

STANDARD TERMS AND CONDITIONS OF SALE
1. DEFINITIONS

"**Commencement Date**" as defined in clause 2.3.

"**Contract**" means the contract between ST and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

"**Conditions**" these terms and conditions as amended in accordance with clause 24.

"**Customer**" means the person firm or company specified in the Quotation and with whom the Contract is entered into.

"**Data Protection Legislation**" the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy

"**Equipment**" means any equipment, goods, materials or spare parts supplied by ST in accordance with the Quotation.

"**Equipment Specification**" means ST's standard specifications for the Equipment, unless otherwise agreed in writing with the Customer.

"**Factory Acceptance**" means acceptance of the Equipment by ST's engineers having carried out commissioning and testing of the Equipment at ST's factory and confirming to ST's reasonable satisfaction that the Equipment is operational in accordance with the Equipment Specifications.

"**Final Acceptance**" means acceptance of the Equipment by the Customer following ST's Installation Personnel having carried out commissioning and testing of the Equipment at the Customer's Site and confirming to ST's reasonable satisfaction that the Equipment is operational in accordance with the Equipment Specifications, at which time a certificate of Final Acceptance (the "Final Acceptance Certificate") shall be issued.

"**Installation Personnel**" means the engineer(s) despatched to the Site by ST or its authorised agents for the purpose of installing the Equipment.

"**Price**" means the price to be paid by the Customer for the Equipment and/or Services as specified in the Quotation.

"**Quotation**" means ST's quotation document or letter providing an estimate for the Equipment or Services in accordance with these Conditions.

"**Order**" means the Customer's order for the supply of Equipment and / or Services as set out in the Customer's purchase order, or the Customer's written acceptance of the Quotation, or overleaf, as the case may be.

"**Services**" the services including any deliverables, supplied by ST as set out in the Service Specification.

"**Site**" means the Customer's premises.

"**Service Specification**" the description or specification of the Services provided by ST.

"**Software**" means the combination of programs and supporting documentation (including any manuals, whether in visual or machine readable form) which comprise the items of the software including any upgrades or enhancements made available by ST to the Customer from time to time. For the avoidance of doubt, this does not include third party or "off-the-shelf" software that may be commercially available.

"**Specifications**" means the Equipment Specification and / or the Service Specification.

"**ST**" means Spectrum Technologies Ltd whose registered office and place of business is at Western Avenue, Bridgend, CF31 3RT, United Kingdom.

"**Warranty Period**" means the period of time as specified in the Quotation.

2. Basis of Contract

- 2.1. The Quotation shall not constitute an offer, and, unless otherwise agreed in writing by ST, is only valid for a period of 30 business days from its date of issue.
- 2.2. The Order constitutes an offer by the Customer to purchase the Equipment and / or Services in accordance with these Conditions.
- 2.3. The Order shall only be deemed to be accepted when ST issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.4. The accepted Order and/or Order acknowledgement, the agreed Specification and these Conditions shall be deemed to form the Contract.
- 2.5. These Conditions shall have precedence over and exclude any conditions appearing on any acceptance form, purchase order or other document or letter that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6. Any special condition appearing on the Quotation shall to the extent that it contradicts any provision hereof take precedence over these conditions.
- 2.7. Any samples, drawings, descriptive matter or advertising issued by ST and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the ST catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.

3. THE EQUIPMENT

- 3.1. The Equipment is described in Equipment Specification.
- 3.2. To the extent that the Equipment is to be manufactured in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify ST 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ST arising out of or in connection with any claim made against ST for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the ST's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. ST reserves the right to alter or revise any Equipment Specification in consultation with the Customer, provided that neither fit, form, function nor prices are adversely affected. Notwithstanding the foregoing, ST further reserves the right to make any changes to the Equipment Specification which may be required to conform to any applicable safety or other statutory requirement.

4. PRICE AND PAYMENT

- 4.1. ST reserves the right to:
 - 4.1.1. increase the Price of the Services at any time in line with the percentage increase in the retail prices index; and
 - 4.1.2. increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to ST that is due to:
 - 4.1.2.1. any factor beyond the control of ST (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 4.1.2.2. any request by the Customer to change the delivery date(s), quantities or types of Equipment Goods ordered, or the Equipment Specification;
 - 4.1.2.3. any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give ST adequate or accurate information or instructions in respect of the Equipment.
- 4.2. ST shall render to the Customer, invoices showing the sums due under the Contract and all payments due thereunder shall unless otherwise agreed in writing be made by the Customer:
 - 4.2.1. by electronic funds transfer; and
 - 4.2.2. in Pounds Sterling or in such other contractual currency as ST may agree from time to time.
- 4.3. Unless otherwise stated in the Quotation or agreed in writing under the Contract, ST shall render invoices to the Customer as follows:

4.3.1.1. 60% on receipt of the Order; and

4.3.1.2. 40% on shipment.

- 4.4. All invoices are to be paid in accordance with the payment terms specified on the Quotation, and in full and cleared funds. If no payment terms are included in the Quotation then the Customer will pay the applicable invoice within 14 days from the date of the invoice. Time for payment shall be of the essence of the Contract.
 - 4.5. If the Customer fails to make any payment in the manner described in clause 4.4 ST shall have the right, (without prejudice to any other rights or remedies which may be available to ST) forthwith to terminate the Contract or to suspend all further Services, work or deliveries under the Contract until such default be made good. Any additional costs incurred by ST as a result thereof shall be paid by the Customer.
 - 4.6. Without prejudice to any other of ST's rights or remedies the Customer shall in addition to payment of the Price pay interest at the rate of 4% per annum above the base rate of Lloyds Bank plc on any sum remaining unpaid after the due date until the actual date of receipt by ST of the payment, including interest thereon such interest being calculated on a daily basis. The Customer shall reimburse to ST all costs and expenses (including legal costs) incurred in the collection of any such unpaid sum.
 - 4.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5. DELIVERY OF THE EQUIPMENT**
- 5.1. Delivery of the Equipment shall occur either:
 - 5.1.1. upon the Customer collecting the Equipment from ST's premises when the Customer has loaded the Equipment onto their transport; or
 - 5.1.2. if some other place for delivery is agreed in writing by the Customer and ST, by ST delivering the Equipment to that place. The Customer shall be responsible for the payment of all costs of freight, insurance, import duties and local taxes unless otherwise agreed in writing.
 - 5.2. If there is a delay in delivering the Equipment in accordance with clause 5.1.2, such delays shall not entitle the Customer to:
 - 5.2.1. refuse to take delivery of the Order;
 - 5.2.2. claim damages; or
 - 5.2.3. terminate this Agreement
 - 5.3. ST shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a force majeure event or the Customer's failure to provide ST with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.
 - 5.4. Unless otherwise provided for in the Quotation, the Customer shall collect the Equipment on the day(s) notified by ST, failing which the Customer shall (without prejudice to any other rights which ST may have) be liable for and shall promptly reimburse ST for all costs and expenses incurred by ST up to the time of actual collection, including the cost of storage, preservation, protection and insurance of the Equipment.
 - 5.5. Unless otherwise stated herein, any period or date for delivery nominated by ST in the Quotation is an estimate only and ST shall not be liable for the direct or indirect consequences or losses of any delay, in the performance of its obligations hereunder. Time for delivery shall not be of the essence.
 - 5.6. Unless otherwise agreed by ST in writing, any period for delivery stated in the Quotation shall run from the date ST provided acceptance of the Order.
 - 5.7. If ST delivers up to and including 10% more or less than the quantity of Equipment ordered by the Customer may not reject the Equipment.
 - 5.8. At the time of delivery or collection of the Equipment the Customer shall make an external inspection of the packaging to ensure that they are undamaged and dry and in case any damage or dampness to the cases is evident, the Customer shall immediately contact ST and ST will then take steps to determine if the Equipment has been damaged or impaired in transit. For the avoidance of doubt, ST's reasonable decision shall be final.
- 6. INSPECTION AND TESTING**
- 6.1. Unless otherwise agreed in writing with ST that the Customer can self assemble the Equipment, the Customer shall not unpack the Equipment unless and until the Installation Personnel are present as this may invalidate the Equipment warranty.
 - 6.2. Within 5 working days after unpacking the Equipment the Customer shall examine the goods to satisfy itself that the Equipment conforms to the Equipment Specification. If the Equipment does not conform to the Equipment Specification then the Customer will notify ST with immediate effect.
 - 6.3. Minor faults shall not enable the Customer to reject the Equipment and shall not form the basis for non-payment of invoices relating to delivery and acceptance. Minor faults are defined as those that do not impair the Equipment's ability to meet the specified requirement in respect of functionality and performance.
 - 6.4. Upon ST receiving a notification under clause 6.2, ST will carry out an inspection of the Equipment, and if ST agrees that the Equipment does not comply to the Equipment Specification then ST will take an action as set out in clause 11.
 - 6.5. For Equipment which is subject to commissioning and installation by Spectrum's Installation Personnel, the Customer shall not utilise, tamper or interfere with the Equipment in any way, other than with the express permission of Installation Personnel during the period between receipt at the Customer Site of the Equipment and the Final Acceptance at Customer Site.
 - 6.6. A failure to comply with clause 6.5 indicates the Customer's Final Acceptance of the Equipment, at which date the Final Acceptance Certificate will be produced by ST.
 - 6.7. For the avoidance of doubt, under no circumstances will the Customer attempt to utilise the Equipment for production until the Final Acceptance Certificate has been issued and if the Customer does use or attempt to use the Equipment before the Final Acceptance Certificate has been issued, then full payment for all outstanding sums shall become immediately payable to ST by the Customer.
- 7. INSTALLATION AND ACCEPTANCE TESTING**
- 7.1. ST's obligation to procure the installation and commissioning of all the Equipment at the site shall be subject to the Customer taking all necessary action to permit ST to do so, including the provision of access to the Site for the Installation Personnel, and the provision free of charge of all necessary services and facilities.
 - 7.2. The Customer shall procure that all services and facilities required for the installation of the Equipment at the Site shall be available at the time and date agreed for the installation and the Customer shall reimburse ST for any additional costs incurred as a result of any delay in starting the installation in excess of one working day caused by the Customer's failure to procure the availability of services and facilities. Such additional costs may include but are not limited to charges for Installation Personnel, their accommodation, subsistence and travel costs.
 - 7.3. For Equipment which is subject to commissioning and installation by Installation Personnel ST shall procure the performance of an onsite acceptance test which confirms to ST's reasonable satisfaction that the Equipment is operational in accordance with the Specifications. ST shall promptly thereafter provide the Customer with a Final Acceptance Certificate.
 - 7.4. If, within 45 days of collection or delivery in accordance with this clause 7, ST is unable for reasons beyond its control to complete installation and commissioning, then the Equipment shall be deemed to have been accepted by the Customer.
 - 7.5. The on-site acceptance test shall be that deemed appropriate by ST unless another form of test is agreed by ST in writing under the Contract. The Customer shall be deemed to have accepted and approved the Equipment for all purposes of this Contract upon signing of the Final Acceptance Certificate. Minor faults shall not enable the Customer to reject the Equipment or unreasonably withhold signing of the Final

- Acceptance Certificate. Minor faults are defined as those faults that do not impair the Equipment's ability to meet the Functional requirements of the Specification.
- 7.6. Where required ST will provide or procure the provision of training in the use of the Equipment to operators employed by the Customer which training shall be undertaken by the Installation Personnel and should normally be completed during one to 2 business days. Any additional training of the Customer's personnel may be charged to the Customer at the discretion of ST.
- 7.7. If ST fails to deliver the Equipment within 180 days of the agreed delivery date, for any reason whatsoever, and ST is thereby adjudged to be liable to the Customer in respect of such failure, ST's liability shall be limited to repaying the amount (if any) pre-paid to ST by the Customer for the undelivered Equipment.
- 7.8. The Customer agrees where requested, to supply sufficient suitable wire or other material to be used on the Equipment for Equipment testing and commissioning as per the agreed acceptance test for both the ST factory and on Site acceptance testing. Wire supplied by the Customer for use in the ST factory and on Site acceptance tests shall be provided free of charge and free of any UK import duties or other taxes. The Customer shall promptly reimburse ST in the event that ST has to pay any such import duties or other taxes for wire supplied by the Customer. The residue of any wire so supplied shall become the property of ST and shall not be returned to the Customer unless agreed otherwise in writing.
- 7.9. The Customer shall be responsible for the provision of adequate services required for the installation, operation and use of the Equipment in respect of power, extraction and compressed air at Customer's Site, as required, and will bear the costs involved. Additionally, where required, suitable safety screening must be provided by the Customer to allow installation and servicing of the Equipment, which must also be provided by the Customer at the Customer's cost.
- 7.10. Equipment supplied for Customer installation, made evident by the Quotation, does not require the provision of Installation Personnel and can be unpacked by the Customer without affecting the warranty. In this case, Final Acceptance by the Customer will be deemed to have occurred if no written notification detailing reasons for non-acceptance has been received by ST within 5 working days of delivery.
- 8. TITLE AND RISK**
- 8.1. Title to the Equipment shall not pass to the Customer until ST has received payment in full (in cash or cleared funds) for the Equipment and any other equipment or goods that ST has supplied to the Customer in respect of which payment has become due.
- 8.2. Until ST has received payment in full the Customer shall:
- 8.2.1. store the Equipment separately from all other goods and/or equipment held by the Customer;
- 8.2.2. not remove, deface or obscure any identifying mark or packaging relating to the Equipment;
- 8.2.3. maintain the Equipment in satisfactory conditions and keep them insured against all risks for their full price on ST's behalf from the date of delivery;
- 8.2.4. notify ST immediately if it becomes subject to any of the events listed in clauses 16.2.2 to 16.2.4; and
- 8.2.5. given ST such information relating to the Equipment that ST may require from time to time.
- 8.3. The Customer may resell or use the Equipment in the ordinary course of its business (but not otherwise) before ST receives payment for the Equipment. However, if the Customer resells the Equipment before that time:
- 8.3.1.1. it does so as principal and not as ST's agent; and
- 8.3.1.2. title to the Equipment shall pass from ST to the Customer immediately before the time at which resale occurs.
- 8.4. If title to the Equipment passes to the Customer, the Customer becomes subject to any of the events in clause 16.2.2 to 16.2.4 then, without limiting any other right or remedy ST may have:
- 8.4.1. the Customer's right to resell the Equipment or use them in the ordinary course of its business ceases immediately; and
- 8.4.2. ST may at any time:
- 8.4.2.1. require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and
- 8.4.2.2. ST may at any time:
- 8.4.2.2.1. require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and
- 8.4.2.2.2. if the Customer fails to so promptly, enter any premises of the Customer or any third party where the Equipment is stored in order to recover them.
- 8.5. The risk of loss or damage to the Equipment shall pass to the Customer upon delivery at the Customer's site or if the Customer is collecting the Equipment from ST's premises upon the loading of the Equipment onto the transport.
- 8.6. ST shall be entitled to maintain an action for the price of any Equipment notwithstanding that title therein has not passed to the Customer.
- 9. SUPPLY OF SERVICES**
- 9.1. ST shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 9.2. ST shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3. ST reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ST shall notify the Customer in any such event.
- 9.4. ST warrants to the Customer that the Services will be provided using reasonable care and skill.
- 10. CUSTOMER OBLIGATIONS**
- 10.1. The Customer shall:
- 10.1.1. ensure that the terms of the Order and any information it provides in the Specifications are complete and accurate;
- 10.1.2. co-operate with ST in all matters relating to the Services;
- 10.1.3. provide ST, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ST to provide the Services;
- 10.1.4. provide ST with such information and materials as ST may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 10.1.5. prepare the Customer's premises for the supply of the Services;
- 10.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 10.1.7. comply with all applicable laws, including health and safety laws;
- 10.1.8. keep all materials, equipment, documents and other property of ST (ST Materials) at the Customer's premises in safe custody at its own risk, maintain ST Materials in good condition until returned to ST, and not dispose of or use ST Materials other than in accordance with the ST's written instructions or authorisation; and
- 10.1.9. comply with any additional obligations as set out in the Specifications.
- 10.2. If ST's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 10.2.1. without limiting or affecting any other right or remedy available to it, ST shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ST's performance of any of its obligations;
- 10.2.2. ST's shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ST's failure or delay to perform any of its obligations as set out in this clause 10.2; and
- 10.2.3. the Customer shall reimburse ST on written demand for any costs or losses sustained or incurred by ST arising directly or indirectly from the Customer Default.
- 10.3. If ST's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, ST shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 11. REMEDIES AND WARRANTY PERIOD**
- 11.1. The Quotation will confirm whether the Equipment is provided with a warranty (Warranty).
- 11.2. ST warrants to the Customer that at the time of delivery the Equipment shall accord with the Equipment Specification and shall be free of Defects in:
- 11.2.1. Materials;
- 11.2.2. Design; or
- 11.2.3. Workmanship.
- 11.3. Upon the discovery of any alleged defect to which the Warranty may apply, the Customer shall immediately notify ST, or its appointed service agent in the relevant territory, with a written report with all relevant details, including the model number of the Equipment, the serial number and a description of the defect and particulars of the claim and the reasons therefor.
- 11.4. Upon receipt by ST or its appointed service agent of the notification referred to in Clause 6.4 or 11.3, ST or its appointed service agent shall consider, and if appropriate, investigate the alleged defect. If the claim is accepted as valid, ST shall decide at its sole discretion which of the following remedial procedures it elects to apply having regard to the Customer's operational requirements:
- 11.4.1. replacement of the part claimed to be defective, in which case ST shall, without charge, cause a replacement item to be delivered to the Customer; or
- 11.4.2. repair by ST or its service agent of the part claimed to be defective in which case the Customer shall promptly return such part to ST at its works in the United Kingdom or such other place as ST shall specify and ST or its service agent shall without charge promptly repair the same and return it to the Customer; or
- 11.4.3. local repair by the Customer or its sub-contractor on a price basis agreed to be reasonable with ST beforehand and reimbursed by ST to the Customer.
- 11.5. In carrying out any work under the Warranty ST retains the right to incorporate engineering changes orders or to supply replacement components to a higher revision level provided that the performance and Specifications of the Equipment is not impaired.
- 11.6. The actions set out under clause 11.4 shall only apply if:
- 11.6.1. the Customer has given notice in writing, during the Warranty Period within a reasonable time of discovery that some or all of the Equipment do not comply with the Equipment Specification and this impacts on the performance of the Equipment;
- 11.6.2. ST is given a reasonable opportunity to examine the Equipment; and
- 11.6.3. the Customer (if asked to do so by ST) returns such Equipment to ST's premises at the Customer's cost.
- 11.7. ST shall not be liable to repair or replace the Equipment if:
- 11.7.1. the Customer makes any further use of such Equipment after giving notice in accordance with clause **Error! Reference source not found.**2 or 11;
- 11.7.2. the defect arises because the Customer failed to follow ST'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;
- 11.7.3. the defect arises as a result of ST following any drawing, design, instructions of specification for the Equipment, provided by the Customer;
- 11.7.4. the Customer alters or repairs the Equipment without the written consent of ST; or
- 11.7.5. the Equipment differs from the Equipment Specification as a result of changes made to ensure they comply with the applicable statutory or regulatory standards.
- 11.8. Except as provided in this clause 11, ST shall have no liability to the Customer in respect of the Equipment's failure to comply with Equipment Specification.
- 11.9. The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by ST.
- 11.10. The supply of any replacement parts provided under the Warranty shall be upon the same terms and conditions as are included in the Contract so far as the same are relevant.
- 11.11. Where a defect is discovered in any part of any Equipment covered by the Warranty, and defective parts are repaired or supplied by ST, for Equipment in pursuance of the Warranty they shall continue to have the benefit of the relevant Warranty for the remainder of the then unexpired period of the original warranty.
- 11.12. ST or, if ST so requires, its appointed service agent, sub-contractors or suppliers shall have the right to inspect the affected item and any relevant log books or records in the event of any claim being made under the Warranty.
- 11.13. The liability of ST under the Warranty shall not extend to defects or failures of the Equipment or any part thereof resulting from accident or consequential damage or fair wear and tear or otherwise arising in any item:
- 11.13.1. which has been exposed to any abnormal physical use or mechanical or electrical stress, electricity failures or reductions;
- 11.13.2. which has been used, operated, repaired or maintained in a manner other than that prescribed or recommended or agreed upon by ST or by the manuals and handbooks supplied by ST;
- 11.13.3. which has been repaired, altered or modified other than by ST or by an appointed service agent, sub-contractor or supplier in a manner approved by ST;
- 11.13.4. which has been operated in a damaged state.
- 11.14. ST reserves the right to charge the Customer for costs incurred in investigating a warranty claim where no fault is found or where any defects or failures of the Equipment or any part thereof have resulted from accident or consequential damage or fair wear and tear as referred to in Clause 11 hereof.
- 11.15. If the Customer is unable for a period of not less than 14 full working days to use the Equipment by reason of the repair or replacement of a part accepted as defective hereunder, then the period of time for which the Equipment is not useable shall be added on to the original Warranty for the Equipment.
- 11.16. ST accepts no liability or responsibility whatsoever for the loss or security of information stored on magnetic or other storage media used in the Equipment whatsoever caused.
- 11.17. DISCLAIMER/EXCLUSION OF WARRANTIES: EXCEPT FOR THOSE SET OUT IN THIS CONTRACT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE, WHICH EXTEND BEYOND THOSE EXPRESSLY STATED HEREIN.**
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1. All intellectual property rights in or arising out of or in connection with the Equipment and Services (other than intellectual property rights in any materials provided by the Customer) shall be owned by ST.
- 12.2. The Customer grants ST a fully paid-up, non-exclusive, royalty-free license to copy and modify any materials provided by the Customer to ST for the term of this Contract for the purpose of providing the Services to the Customer.
- 12.3. In respect of the infringement of any other intellectual property rights relating to any part of the Equipment, ST's liability shall be solely in respect of Equipment designed by ST and shall relate solely to infringement of registered patents within the United Kingdom.

- 12.4. In the event of such infringement set out in clause 12.3 ST's obligations shall be limited to (at ST's option) either replacing the infringing item by a non-infringing item, or securing at its own cost a licence permitting use of the said item by the Customer or refunding to the Customer the Price upon return of the Equipment to ST.
- 12.5. No liability shall be incurred by ST in respect of infringements or alleged infringements arising by combination of the Equipment with any other item, or any infringement or alleged infringement resulting from the supply of Equipment or any other item by the Customer or from compliance by ST with the Customers instructions whether express or implied.
- 12.6. The Customer on its part warrants that any design or instructions furnished by it shall not be such as will cause ST to infringe any letters patent or other industrial property right, and ST's liabilities under this sub-clause shall in no case extend to any such infringements. The Customer shall indemnify ST from and against any and all loss, damage or costs incurred by ST as a result of any breach of this Warranty by the Customer.
- 12.7. The Customer shall not by virtue of the supply of Equipment by ST have conveyed to him the right to reproduce or cause the reproduction of such Equipment or any part thereof nor any licence under any patents or rights owned or controlled by ST.
- 13. FORCE MAJEURE**
- 13.1. **Force Majeure Event** means any circumstance not in a party's reasonable control including, without limitation:
- 13.1.1. acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2. epidemic or pandemic;
- 13.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.4. nuclear, chemical or biological contamination, or sonic boom;
- 13.1.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 13.1.6. collapse of buildings, fire, explosion or accident;
- 13.1.7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- 13.1.8. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- 13.1.9. interruption or failure of utility service.
- 13.2. Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 13.4. The Affected Party shall:
- 13.4.1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 30 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- 13.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations;
- 13.4.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 months, the party not affected by the Force Majeure Event may terminate this Contract by giving 2 weeks written notice to the Affected Party.
- 14. EXPORT LICENCE**
- 14.1. The supply of any Equipment for which a United Kingdom export licence or other consent is necessary shall be conditional upon the granting of such licence or consent by the United Kingdom Government or other competent authority. In the event that a relevant export licence or other consent is not granted, or having been granted is thereafter withdrawn, then ST shall be entitled to terminate the Contract. ST shall not be regarded as being at fault in such circumstances.
- 14.2. The obtaining of any other licence or consent shall be the responsibility of the Customer, and failure to do so in a timely manner shall constitute a breach of the Contract.
- 15. SOFTWARE LICENCE**
- 15.1. Software supplied by ST from time to time, other than commercially available third party off-the-shelf software, is provided in accordance with this clause 15.1.
- 15.2. The Customer acknowledges that all computer software and source code relating to the Equipment shall remain in the sole ownership of ST.
- 15.3. Subject to payment of the full Price and any additional fees for the Software, ST agrees that the Customer shall be granted a non-exclusive license free of charge to use software in machine readable object code on a single process for its own internal business purposes relating to the Equipment subject to the following:
- 15.3.1. the software may only be used only in conjunction with ST hardware;
- 15.3.2. the software is to be kept confidential;
- 15.3.3. the licence shall become operational upon Final Acceptance of the Equipment and shall continue until the Equipment is no longer used by the Customer or until otherwise terminated;
- 15.3.4. the license is non-transferable;
- 15.3.5. source codes will not be made available to the Customer.
- 15.4. The software operates with encrypted passwords. The password for the Customer's Equipment is a deliverable item that will be provided at the time of shipping or upon Final Acceptance where the Equipment is subject to Installation by ST's Installation Personnel. This password will change after 90 days, at which time ST will supply the Customer with the new permanent password provided all payments due to ST hereof have been made.
- 15.5. The Customer undertakes not to copy, decompile, reverse engineer, translate, adapt, vary, modify, distribute or publish the Software except as permitted by this Contract. The Customer may not make copies of the Software other than those granted by law for archival or backup purposes. The source code will not be provided to the Customer by ST as part of the sale of the Equipment or under these terms and conditions.
- 15.6. The Customer covenants that it will:
- 15.6.1. at all times take all reasonable steps to ensure the non-disclosure and confidentiality of the Software and all matters relating to it;
- 15.6.2. use its best endeavours to bind its officers and employees and agents not to disclose, communicate, copy or reveal for any purpose whatsoever the Software or any part thereof except as permitted by this clause and the Customer accepts liability for any breach of this Contract by its officers and employees and agents;
- 15.6.3. not to transfer, assign, sub-licence, charge or otherwise deal in the Software other than in accordance with this Contract;
- 15.6.4. maintain all copyright notices on all copies of the Software; and
- 15.6.5. notify ST immediately if it becomes aware that any person may have unauthorised knowledge, possession or use of the Software.
- 15.6.6. ST warrants that the Software will function in accordance with its specification for a period of 30 days (Software Warranty Period), however the Customer acknowledges that software by its very nature may suffer from minor or inherent defects.
- 15.6.7. ST does not warrant that the use of the Software will be uninterrupted or error-free.
- 15.7. If within the Software Warranty Period, the Customer notifies ST in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by ST, or it has not been loaded onto ST-specified or suitably configured equipment, ST shall, at the ST's option, either repair or replace the Software.
- 15.8. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 15.9. Any commercially available software that is required will be supplied in accordance with the terms and conditions of the third-party supplier.
- 16. TERMINATION**
- 16.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 6 months' written notice.
- 16.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 16.2.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 90 days after receipt of notice in writing to do so;
- 16.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 16.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 16.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 16.3. Without affecting any other right or remedy available to it, ST may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 16.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 16.3.2. there is a change of control of the Customer.
- 16.4. In the event of the complete or partial termination of the Contract ST shall submit to the Customer an account in writing (hereinafter referred to as "the Account") relating to the terminated portion showing:
- 16.4.1. the sum of the prices of those elements of the Equipment delivered to the Customer at the date of termination;
- 16.4.2. the sum of the pro rata proportions of the prices of those elements of the Equipment partially completed or completed and awaiting delivery at the date of termination;
- 16.4.3. the sum of all costs, liabilities and expenditure not otherwise included in Clauses 21.2.1 or 21.2.2 properly incurred or committed by ST in the performance or termination of the Contract; and
- 16.4.4. all sums up to then paid by the Customer to ST on account of the Equipment supplied or to be supplied hereunder less any sums repaid to the Customer by the ST under the Contract.
- 16.5. The Account shall be accompanied by a certificate signed by a director of ST to the effect that the Account is a true statement of the matters stated therein as such are recorded in the books of account of ST at the date thereof. Such Account and certificate shall be deemed conclusive in the absence of manifest error.
- 16.6. If the total amount shown in the Account calculated under Clauses 21.2.1, 21.2.2 and 21.2.3 is greater than the amount paid under Clause 21.2.4 hereof then the Customer shall pay the difference to ST in full in cash in Pounds Sterling or in such other contractual currency as ST may elect, but if the amount is less ST shall pay the difference to the Customer in Pounds Sterling or in such other contractual currency as the Customer may elect. Such payments shall be made within 30 days of the submission of the Account and certificate.
- 16.7. If the cause of termination is the fault of either party hereto the other party shall be entitled in addition to be paid such reasonable costs and expenses connected with or arising from the termination as are not included in the Account and any additional damages to which the other party may be entitled at law.
- 16.8. ST shall be entitled to sell or otherwise employ the equipment and parts thereof delivered at the date of termination and shall separately credit the Customer with the price received from any such sale or employment less the amount of any costs or expenses incurred by ST in respect thereof.
- 16.9. This clause shall have full force and effect notwithstanding that either party may have repudiated the Contract.
- 17. LIMITATION OF LIABILITY**
- 17.1. This clause 17 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:
- 17.1.1. any breach of this contract however arising;
- 17.1.2. any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and
- 17.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this contract.
- 17.2. Nothing in this contract shall limit or exclude the liability of either party for:
- 17.2.1. death or personal injury resulting from negligence; or
- 17.2.2. fraud or fraudulent misrepresentation; or
- 17.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 17.2.4. the indemnity contained in clauses 3 and 12.6.
- 17.3. Without prejudice to clause 17.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 17.3.1. loss of profit;
- 17.3.2. loss of goodwill;
- 17.3.3. loss of business;
- 17.3.4. loss of business opportunity;
- 17.3.5. loss of anticipated saving;
- 17.3.6. loss or corruption of data or information;
- 17.3.7. special, indirect or consequential damage;
- 17.3.8. suffered by the other party that arises under or in connection with this Contract.
- 17.4. Without prejudice to clause 17.2, ST's total liability arising under or in connection with this contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the greater of the Price or £1 million.
- 18. WAIVER**

Any failure delay or indulgence on the part of ST in exercising any power or right conferred hereunder shall not operate as a waiver of such power or right nor preclude the exercise of any other right or remedy hereunder, and shall be without prejudice to the legal rights of ST.

19. ENTIRE AGREEMENT & EXCLUSIVITY OF REMEDIES

19.1. The Contract shall constitute the entire agreement between ST and the Customer in respect of the Equipment and shall supersede and exclude all prior representations proposals or agreements whether oral or in writing.

19.2. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies for, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

20. ASSIGNMENT OF CONTRACT

20.1. Subject to clause 20.2, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

20.2. Either party may, after having given prior written notice to the other party, assign or subcontract any or all of its rights and obligations under this Contract to a member of its group for so long as that company remains a member of its group. A party who assigns its rights under this Contract to a member of its group shall procure that such company assigns such rights back to it or to such other member of its group as it may nominate immediately before that company ceases to be a member its group. A party who subcontracts the performance of any or all of its obligations under this Contract to a member of its group shall immediately resume the performance of such obligations on such company ceasing to be a member its group.

21. SEVERABILITY

In the event of any Condition or part thereof of the Contract being rendered or declared ineffective or invalid by any legislation or rule of law or by any decision of any Court of competent jurisdiction the remainder of the Contract shall remain in full force and effect.

22. DATA PROTECTION

22.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 22 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 22, Applicable Laws means (for so long as and to the extent that they apply to ST) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

22.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and ST is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

22.3. Without prejudice to the generality of clause 22.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to ST for the duration and purposes of the Contract.

22.4. Without prejudice to the generality of clause 22.1, ST shall, in relation to any Personal Data processed in connection with the performance by ST of its obligations under the Contract:

22.4.1. process that Personal Data only on the written instructions of the Customer unless ST is required by Applicable Laws to otherwise process that Personal Data. Where ST is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, ST shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit ST from so notifying the Customer;

22.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

22.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

22.4.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

22.4.5. the Customer or ST has provided appropriate safeguards in relation to the transfer;

22.4.6. the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

22.4.7. ST complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

22.4.8. ST complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

22.4.9. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

22.4.10. notify the Customer without undue delay on becoming aware of a Personal Data breach;

22.4.11. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and

22.4.12. maintain complete and accurate records and information to demonstrate its compliance with this clause 22.

23. CONFIDENTIALITY

23.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 23.2.

23.2. Each party may disclose the other party's confidential information:

23.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 23.2; and

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

23.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract

24. VARIATION

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives)

25. NOTICES

All notices and requests required or authorised hereunder shall be given in writing either by personal delivery, recorded mail (return receipt requested) or by facsimile or email transmission. The date upon which any such notice or request is personally delivered or if such notice or request is given by registered or recorded mail the date upon which it is received by the addressee shall be deemed to be the effective date of such notice or request. In the case of facsimile or email transmission the date upon which any such notice or request is transmitted shall be deemed to be the effective date of such notice or request subject to receipt of a successful send or delivery message; however, in such cases the transmitting party shall also send a hard copy by mail within 24 hours of the original transmission. In the case of ST, all such notices and requests shall be addressed to its place of business first above written, and in the case of the Customer, shall be addressed to its registered office, or where such is not known to ST, to the last known place of business of the Customer.

26. GOVERNING LAW

26.1. The Contract shall be governed and construed and shall take effect in all respects in accordance with the laws of England, and the Customer agrees irrevocably to submit to the jurisdiction of the English Courts.

26.2. If legal proceedings are issued by either party to this Contract against the other then it is agreed as a term of this Contract that the party losing the outcome of such proceedings will be entirely responsible for and shall reimburse the other party for their reasonable legal costs incurred in respect of the said proceedings.

27. INTERPRETATION

Headings are for convenience only and shall not govern the interpretation of these conditions.