

## TCN Terms and Conditions for Supply of Goods (to Customers)

### 1 INTERPRETATION

#### 1.1 Definitions.

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday in England) when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** means these terms and conditions as amended from time to time in accordance with clause 16.8.

**Collection Location:** has the meaning set out in clause 4.2.

**Confidential Information:** means all confidential or proprietary information (however recorded or preserved) that is disclosed or made available whether before or after the date of these Conditions (in any form or medium), directly or indirectly, by the Disclosing Party to the Receiving Party including all business, affairs, customers, suppliers, operations, processes, product information, technical or commercial know-how, specifications, inventions and initiatives which are of a confidential nature and any information, findings, data or analysis derived from Confidential Information excluding information that:

- (a) is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Receiving Party; or
- (b) was lawfully in the possession of the Receiving Party before the information was disclosed by the Disclosing Party.

**Configuration Specification:** has the meaning set out in clause 7.1.

**Contract:** each contract made between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases Goods from the Supplier.

**Data Breach:** means any unauthorised or unlawful processing of, disclosure of, use of, access to, theft of and/or any accidental or unlawful damage to, destruction of, loss of, alteration to or corruption of Personal Data.

**Data Protection Legislation:** means all legislation and regulatory requirements in force from time to time relating to the use of personal data, including without limitation, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK) (ii) the Regulation and (iii) any other directly applicable European Union regulation relating to privacy.

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 16.1(a).

**Goods:** the goods (or any part of them) set out in each Order.



**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the supply of Goods, as set out in the Customer's purchase order form.

**Manufacturer:** means the manufacturer of the relevant Goods.

**Quotation:** means the quotation provided to the Customer by the Supplier for providing the Customer with the Goods.

**Personal Data:** means any personal data which is supplied, or in respect of which access is granted, to the Supplier by the Customer in connection with the provision of Goods by the Supplier under a Contract.

**Regulation:** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as and any legislation which amends, re-enacts or replaces it in England and Wales.

**Sales Order Confirmation:** the written confirmation provided to the Customer by the Supplier that the Order has been accepted by the Supplier (at which time a Contract is formed and comes into existence).

**Supplier:** Total Computer Networks Limited registered in England and Wales with company number 04958126 and whose registered office address is Newspaper House, Rothwell Road, Kettering, Northamptonshire, NN16 8GA.

**Supplier Materials:** has the meaning set out in clause 8.1(g).

1.2 In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a **party** includes its personal representatives, successors or permitted assigns;
- (c) a reference to a **statute** or **statutory provision** is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) unless the context otherwise requires, words in the singular include the plural and in the plural include the singular; and
- (f) a reference to **writing** or **written** includes emails and faxes.



## 2 BASIS OF ENTERING INTO A CONTRACT

- 2.1 The provision of an Order constitutes an offer by the Customer to purchase the Goods set out therein in accordance with the provisions of these Conditions. To the extent that an Order contains any services, the Supplier's terms and conditions for the supply of services shall apply in respect of those services instead of these Conditions.
- 2.2 An Order shall only be considered accepted when the Supplier issues the Sales Order Confirmation at which point and on which date a Contract shall come into existence (the **Commencement Date**). In the event that a Sales Order Confirmation is not issued by the Supplier, an Order shall be deemed to be accepted, and a binding Contract to have come into existence, on the date on which the Supplier commences the delivery of the Goods. All prices are subject to change as a result of errors or omissions prior to receipt of the Goods by the Customer. For the avoidance of doubt, the Customer is not required to purchase any minimum quantity of Goods under these Conditions. The Supplier is not obliged to accept any Order and shall be entitled to accept or reject any such Order in its sole discretion.
- 2.3 Each Contract constitutes the entire agreement between the parties for the supply of the Goods in that Order (as applicable). The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in these Conditions.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods contained in the catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of a Contract or have any contractual force.
- 2.5 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty (30) Business Days from its date of issue unless otherwise indicated on the Quotation.
- 2.7 If there is any conflict between these Conditions and the terms of an Order (being an Order accepted or deemed accepted in accordance with clause 2.2), the terms of the relevant Order (as applicable) shall prevail.

## 3 GOODS

- 3.1 The Goods supplied are as described by the Manufacturer unless at the time of issuance of the Order (as applicable), configuration of the Goods has been ordered (see clause 7) in which case the Goods will be as described by the Manufacturer and as modified in accordance with the Configuration Specification.
- 3.2 The Supplier reserves the right to amend any specification of the Goods if required by any applicable statutory or regulatory requirements.



## 4 DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which clearly refers to the Contract to which those Goods relate, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered under a Contract by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense unless specifically agreed with the Customer prior to the Order being placed.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may subsequently agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready to be delivered or if applicable and agreed between the Customer and Supplier in writing (in the Contract or subsequently) the Customer (or its agent) shall collect the Goods from the Supplier's premises at 1 Brooklands Court, Kettering Venture Park, Kettering, Northamptonshire NN15 6FD or such other location as may be advised by the Supplier prior to delivery (**Collection Location**) within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready for collection.

4.3 Delivery of the Goods shall take place and be considered completed on the Goods' arrival at the Delivery Location or, if applicable, upon the commencement of the loading of the Goods at the Collection Location.

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

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

4.6 If the Customer fails to collect, accept or take delivery of the Goods within ten (10) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 11<sup>th</sup> Business Day following the day on which the Supplier notified the Customer that the Goods were ready for delivery or collection (as the case may be); and



(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including, but not limited to, insurance).

4.7 If twenty-five (25) Business Days after the Supplier notified the Customer that the Goods were ready for delivery or collection, the Customer has not collected, accepted or taken delivery of them and notwithstanding the fact that Goods have been deemed delivered under clause 4.6, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs and expenses, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers or makes available for collection (as the case may be) up to and including five (5) per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the invoice for that Contract on receipt of notice from the Customer that the wrong quantity of Goods was delivered or collected.

4.9 The Supplier may deliver or make available for collection (as the case may be) the Goods pursuant to the terms of a Contract by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or making the Goods available for collection by the Supplier or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5 QUALITY OF GOODS

5.1 It is acknowledged by the parties that the Supplier does not manufacture the Goods and is a reseller of the Goods. Goods may be configured prior to delivery or collection in accordance with a Customer's request (see clause 3.1 and clause 7).

5.2 All Goods supplied will carry the benefit of the particular Manufacturer's warranty from time to time (**Manufacturer's Warranty**) if applicable and the terms of these will vary from product to product. The Customer should familiarise itself with the terms of the Manufacturer's Warranty and a copy of this is available upon request from the Supplier or from the Manufacturer direct and/or may be included with the Goods when they are delivered. The Customer should be aware that by altering the configuration of the Goods, the configuration may affect the Manufacturer's Warranty and the rights of the Customer thereunder.

5.3 The Supplier warrants that on delivery and for either the period of warranty given under the terms of the Manufacturer's Warranty or for thirty (30) days after the date of delivery or collection of the Goods whichever is the shorter (**Warranty Period**) the Goods shall:

- (a) conform in all material respects with their description; and
- (b) be free from material defects in design, material and workmanship.

5.4 Subject to clause 5.5, if:

- (a) the Customer gives notice in writing during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 5.3;
- (b) the Supplier is given a reasonable opportunity to examine such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.



- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.3 if:
- (a) the Customer makes any further use of such Goods after giving notice pursuant to clause 5.4(a);
  - (b) the defect arises because the Customer failed to follow the Supplier's or Manufacturer's (as applicable) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the defect arises as a result of the Supplier or Manufacturer (as applicable) following any drawing, design or Configuration Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier or Manufacturer;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from their description or the Configuration Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.3.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.4 from the date of delivery / collection or deemed delivery of the repaired or replacement Goods.
- 5.8 If the Customer becomes aware of a breach of either the Supplier's warranty in clause 5.3 during the course of the Warranty Period and/or the Manufacturer's Warranty during the course of the warranty period referred to in the Manufacturer's Warranty then the Customer should contact the Supplier. The Supplier will then either direct the Customer to the Manufacturer if appropriate or deal with the matter itself. It is agreed and acknowledged by both parties that the Supplier has no liability to the Customer (or otherwise) under the Manufacturer's Warranty.
- 5.9 If the Customer changes its mind about any of the Goods supplied, and provided that no claim for any breach of warranty or Manufacturer's Warranty is being entertained or considered or undertaken by that Customer, then the Supplier may, always at its absolute discretion accept the return of the Goods and provided the Goods are returned in an excellent condition and are fit for re-sale, then the Supplier will refund the Customer accordingly subject to any reasonable administration charges and/or any charges incurred by the Supplier for the return of the Goods to the Manufacturer.



## 6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.3 or 4.6 (as the case may be). Where delivery is in batches, risk shall pass for the Goods delivered in each batch upon delivery of that batch.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

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

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable at the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l); and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,

however, nothing in this clause 6.3 shall prevent the Customer from using the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time (at its option) require the Customer to deliver up the Goods or enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.



## 7 CONFIGURATION OF THE GOODS

- 7.1 Where specified by the Customer at the time of issuing an Order, prior to delivery or collection of the Goods, and forming part of a Contract, the Goods will be configured by the Supplier in accordance with the specification relating to the configuration supplied by the Customer and agreed by the Supplier (the **Configuration Specification**).
- 7.2 To the extent that the Goods are to be configured in accordance with a Configuration Specification, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Configuration Specification. This clause 7.2 shall survive termination of these Conditions or any Contract.
- 7.3 The Supplier reserves the right to amend the Configuration Specification if required by any applicable statutory or regulatory requirements.
- 7.4 The Customer acknowledges and accepts that changes to the Goods made in accordance with the Configuration Specification may cause warranties relating to the Goods to become void. The Customer shall hold the Supplier harmless in respect of any such invalidation or losses flowing from it.

## 8 CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) if submitted by the Customer, ensure that the terms of each Order (and if applicable, each Configuration Specification) issued to the Supplier are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Goods;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and facilities as reasonably required by the Supplier to supply the Goods;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods, and ensure that such information is accurate in all material respects;
  - (e) prepare the Customer's premises for the supply of the Goods;
  - (f) obtain and maintain all necessary licences, permissions and consent which may be required in relation to the provision of the Goods before the date on which delivery of the Goods commences;
  - (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
  - (h) provide to the Supplier and its employees, agents, consultants and subcontractors details relating to all hazards at the Customer's premises and comply with all health and safety laws and policies in connection with the presence of the Supplier and its employees, agents, consultants and subcontractors at the Customer's premises.



- 8.2 If the Supplier's performance of any of its obligations in respect of supplying the Goods is prevented or delayed by any act or omission by the Customer or failure by the Customer to fully perform any relevant obligation (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend further deliveries of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9 CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in each Contract. The price for the Goods will not include the costs for delivery unless otherwise agreed between the parties.
- 9.2 Where a Quotation is not provided, the price for the Goods shall be advised to the Customer by the Supplier prior to the Commencement Date.
- 9.3 The Supplier shall invoice the Customer on or at any time after completion of delivery or collection or deemed delivery (in accordance with clause 4.3 or 4.6). Where Goods are configured prior to delivery or collection, then the Supplier shall invoice the Customer for the supply of the Goods and for the configuration on or at any time after completion of delivery or collection or deemed delivery (in accordance with clause 4.3 or 4.6).
- 9.4 The Customer shall pay each invoice submitted by the Supplier (unless otherwise agreed in writing between the parties):
- (a) within thirty (30) days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - (c) time for payment shall be of the essence under each Contract.
- 9.5 All amounts payable by the Customer under any Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under a Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 9.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under any Contract by the due date for payment in accordance with clause 9.4(a) (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Barclays Bank Plc base rate from time to time accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.



If payment is not made on the Due Date, the Supplier may at its discretion instruct solicitors to take appropriate action against the Customer in order to recover the payment and the Customer shall indemnify and keep indemnified the Supplier in respect of the reasonable costs and charges directly or indirectly incurred by the Supplier in this regard.

- 9.7 The Customer shall pay all amounts due under each Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 All Supplier Materials are, and shall at all times remain, the exclusive property of the Supplier.

## 11 CONFIDENTIALITY

- 11.1 Except as set out in clause 11.2, a party (**Receiving Party**) shall keep in strict confidence all Confidential Information that has been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors and shall implement adequate technical and security measures to protect the Confidential Information in the Receiving Party's possession or control (being at least as stringent as the measures applied by the Receiving Party to its own Confidential Information).
- 11.2 The Receiving Party may disclose Confidential Information:
- (a) to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under a Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party; and
  - (b) when required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that the Receiving Party shall, to the extent permitted by law, use all reasonable endeavours to give the Disclosing Party as much notice of this disclosure as possible.
- 11.3 Except as set out in clause 11.2, the Receiving Party shall use the Disclosing Party's Confidential Information only to exercise its rights and perform its obligations under or in connection with these Conditions and/or any Contract.
- 11.4 Without prejudice to any other rights or remedies that each party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this clause 11 by the other party. Accordingly, each party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this clause 11.
- 11.5 This clause 11 shall survive termination of these Conditions.



## 12 Data protection and data processing

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2 The parties agree that for the purposes of these Conditions and the Supplier's processing of the Personal Data in connection with the provision of the Goods, the Supplier (and each permitted sub-processor) shall be a data processor (where Data Controller and Data Processor have the meanings as defined in the Regulation). The table below sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Regulation).

<b>Subject matter of processing</b>	Provision of the Goods as more specifically set out in each Order
<b>Duration of processing</b>	Duration of each Contract
<b>Nature and purpose of processing</b>	Enable fulfilment of the contract through the supply of Goods to the Customer at the Customer's address or the home address of the Customer's employee
<b>Type of personal data</b>	Name Address Telephone Number Email address
<b>Categories of Data Subjects</b>	Customer Customer's employees

12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of these Conditions

12.4 The Supplier shall, to the extent it is acting as Data Processor:

- (a) only process the Personal Data on the written instructions of Customer, including with regard to transfers of personal data to a third country or international organisation, and otherwise as necessary to perform its obligations under these Conditions or as required by any EU or member state law of which, before processing any Personal Data, the Supplier notifies the Customer (unless prohibited by that law from doing so on important grounds of public interest);
- (b) ensure that all staff or contractors who may have access to, or are authorised to process Personal Data are bound by appropriate obligations of confidentiality at least as protective as those set out in these Conditions or are under appropriate statutory obligations of confidentiality;
- (c) have in place and maintain all appropriate technical and organisational measures aimed at ensuring an appropriate level of security and preventing a Data Breach, which shall be compliant with all appropriate Data Protection Legislation regarding the security of the Personal Data;



- (d) assist Customer by appropriate technical and organisational measures for the fulfilment of Customer's obligation to respond to requests for exercising of data subject rights (including access requests) set out in Chapter III of the Regulation;
- (e) not transfer any Personal Data outside the EEA without appropriate safeguards in place as required by Data Protection Legislation;
- (f) subject to reasonable access arrangements and save for disclosure of information which is confidential, commercially sensitive or privileged the Supplier shall on reasonable request, provide to Customer, and / or its authorised representatives or auditors, all information required by Customer and / or allow for and contribute to audits and inspections to assess the Supplier's compliance with this Clause 12 and the Data Protection Legislation;
- (g) notify Customer in writing without undue delay after becoming aware of any Data Breach and shall provide Customer with reasonable assistance in investigating and responding to such Data Breach;
- (h) within 30 days of termination or expiry of these Conditions (or the relevant part of them) at the option of Customer either destroy or delete all Personal Data or transfer all Personal Data to Customer or a nominated third party other than to the extent that such Personal Data's ongoing retention is required by EU or member state law and only for such period as required by EU or member state law;
- (i) notify Customer in writing, as soon as reasonably practicable, if it receives from a Data Subject a communication, request or complaint which relates to the processing of the Personal Data by the Supplier on behalf of Customer or to either party's compliance with the Data Protection Legislation (save to the extent that such notification is prohibited by the relevant applicable laws) and, in each case, provide a copy of any such communication, request or complaint; and
- (j) participate in, and provide reasonable assistance with, a Privacy Impact Assessment, a data protection impact assessment or prior consultation under Article 35 (Data protection impact assessment) and Article 36 (Prior consultation) of the Regulation in respect of the new type of processing proposed by the Supplier.

12.5 Excluding any actions required by the Supplier for compliance with the Supplier's direct obligations under Data Protection Legislation, to the extent that any assistance provided by the Supplier under clause 12.4 requires a significant effort or time commitment then the Supplier shall be entitled to charge, and the Customer shall pay, the Supplier's reasonable costs of providing such assistance.

12.6 The Customer hereby provides its general written authorisation for the Supplier to appoint sub-processors. The Supplier shall notify the Customer in writing of any intended changes concerning the addition or replacement of sub-processors. If the Customer reasonably objects to any changes concerning sub-processors the Customer must notify the Supplier at least 4 weeks prior to the proposed engagement and the Supplier shall not engage, or shall cease to engage that sub-processor. If the Customer fails to notify the Supplier of any objections at least 4 weeks prior to the proposed engagement then the Customer shall be deemed to have consented to the change in sub-processor and shall have no further right to object. The Supplier confirms that it has entered or (as the case may be) will enter with each of the sub-processors a written agreement incorporating terms which are substantially similar to those set out in this clause 12. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any sub-processor appointed by the Supplier pursuant to this clause 12.



**13 LIMITATION OF LIABILITY:**

13.1 Nothing in these Conditions or any Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- (e) defective products under the Consumer Protection Act 1987; or
- (f) any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with any Contract for:
  - (i) any loss of profits, sale, business or revenue;
  - (ii) loss or corruption of data, information or software;
  - (iii) loss of business opportunity;
  - (iv) loss of anticipated savings; or
  - (v) any indirect or consequential loss.

13.3 The Supplier's total liability to the Customer in respect of all losses arising under or in connection with each Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid or to be paid for the Goods under that Contract.

13.4 Except as set out in these Conditions or any Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from each Contract.

13.5 This clause 13 shall survive termination of these Conditions.



## 14 TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate these Conditions and/or any Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under these Conditions and/or any Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing informing of the breach;
  - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
  - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);
  - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.



- 14.2 Without limiting its other rights or remedies, the Supplier may terminate these Conditions and/or any Contract:
- (a) by giving the Customer one (1) month's written notice; or
  - (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date.
- 14.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend all further deliveries of Goods under any Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under this Contract on the Due Date; or
  - (b) the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15 CONSEQUENCES OF TERMINATION

- 15.1 On termination of these Conditions and/or any Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest under these Conditions or the particular Contract (as the case may be) and, in respect of any Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Receiving Party shall destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information and erase all the Disclosing Party's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form and shall certify in writing to the Disclosing Party that it has complied with the requirements of this clause 15.1(b); the Customer shall return all of the Supplier Materials, provided pursuant to these Conditions or the relevant Contract, which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose;
  - (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of contract which existed at or before the date of termination or expiry; and
  - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15.2 On termination of these Conditions for any reason all Contracts will automatically terminate.



## 16 GENERAL

### 16.1 Force Majeure:

- (a) For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lockouts or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under any Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from supplying any Goods under a Contract for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate any such Contract immediately by giving written notice to the Customer.

### 16.2 Assignment and Subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under these Conditions or any Contract and may subcontract or delegate in any manner any or all of its obligations under a Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions or any Contract.

### 16.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with these Conditions or any Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice, given under these Conditions or any Contract shall not be validly served if sent by e-mail.





16.4 Waiver and Cumulative Remedies:

- (a) A waiver of any right under these Conditions or any Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under these Conditions or any Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under these Conditions or any Contract are cumulative and to not exclude rights provided by law.

16.5 Severance:

- (a) If a court or any other competent authority finds that any provision of these Conditions or any Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these Conditions or any Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of these Conditions or any Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.6 No Partnership:

Nothing in the these Conditions or any Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.7 Third parties:

A person who is not a party to these Conditions shall not have any rights under or in connection with it or any Contract.

16.8 Variation:

Any variation, including the introduction of any additional terms and conditions, to these Conditions or any Contract shall only be binding when agreed in writing and signed by the Supplier.

16.9 Governing Law and Jurisdiction:

these Conditions and each Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

