adjusted accordingly.
- 7. INSTALLATION**
- 7.1** Installation is not included in the price of the Deliverables, unless otherwise stated in the Contract. The Buyer is responsible for completing any final electrical or utility hook-ups to the Buyer's power supply or other utility sources and shall use electricians or other suitably qualified technicians.
- 7.2** The Buyer is responsible for:
- 7.2.1** arranging inspections, approvals or supervision of such hook-ups at the installation site as set out in any Applicable Laws; and
- 7.2.2** obtaining all required permits related to the installation site.
- 8. WARRANTIES AND CLAIMS**
- 8.1 Goods.** The Company warrants that the Goods:
- 8.1.1** will be free from defects in design, workmanship and materials for a period of twelve (12) months from delivery of the Goods; and
- 8.1.2** shall materially conform to the Specification at the time of delivery.
- 8.2 Services.** The Company warrants that at the time of performance, the Services shall be performed with reasonable care and skill.
- 8.3 Software.** All Software provided to Buyer is on an "as is" basis and Company provides no warranty or makes no representation whatsoever in connection with the Software. The Company does not warrant that the operation of the Software will be uninterrupted, error free or meet any specific requirements. Additional statements or presentations whether verbal or written do not constitute warranties by the Company and should not be relied upon by Buyer.
- 8.4 Limitations of Warranties.** The Company shall have no liability for the Deliverables' failure to comply with the warranties at clause 8.1 and clause 8.2 if:
- 8.4.1** the Goods are relocated from the installation site or intended installation site to another location by any party other than Company or those authorized by Company;
- 8.4.2** if Customer transfers its interest in or title to or leases any the Goods to another party without obtaining the prior written consent of the Company;

- 8.4.3** the defect results from the Buyer's failure to properly install, maintain, or operate the Goods in accordance with Company's manuals, directions, training, and recommendations, or if there are none, good trade practice; or
- 8.4.4** the Goods are altered or repaired by any party other than Company or those authorized by Company;
- 8.4.5** the defect is caused by disasters such as fire, flood, lightning or improper electrical current or power surges;
- 8.4.6** any further work, use or treatment is undertaken on or in respect of the Goods after giving notice in accordance with clause 8.5;
- 8.4.7** the defect relates to consumable items and wear parts which by their nature require periodic replacement;
- 8.4.8** the failure to conform to the warranty has been caused by misuse, neglect, wilful damage, fair wear and tear, abnormal working conditions or accident;
- 8.4.9** the defect arises as a result of the Goods being combined with non-compatible goods;
- 8.4.10** the defect arises as a result of the Company following any drawing, design, specification or instruction supplied by the Buyer;
- 8.4.11** the defect relates to equipment, materials, parts, spare parts, components, services and/or software supplied by a third party and integrated into the Goods, in which case, the Company shall pass to the Buyer the benefit of any manufacturer's warranty in respect of such parts insofar as such guarantees are assignable without expense to the Company.
- 8.5** The Company may, at its option, repair, replace or re-perform the Deliverables that do not comply with clauses 8.1 and 8.2, provided that the Buyer:
 - 8.5.1** serves written notice on the Supplier:
 - 8.5.1.1** in the case of a defect that is apparent on normal visual inspection, in accordance with clause 5.7;
 - 8.5.1.2** in the case of a latent defect, as soon as any fault and/or cause for complaint becomes apparent;
 - 8.5.2** shall make the Goods available for examination by the Company;
 - 8.5.3** (if asked to do so by the Company) returns the Goods to the Company carriage paid, promptly on request; and
 - 8.5.4** none of the events listed in clause 8.4 apply.
- 8.6** Where components are replaced under clause 8.5, if there is less than 3 (three) months remaining of the original warranty then the replaced components shall receive 3 (three) months warranty from the date of installation, otherwise the length of warranty for any replacements shall reflect the remainder of the original warranty.
- 8.7** The warranties set out in this clause 8 are non-transferable and if the Buyer sells the Goods, it shall sell them as is and without the benefit of the warranties set out in this clause 8.
- 8.8** The clause 8 sets out the Buyer's sole and exclusive remedy for the Deliverables' failure to comply with the warranties at clause 8.1 and clause 8.2 and accept as provided in this clause 8, the Company shall have no liability to the Buyer in respect of the Deliverables' failure to comply with the warranties set out at clause 8.1 and clause 8.2.
- 8.9** Except as set out in this clause 8:
 - 8.9.1** the Company gives no warranty and makes no representations in relation to the Deliverables; and
 - 8.9.2** all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute.
- 9. INDEMNITIES**
- 9.1** The Buyer shall indemnify the Company, its employees, directors, officers, suppliers and subcontractors and keep them fully and effectively indemnified against all and any costs, claims, demands, losses or liabilities of whatsoever nature brought or made against the Company or otherwise suffered or incurred by the Company relating to or connected with:
 - 9.1.1** any act or omission by the Buyer, its employees or agents, including those which take place when the Buyer collects the Goods from the Company;
 - 9.1.2** any claim for personal injury, death, and/or damage to property arising or allegedly arising directly or indirectly from the design, operation and/or use of the Buyer's end product; or
 - 9.1.3** any lack of performance, co-operation, supply or delay of the Buyer as a result of any third party supplier (including sub-contractors and assignees) nominated by the Buyer and that the Buyer has requested the Company must liaise/collaborate with in connection with the Contract.
- 10. TITLE AND RISK**
- 10.1** Risk of damage to or loss of the Goods shall pass to the Buyer on completion of delivery in accordance with clause 5.2 (or where the Company is responsible for carriage of the Goods, upon the Buyer's first failure to take or accept delivery in accordance with clause 5.3).
- 10.2** Title to the Goods shall not pass to the Buyer until the Company receives in cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due. Until title passes to the Buyer, the Buyer shall not, without prior written consent of the Company, sell, assign, let, mortgage, charge, pledge, part with possession with or otherwise deal with the Goods.
- 10.3** Until such time as title in the Goods passes to the Buyer in accordance with clause 10.2:
 - 10.3.1** the Buyer will keep the Goods separate from those of the Buyer and third parties so that they remain readily identifiable as the Company's property;
 - 10.3.2** the Buyer will ensure the Goods are properly stored, protected and maintained in satisfactory condition;
 - 10.3.3** the Buyer will keep them insured against all risks for their full purchase price on the Company's behalf;
 - 10.3.4** the Buyer will not remove, deface or obscure any identifying mark or packaging relating to the Goods;
 - 10.3.5** the Buyer will notify the Company immediately if it becomes subject to an Insolvency Event (as defined at clause 14.1.2); and

10.3.6 the Company shall be entitled to:

10.3.6.1 require the Buyer to deliver up the Goods to the Company and if the Buyer fails to do so forthwith, to enter any premises of the Buyer or any third party where the Goods are stored and take possession of any Goods, remove any part of the Goods and/or dispose of the Goods or any part of the Goods as the Company thinks fit; or

10.3.6.2 ((where the Goods are affixed to or incorporated in any other goods) the Company shall be entitled, at Buyer's expense, to enter upon any premises of the Buyer or any third party where such other goods are stored and take possession and remove such other goods to enable the Company to remove the Company's property from such other goods. The Company shall not be liable for any damage arising therefrom.

10.4 Subject to obtaining prior written consent from the Company, if the Buyer resells the Goods in the ordinary course of its business before the Company receives payment for the Goods:

10.4.1 it does so as principal and not as the Company's agent; and

10.4.2 title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.

11. NO ASSIGNMENTS OR SUBCONTRACTS WITHOUT CONSENT

11.1 The Buyer shall not assign or sub-contract the whole, or any part of the Contract, including these Conditions, without the prior written consent of the Company signed on behalf of the Company by a duly authorised employee. The Buyer shall be responsible in all respects for the acts and omissions of any such assignee or sub-contractor as if they were the acts or omissions of the Buyer.

12. LIEN

12.1 Without prejudice to the Company's rights under these Conditions, the Company shall have a general lien over all goods, articles, materials or property received by the Company from the Buyer for any monies whatsoever due from the Buyer to the Company. If any such lien is not satisfied within a reasonable time, the Company may at its absolute discretion sell the goods or part thereof as agent for the Buyer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the goods and shall upon accounting to the Buyer for any balance remaining be discharged from all liability whatsoever in respect of the goods.

13. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENCES

13.1 Notwithstanding any provision, express or implied, to the contrary, the parties confirm that Company or its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables provided under these Conditions.

13.2 Subject to clause 13.3 upon receipt of payment in full for the Deliverables, the Company grants to the Buyer a, non-transferable, non-exclusive, royalty-free licence (with no right to sub-licence) to use such the Intellectual Property Rights incorporated into the Deliverables solely to operate and maintain the Deliverables.

13.3 Software Licence Agreement. All proprietary software supplied by the Company to the Buyer pursuant to the Contract (the "**Software**") is subject to the licence terms set out in this clause 13.3 ("**Software Terms**"). The Company is not responsible and shall have no liability to the Buyer for any performance or non-performance of Software supplied by third parties. The Buyer agrees to be bound by the Software Terms upon loading or executing the software:

13.3.1 Grant of Licence - The Company grants the Buyer an irrevocable, non-transferable, non-exclusive, royalty free, perpetual right and license (with no right to sub-licence) to use Software solely for use of the Goods provided under the Contract. The Buyer shall not modify, copy, translate, disassemble, decompile, reverse engineer, or create derivative works based upon the Software. The Buyer shall not rent, lease, sell or distribute the Software. Commercial use is prohibited, under no circumstances shall the Buyer be permitted, allowed or authorised to commercially exploit the Software.

13.3.2 Copyright - The Software is owned by the Company or its licensors and is protected by international copyright laws and international treaty provisions. The Buyer assumes no title or ownership in the Software and there is no transfer of any rights in the Software other than the right to use the Software as set out in this clause 13.3. The Buyer must treat the Software like any other copyright material and agrees to ensure that any user of the Software licensed hereunder complies with these Licence Terms.

13.3.3 Export - The Buyer may not export or re-export the Software or any copy or adaptation in violation of any applicable laws or regulations.

13.3.4 Upgrades. The Company may from time to time notify the Buyer of upgrades or updates to the Software which the Buyer shall not be entitled to receive unless it makes payment of a one-off licence fee. The Buyer shall not be obliged to update or upgrade the Software.

14. TERMINATION

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

14.1.1 if the other party commits a material breach of the Contract and such breach is not remediable or if it is remediable, it fails to remedy within 15 days of receiving written notice of such breach;

14.1.2 if:

14.1.2.1 the other party makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to administration or liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction);

14.1.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other party;

14.1.2.3 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;

14.1.2.4 the other party takes any preparatory step in respect of any of the above; or

14.1.2.5 it reasonably believes that any of the events mentioned above is about to occur in relation to the other party, (each an "**Insolvency Event**").

- 14.2** Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to suspend the supply of Services or any further deliveries of Goods under the Contract without any liability to the Buyer if the Buyer suffers an Insolvency Event or fails to make payment of any sums due by the due date for payment.
- 14.3** On termination of the Contract for any reason:
- 14.3.1** the Buyer shall immediately pay to the Company, all of the Company's outstanding unpaid invoices and any accrued interest thereon; and;
- 14.3.2** in respect of Deliverables supplied but for which no invoice has yet been submitted, the Company shall submit an invoice for such Deliverables which shall be payable by the Buyer immediately upon receipt; and
- 14.3.3** if the Buyer fails to comply with clauses 14.3.1 and 14.3.2, the Company shall have the right to take possession of all Goods which have not been paid for.
- 14.4** On termination of the Contract by the Company pursuant to clause 14.1, the Buyer shall pay to the Company, an amount equal to the costs and expenses incurred by the Company in performance of the Contract up to the date of termination and incurred in connection with the termination, including in respect of all liability incurred by Company in connection with commitments made to third parties prior to termination.
- 14.5** On termination of any Contract for any reason:-
- 14.5.1** any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination shall not be affected; and
- 14.5.2** any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination of a Contract shall remain in full force and effect.
- 15. LIMITATION OF LIABILITY**
- 15.1** Subject to clause 15.4, the Company shall not be liable to the Buyer, whether in tort (including, without limitation, negligence or breach of statutory duty), contract or otherwise, arising under or in connection with the Contract for: loss of profit or revenues, loss of anticipated profits, loss of opportunity; loss of productivity; anticipated savings; damage to equipment, components or materials, loss of use, wastage or damage to the Buyer's end products; down time costs, loss or damage to goodwill, loss of business, business interruption, loss of data or any type of special, indirect or consequential loss, damage, costs or expenses.
- 15.2** Subject to clause 15.4, the Company's total liability to the Buyer arising under or in connection with the Contract, shall not exceed the amount actually received by Company for the Deliverables which give rise to the claim.
- 15.3** Subject to clause 15.4, the Company excludes all liability arising as a result of any inaccuracy or incompleteness in the Proposal.
- 15.4** Nothing in these Conditions shall exclude or limit the liability of either party in respect of any of the following:
- 15.4.1** death or personal injury caused by negligence; or
- 15.4.2** fraud or fraudulent misrepresentation; or
- 15.4.3** any indemnity given; or
- 15.4.4** any other losses which cannot be excluded or limited by law.
- 16. BUYER OBLIGATIONS**
- 16.1** The Buyer shall:
- 16.1.1** ensure that the terms of the Order (including the Proposal) and are complete and accurate, and promptly inform the Company of any inaccuracies or discrepancies;
- 16.1.2** maintain accurate and complete records regarding equipment operation, maintenance, and service performed on the Goods;
- 16.1.3** cooperate with the Company in all matters relating to the Deliverables and provide the Company with adequate instructions for performance or delivery;
- 16.1.4** obtain and maintain all necessary licences, permissions and consents which may be required for the delivery or the Goods or performance of the Services before the date on which the Goods are to be delivered or performance of the Services is to start;
- 16.1.5** be responsible and reimburse the Company for any costs associated with work permits, immigration documents or other permits or licenses required to allow the Company, its employees, agents or subcontractors to perform Services at the location set out in the Order;
- 16.1.6** provide the Company, its employees, agents, consultants and subcontractors, with clear, uninterrupted access to the premises set out in the Order to provide the Services;
- 16.1.7** provide the Company with such information and materials as the Company may reasonably require to supply the Deliverables and ensure that such information is complete and accurate in all material respects; and
- 16.1.8** prepare the premises set out in the Order, as required for the Deliverables.
- 16.2** If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation:
- 16.2.1** without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend delivery or performance of the Deliverables until the Buyer remedies the default;
- 16.2.2** the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Buyer's failure to perform, or delay in performing, any of its obligations; and
- 16.2.3** the Buyer shall reimburse the Company on demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer's default.
- 17. FORCE MAJEURE AND EXCUSABLE DELAYS**

- 17.1** Neither party shall be liable to the other or be deemed in breach of the Contract for any delays or non-performance of any obligations under the Contract, if the delay or failure is due to a Force Majeure Event. The period for delivery and/or performance shall be deemed extended for a period of time equivalent to the duration of the Force Majeure Event.
- 17.2** The party suffering from a Force Majeure Event shall promptly give written notice of the Force Majeure Event to the other party (provided that failure to provide prompt notice prevent a party from claim relief other than to the extent that such failure prejudices the other party), stating the period of time the occurrence is expected to continue and shall use reasonable endeavours to ensure the effects of such Force Majeure Event are minimised.
- 17.3** The parties expressly agree that, notwithstanding anything to the contrary, neither party shall be liable for delays or non-performance as a result of causes related to COVID-19, including but not limited to, governmental directions, orders, guidelines or recommendations; unavailability or delay in receipt of third party materials or services, components or other required supplies; labour shortages and/or stoppages, or any effects or conditions resulting from such events or other reasonable measures taken by a party, to address such events ("COVID-19 Event"). The party suffering a COVID-19 Event shall promptly give written notice of such to the other party, (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party) stating the period of time the occurrence is expected to continue (if reasonably known), and shall use commercially reasonable efforts to end the failure or delay and minimize its effects. Any price consequences and/or impacts to timeframes for delivery of the Deliverables shall be reasonably determined by the Company.

18. GENERAL

- 18.1 Employees.** During the parties' performance under this Order and for a period of six (6) months thereafter, neither party shall knowingly solicit for employment any of the other party's then-current personnel who have been directly involved in the performance of this Order, without the prior written consent of the other party. The foregoing shall not apply to advertisements or general solicitations that do not specifically target the other party's personnel and shall not apply to employees who were directly involved in the performance of the Order at one time but who did not have direct involvement in the six (6) month period preceding the solicitation.
- 18.2 Notices.** Any notice given shall be in writing and delivered by pre-paid first-class post or recorded delivery to the other party at the address set out in the Order, or such other address may have been notified by that party for such purposes. A correctly addressed notice shall be deemed to have been served 48 (forty-eight) hours after the date it was posted.
- 18.3 Severance.** If one or more of the provisions or part provisions contained in these Conditions is or becomes invalid, illegal or unenforceable in any respect, such provision(s) or part provisions shall be deemed modified to the 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 shall not affect the validity, legality and enforceability of the remaining provisions of the Contract.
- 18.4 No waiver or release.** Any delay, act, or omission by Company in exercising any right or remedy provided under these Conditions or by law shall not operate as: (i) a waiver of that or any other right or remedy, nor shall it restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that right or remedy. A waiver of a right or remedy by Company must be made in a written document executed by an authorised representative of the Company.
- 18.5 Entire Agreement.**
- 18.5.1** These Conditions and the Order constitute the whole agreement between the parties with respect to its subject matter, and supersedes all prior agreements, conditions, warranties, representations, arrangements and communications, assurances and understandings between them, whether oral or written.
- 18.5.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.
- 18.6 Third Party Rights.** No one other than a party to the Contract shall have any right to enforce its terms.
- 18.7 Compliance with law.** The Buyer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 18.8 No partnership or agency.** Nothing in the Contract will constitute, or be deemed to constitute a partnership between the parties nor will it constitute, or be deemed to constitute, party the agent of the other party for any purpose.
- 18.9 Set off.** The Company shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract or under any other contract which the Company has with the Buyer.

19. GOVERNING LAW

- 19.1** The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter, or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with, the laws of England and Wales.
- 19.2** The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 19.3** The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.