

CONDITIONS OF SALE

1) DEFINITIONS:

In these Conditions, the following definitions shall apply:-

“**Buyer**” the person or firm who purchases the Goods and/or Services from the Supplier.

“**Conditions**” these terms and conditions as amended from time to time in accordance with clause 18)g).

“**Contract**” the contract between the Supplier and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.

“**Deliverables**” the deliverables set out in the Order.

“**Force Majeure Event**” as defined in clause 14)a).

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

“**Goods Specification**” any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Supplier.

“**Intellectual Property Rights**” any patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Order**” the Buyer’s order for the supply of Goods and/or Services, as set out in the Buyer’s purchase order.

“**Services**” the services, including the Deliverables, supplied by the Supplier to the Buyer as set out in the Service Specification.

“**Service Specification**” the description or specification for the Services provided in writing by the Supplier to the Buyer.

“**Supplier**” Barnbrook Systems Limited having its registered office at 25 Fareham Park Road, Fareham, Hampshire, PO15 6LD.

2) EFFECT:

- a) The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- b) The Order shall only be deemed to be accepted when the Supplier issues a written acknowledgement of the Order at which point and on which date the Contract shall come into existence (“**Commencement Date**”).
- c) The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- d) Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- e) These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- f) Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

- g) All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3) **GOODS:**

- a) The Goods are described in the Supplier's catalogue as modified by any applicable Goods Specification.
- b) To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3)b) shall survive termination of the Contract.
- c) The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4) **DELIVERY OF GOODS:**

- a) Unless the Goods are delivered as mentioned in 4) b) below the Supplier will give the Buyer 7 days notice that they are ready for collection from the Supplier's premises and delivery shall be deemed to take place on the earlier of the Buyer or his carrier collecting the Goods from the Supplier or at the close of business on the seventh day following dispatch of such notice provided that the Buyer shall not be obliged to take delivery before the agreed delivery date.
- b) If the Supplier delivers the Goods to the Buyer's premises, then delivery under the Contract shall be at the time and place of actual delivery at the Buyer's premises.
- c) Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.
- d) If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Buyer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- e) If the Buyer fails to accept or take delivery of the Goods within 10 days of the Supplier notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- i) delivery of the Goods shall be deemed to have been completed 7 days following the day on which the Supplier notified the Buyer that the Goods were ready; and
 - ii) the Supplier shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- f) If 3 months after the Supplier notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- g) The Goods will be delivered by the Supplier in packaging for short term storage in the Buyers, clean, dry store and/or ruggedized containers, as applicable.

5) **LOSS, SHORTAGE OR DAMAGE:**

In the event that the Supplier undertakes delivery to the Buyers premises in accordance with clause 4)b) above the Buyer must within 5 days from the date of delivery or notification of dispatch of the Goods advise the Supplier in writing of any claim of non-delivery, shortage or damage to the Goods.

6) **TITLE AND RISK:**

- a) The risk in the Goods shall pass from the Seller to the Buyer upon delivery of the Goods to the Buyer.
- b) Title to the Goods shall not pass to the Buyer until the Supplier receives payment in full (in cash or cleared funds) for the Goods. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under these Conditions and all other contracts between the Supplier and the Buyer.

- c) Until title to the Goods has passed to the Buyer, the Buyer shall:
 - i) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Supplier's property;
 - ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - iv) not incorporate the Goods into any systems of subsystems;
 - v) not use in anyway or commence fitment of the Goods;
 - vi) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12)b)ii) to clause 12)b)ix); and
 - vii) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- d) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 12)b)ii) to clause 12)b)ix), then, without limiting any other right or remedy the Supplier may have:
 - i) the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - ii) the Supplier may at any time:
 - (1) require the Buyer to deliver up all Goods in its possession; and
 - (2) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7) SUPPLY OF SERVICES

- a) The Supplier shall provide the Services to the Buyer in accordance with the Service Specification in all material respects.
- b) The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified by the Supplier to the Buyer from time to time, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- c) The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Buyer in any such event.
- d) The Supplier warrants to the Buyer that the Services will be provided using reasonable care and skill.

8) BUYER'S OBLIGATIONS

- a) The Buyer shall:
 - i) ensure that the terms of the Order and (if submitted by the Buyer) the Goods Specification are complete and accurate including particulars of weight and dimensions;
 - ii) co-operate with the Supplier in all matters relating to the Services;
 - iii) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - iv) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - v) prepare the Buyer's premises, if applicable, for the supply of the Services;
 - vi) 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;
 - vii) keep and maintain all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Buyer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - viii) ensure that all the all information provided to the Supplier in relation to the provision of the Goods and/or Services are complete and accurate including all information requested by the Supplier from time to time.
- b) The Buyer accepts responsibility for the Goods (and all combinations of goods with services, software or other goods) achieving the Buyer's intended results and for the selection of and results obtained from any other services, software or other goods with which the Goods are used in combination with.
- c) If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):
 - i) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any

of its obligations to the extent the Buyer Default prevents or delays the Supplier's performance of any of its obligations;

- ii) the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause; and
- iii) the Buyer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default.

9) **CHARGES AND PAYMENT**

- a) The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is unless otherwise expressly provided delivery ex-works. The prices stated include packing to Supplier's normal retail standard. Unless otherwise defined the prices stated are in GBP exclusive of VAT which shall be payable by the Buyer and must be added to the prices stated.
- b) The charges for Services shall be on a time and materials basis:
 - i) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Service Specification;
 - ii) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day on business days;
 - iii) the Supplier shall be entitled to charge an overtime rate of 10 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause b) ii); and
 - iv) the Supplier shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- c) The Supplier reserves the right to:
 - i) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Buyer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Buyer;
 - ii) increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (1) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (2) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (3) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- d) In respect of Goods, the Supplier shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Buyer on completion of the Services.
- e) The Buyer shall pay each invoice submitted by the Supplier:
 - i) within 30 days of the date of the invoice; and
 - ii) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
 - iii) time for payment shall be of the essence of the Contract.
- f) All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- g) If the Buyer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

- h) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Supplier to the Buyer.

10) INTELLECTUAL PROPERTY RIGHTS

- a) All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- b) The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Buyer.
- c) All Intellectual Property Rights in the Goods shall be owned by the Supplier.
- d) Any tools, dies, moulds etc., used by the Supplier in the performance of the Contract will be charged at cost. The Intellectual Property Rights in such materials shall remain the property of the Supplier.

11) GOODS WARRANTY:

- a) The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("warranty period"), the Goods, unless otherwise stated in the Contract, shall:
 - i) conform in all material respects with their description and any applicable Goods Specification; and
 - ii) be free from material defects in design, material and workmanship.
- b) Subject to clause 11)c), if:
 - i) the Buyer gives notice in writing during the warranty period that some or all of the Goods do not comply with the warranty set out in clause 11)a) and;
 - ii) the Supplier is given a reasonable opportunity of examining such Goods; and
 - iii) the Buyer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Buyer's cost,
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- c) The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 11)a) if:
 - i) title to the Goods has not passed to the Buyer;
 - ii) the Buyer makes any further use of such Goods after giving a notice in accordance with clause 11)b);
 - iii) the defect arises because the Buyer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - iv) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Buyer;
 - v) the Buyer alters or repairs such Goods without the written consent of the Supplier;
 - vi) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - vii) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- d) Clause 11 shall not apply to any goods or parts thereof obtained by the Supplier from a third party in the provision of the Contract.
- e) Except as provided in this clause 11, the Supplier shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 11)a).
- f) This clause relates to the Suppliers new build Brake Controller which has a 2 year warranty from the date of installation/or 3 years from the date of delivery, whichever occurs first. The warranty is void if the brake controller is damaged by other systems within the train. The warranty in this clause shall be void if the Brake Controller is not installed correctly and not authorized for release to traffic in accordance with written instructions approved and provided by the vehicle owning authority. The Buyer shall provide the Supplier with evidence of the authorized vehicle release to traffic document post installation of Brake Controller along with the warranty claim. The remaining provisions of this clause 11 shall apply.

12) TERMINATION OF CONTRACT:

- a) Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 3 months' written notice.

- b) Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- i) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - ii) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - iii) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - v) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - vi) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - vii) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - viii) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - ix) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - x) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12)b)ii) to clause 12)b)ix) (inclusive);
 - xi) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - xii) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - xiii) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
 - xiv) Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- c) Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Supplier if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 12) b) ii) to clause 12)b)ix), or the Supplier reasonably believes that the Buyer is about to become subject to any of them.
- d) On termination of the Contract for any reason:
- i) the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied or any work in progress relating to the supply of any Goods (which shall include the costs of any materials) but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - ii) the Buyer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Supplier may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - iii) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - iv) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
 - v) The Order Acknowledgement may detail specific cancellation charges that will apply and will be lodged as an outstanding Buyer debt until cleared.

13) LIMITATION OF LIABILITY:

- a) Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - ii) fraud or fraudulent misrepresentation;
 - iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - v) any other liability which cannot be excluded by law.

- b) Subject to clause 13)a):
 - i) the Supplier shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
 - ii) the Supplier's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £100,000.
 - c) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
 - d) This clause 13 shall survive termination of the Contract.
- 14) **FORCE MAJEURE:**
- a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to 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 subcontractors.
 - b) The Supplier shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.
- 15) **CONFIDENTIALITY:**
- A party (receiving party) 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.
- 16) **EXPORT/IMPORT RESTRICTIONS:**
- Notwithstanding any stipulation in the Contract to the contrary, the Buyer shall be liable to pay for all Goods delivered and Services rendered, notwithstanding subsequent export or import licences preventing further performance of the Contract in whole or in part. No part of any payment already made for Goods or Services already so delivered or rendered shall be payable by the Supplier PROVIDED that the Buyer shall have credit for any advance payments made for Goods or Services to be delivered or rendered.
- 17) **SOFTWARE:**
- Unless otherwise provided by the Supplier, all software supplied in whatever form is supplied under licence and not by way of sale and is subject in the case of the Supplier's software to the relevant terms and conditions of the licence and in the case of other software to terms and conditions equivalent to those agreed between the Supplier and the Supplier's licensor.
- 18) **GENERAL**
- a) **Assignment and other dealings.**
 - i) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
 - ii) The Buyer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

- b) **Notices.**
- i) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
 - ii) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18)b)i); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.
 - iii) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- c) **Severance.**
- i) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - ii) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- d) **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- e) **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- f) **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- g) **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- h) **Governing law.** Subject to clause 18) j) this agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- i) **Jurisdiction** Subject to clause 18) j) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- j) **Dispute Resolution.** Where the Buyer's place of business is outside the UK, all disputes arising in connection with the Contract shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one of more arbitrators appointed in accordance with the rules. The Uniform Law on the International Sales of Goods shall not apply.