



## VantageUAV Limited (t/a Vantage UAV & Aetha Global)

### Terms & Conditions of Business

Issue 1.3



A handwritten signature in black ink, reading 'A. Vaughan'.

**Policy maintained by** Andrew Vaughan

**Last reviewed** 01/02/2023

A handwritten signature in black ink, reading 'Jon Love'.

**Approved for issue** Jon Love

**Next review** 01/02/2024

## Amendment Record

Issue	Date	Amendment
1	01/02/2020	Issue of original document
1.1	01/02/2021	Annual Review
1.2	01/02/2022	Annual Review
1.3	01/02/2023	Annual Review

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

**Contract:** the Customer's order and the Supplier's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with condition 5.1(a).

**Deliverables:** all products and materials developed by the Supplier in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Equipment:** the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, 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.

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Project:** the project as described in the Project Plan.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.

**Services:** the services to be provided by the Supplier under the Contract.

**Software:** any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Equipment at the time of its delivery or otherwise to be provided by the Supplier under the Contract.

**Supplier:** Vantage UAV Limited incorporated and registered in England and Wales with company number 10947573 whose registered office is at 339 Two Mile Hill Rd, Bristol, BS15 1AN

**Supplier's Project Manager:** the Supplier's manager for the Project, appointed in accordance with condition 4.2.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

(a) apply to and be incorporated in the Contract; and

(b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

### **3. EFFECT OF ORDER AND BASIS OF SALE OF EQUIPMENT**

3.1 Any quotation is valid for a period of 30 days only, and the Supplier may withdraw or amend it at any time by notice to the Customer. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3.2 The Customer's order (whether on the basis of the Supplier's sales order form or otherwise) constitutes an offer by the Customer to purchase the Services and/or Equipment specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the sales order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the order, shall establish a contract for the supply and purchase of the stated Services and/or Equipment on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Customer's order shall not govern the Contract.

3.3 In relation to any Equipment:

- (a) The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment;
- (b) No order for Equipment which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation;
- (c) The quantity and description of the Equipment shall be as set out in the Supplier's acknowledgement of order or (if there is no acknowledgment of order) quotation, provided that the Supplier may substitute the Equipment (or any of it) for other equipment with an equivalent or superior specification;
- (d) All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract;
- (e) The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where the Supplier is not the manufacturer of the Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier;

- (f) The Supplier's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Supplier. However, nothing in these conditions limits the Supplier's liability for fraudulent misrepresentation; and
- (g) Any advice or recommendation given by the Supplier or its employees, contractors or agents to the Customer or its employees, contractors or agents about the storage, application or use of the Equipment which is not confirmed in writing by an authorised officer of the Supplier is followed or acted on entirely at the Customer's own risk.
- (h) Monies owed for equipment that is not held in stock and is ordered in specifically for a client is non-refundable, unless agreed otherwise in writing.
- (i) Certain Equipment provided by the Supplier, including but not limited to drones and other unmanned aerial vehicles, may be subject to legislative changes. If any such legislation comes into effect at any time, the Customer totally indemnifies the Supplier of all liability directly or indirectly relating to the Equipment no longer being able to be used for its intended purpose.
- (j) Any orders for Equipment that requires additional checks for, including, but not limited to, "dual use" or "export-controlled" Equipment, the Customer will cover any costs incurred by the Supplier for carrying out the checks. In the event that the checks fail, the Supplier will refund any deposits that are deemed refundable or the total balance of the paid invoice, less any administrative costs, unless otherwise agreed upon in writing prior to acceptance of the order.

#### **4. SUPPLIER'S OBLIGATIONS**

4.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.

4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Project but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

#### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;

- (b) provide in a timely manner such access to the Customer's premises, equipment and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## **6. CHANGE CONTROL**

6.1 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of the Contract.

6.2 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

## **7. CHARGES AND PAYMENT**

7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 7.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.

7.2 Where the Services are provided on a post-paid time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
- (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.30 am and 5.30 pm on weekdays (excluding weekends and public holidays);
- (c) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis;
- (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and
- (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.

7.3 Where the Services are provided on a pre-paid time-and-materials basis:

- (a) the Customer shall pre-pay to the Supplier on account of Services to be later called-off by the Customer and provided by the Supplier in pre-agreed blocks such amount as is agreed between the parties;
- (b) the pre-paid amount, the minimum blocks in which the Services may be called-off by the Customer, and the expiry date of the pre-payment (after which the Customer's entitlement to call-off Services against the pre-paid amount shall lapse without any entitlement to a refund) shall be as set out in the sales order;
- (c) when the Services are called-off by the Customer, the charges payable for such Services shall be calculated in accordance with the Supplier's discounted daily pre-pay fee rates as amended from time to time and deducted from the pre-paid amount;
- (d) the Supplier's discounted daily pre-pay fee rates are calculated on the basis of an eight-hour day worked between 9.30 am and 5.30 pm on weekdays (excluding weekends and public holidays);

(e) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 7.2(b) on a pro-rata basis;

(f) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and

(g) the Supplier shall invoice the Customer in advance for the agreed pre-paid amount on account of its charges for time, expenses and materials (together with VAT where appropriate).

7.4 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Supplier (without deduction or set-off) in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.5.

7.5 Any fixed price contained in the Project Plan excludes:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and

(b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

7.6 In relation to Equipment:

(a) All prices shall be as stated in the Supplier's acknowledgement of order. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties;

(b) The price for the Equipment is based on the rate prevailing at the date of the Supplier's acknowledgement of the order and the Supplier may increase the price to cover any increases due to market conditions (including, but not limited to, increases imposed by the supplier(s) of such Equipment to the Supplier, increases in foreign exchange rates relating to the Equipment, or in labour, materials, supply or transportation costs) which affect the Supplier at the date of delivery;

(c) The price of the Equipment shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's price list current at the date of acceptance of the order. The Supplier's published export price list shall apply to exports of the Equipment as appropriate; and

(d) The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to the Supplier which is due to any factor



beyond the control of the Supplier (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

7.7 In relation to the Services, the Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

7.8 In relation to the Equipment:

(a) Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier will invoice the Customer for the price of the Equipment on or at any time before delivery of the Equipment, unless:

(i) A deposit is specified in the sales order form (in which case the Supplier shall be entitled to invoice the Customer for the amount of such deposit immediately and shall be under no obligation to progress the Customer's order until such deposit has been paid). The Supplier may then invoice for the remaining balance on or after delivery has taken place.

Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Equipment is ready for collection.

(b) the Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 2 days of receipt, unless any special terms have been agreed upon.

7.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

(a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services and/or deliveries of Equipment until payment has been made in full.

7.10 Time for payment shall be of the essence of the Contract.

7.11 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.12 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **8. DELIVERY OF EQUIPMENT AND ACCEPTANCE**

8.1 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and the Supplier is not liable for any delay in delivery, however caused.

8.2 The Equipment may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Customer.

8.3 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.

8.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

8.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had three days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 13.

8.6 The Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with the Supplier's stipulations. Any remedy under this condition 8.6 shall be limited, at the option of the Supplier, to the replacement or repair of any Equipment which is proven to the Supplier's satisfaction to have been lost or damaged in transit.

## **9. RISK AND PROPERTY**

9.1 The Equipment shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Supplier's acknowledgement of order. The Supplier shall off-load the Equipment at the Customer's risk.

9.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:

- (a) the Equipment; and

(b) all other sums which are or which become due to the Supplier from the Customer on any account.

9.3 Until ownership of the Equipment has passed to the Customer under condition 9.2, the Customer shall:

(a) hold the Equipment on a fiduciary basis as the Supplier's bailee;

(b) store the Equipment (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

(d) keep the Equipment insured on the Supplier's behalf for its full price against all risks to the reasonable satisfaction of the Supplier, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

9.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 16 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.

9.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.

9.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 9 shall remain in effect.

9.7 The Supplier may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## **10. SOFTWARE LICENCE**

10.1 If the Supplier refers to a software licence in the sales order, the price of the Equipment includes the licence fee for the Customer's right to use the Software.

10.2 If the Customer is provided with any software licence in respect of the Software, the Customer shall sign and return it to the Supplier within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

10.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:

- (a) the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
- (b) the Customer shall not use the on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- (c) such licence shall be terminable by either party 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
- (d) on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 17.1, this licence will automatically terminate.

11.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

11.3 If the Supplier manufactures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from the Supplier's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of the Supplier.

11.4 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of the Supplier or (as the case may be) third party rights, owner.

11.5 The Supplier's Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of the Supplier, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

11.6 In relation to the Software:

(a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;

(b) nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and

(c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

## **12. CONFIDENTIALITY AND SUPPLIER'S PROPERTY**

12.1 Each party (the "Recipient") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Recipient by the other party (the "Discloser") or its agents, and any other confidential information concerning the Discloser's business which the Recipient may obtain. The Recipient shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Recipient's obligations to the Discloser, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Recipient.

12.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

12.3 This condition 12 shall survive termination of the Contract, however arising.

## **13. WARRANTY**

13.1 The Supplier warrants to the Customer that the Equipment is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this condition 13), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within twelve months of delivery and installation unless otherwise stated in writing.

13.2 The Supplier shall not be liable for a breach of the warranty contained in condition 13 unless:

(a) the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and

(b) after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost for the examination to take place there.

13.3 The Supplier shall not be liable for a breach of the warranty in condition 13 if:

(a) the Customer makes any use of Equipment in respect of which it has given written notice under condition 13.2(a); or

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

(c) the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.

13.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the initial warranty period.

13.5 The Supplier shall not be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

13.6 For international orders (which, for the avoidance of doubt, shall include any order to be delivered outside the United Kingdom) ("International Orders"), warranty is only valid in the country where the Supplier is based. If the Customer is located outside of the United Kingdom and wishes to return the Equipment for a warranty claim, then the Customer is responsible for all arrangements and costs of sending back to the Supplier and for return shipping back to them, even if the warranty claim is successful, unless a Service Level Agreement ("SLA") is in place with the Customer. Matters relating to warranty should be found in that agreement.

## **14. REMEDIES**

14.1 The Supplier shall not be liable for any non-delivery of Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within three days after the scheduled delivery date.

14.2 Any liability of the Supplier for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.

14.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 18), the Customer shall be liable to pay to the Supplier all reasonable costs, charges or losses sustained by it as a result, subject to the Supplier notifying the

Customer in writing of any such claim it might have against the Customer in this respect.

14.4 In the event of any claim by the Customer under the warranty given in condition 13, the Customer shall notify the Supplier in writing of the alleged defect. The Supplier shall have the option of testing or inspecting the Equipment at its current location or moving it to the Supplier's premises (or those of its agent or sub-contractor) at the cost of the Supplier. If the Customer's claim is subsequently found by the Supplier to be outside the scope or duration of the warranty in condition 13, the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.

## **15. LIMITATION OF LIABILITY**

15.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of the Contract;

(b) any use made by the Customer of the Services, the Deliverables, the Equipment or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

15.3 Nothing in these conditions excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for fraud or fraudulent misrepresentation.

15.4 Subject to condition 15.2 and condition 15.3:

(a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss or corruption of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services and/or Equipment giving rise to such liability.

## **16. RENEWALS**

16.1 At the time of the contract renewal, the Customer will be notified, in writing 30 days prior to renewal, of any change in the contract rate, which will then be applicable from that date.

16.2 The Contract will automatically roll over for a further term equal to the initial contract term unless terminated by three months written notice by the Customer.

16.3 If the Services covered by the contract remain unchanged, the Supplier has the right to automatically increase the cost of the contract up to a maximum of ten percent (10%) of the previous year's contract rate. The renewal fee is payable in advance to ensure continuity of support.

## **17. TERMINATION**

17.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

(a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

(c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or



(e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

(f) the other party ceases, or threatens to cease, to trade; or

(g) there is a change of control of the other party; or

(h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

(i) the ability of the Customer to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control.

17.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

17.3 Where Services are terminated in the Contract term, an amount equal to the charges due to the end of the Contract period remain applicable and payable in full by the Customer.

## **18. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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 sub-contractors.

## **19. WAIVER**

19.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## **20. SEVERANCE**

20.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall

remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **21. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

## **22. ASSIGNMENT**

22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **23. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **24. THIRD PARTY RIGHTS**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## **25. NOTICES**

Any notice under the Contract shall be in writing and shall be delivered;

- i) by hand, sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or
- ii) sent by fax to the other party's fax number as set out in the Contract.

iii) by email, sent to the party's main contact email as set out in the Contract.

A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.30 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender). A notice sent by email shall be deemed to have been received 72 hours after sending to a correct email address.

## **26. GOVERNING LAW AND JURISDICTION**

26.1 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.