

HERONGRANGE LIMITED

TERMS AND CONDITIONS OF TRADING

THE **CUSTOMER'S** ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9

1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings (unless the context otherwise requires):-

Company / Herongrange	Herongrange Limited (Company Number 2239401) whose registered office is situated at 11 Cirrus Park, Lower Farm Road, Moulton Park Industrial Estate, Northampton, NN3 6UR
Conditions	the standard terms and conditions of trading set out in this document
Contract	the contract between the Company and the Customer for the supply of the Equipment and/or supply of the Services in accordance with these Conditions
Contract Price	the price shown overleaf as the price for the Equipment and/or Services
Customer / Client	the customer detailed overleaf who purchases the Equipment and/or Services from the Company
Delivery Location	has the meaning given in clause 6.1
Due Date	has the meaning given in clause 5.1
Equipment	the equipment and/or materials detailed overleaf (including any installment of the equipment or any part of it) which the Company is to supply subject to and in accordance with these Conditions
Intellectual Property Rights	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
Offer	the Customer or its agent's order for the Equipment and/or Services as set out in the Customer's purchase order form or the Customer's written acceptance of the Quotation
Quotation	the quotation (if any) issued by the Company for the supply of Equipment and/or Services by the Company
Services	the services detailed overleaf which the Company is to supply to the Customer subject to and in accordance with these Conditions
Working Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.2 Any reference in these Conditions to any provision of a statute, regulation or British standard or the European norm equivalent shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 A reference in these Conditions to a clause is to the relevant clause of these Conditions unless the contrary is stated.

1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.5 Any phrase in these Conditions introduced by the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference in these Conditions to a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.7 A reference in these Conditions to a party includes its successors or permitted assigns.

2. BASIS OF SALE

2.1 The Offer constitutes an offer by the Customer to purchase the Equipment and/or the Services in accordance with these Conditions.

2.2 An Offer shall be deemed to be accepted by the Company on the earlier of:

2.2.1 the Company issuing a written acceptance of the Offer to the Customer; or

2.2.2 the Company supplying the Equipment and/or the Services (as applicable) to the Customer,

at which point and on which date the Contract shall come into existence.

- 2.3 The Quotation does not constitute an offer by the Company to supply the Equipment and/or Services at the Contract Price (or any price) but is an invitation to treat made by the Company to the Customer. The Company reserves the right to withdraw or revise a Quotation at any time prior to acceptance by the Company of an Offer made by the Customer in response to such Quotation.
- 2.4 These Conditions shall apply to and be deemed to be incorporated into the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and shall supersede any terms and/or conditions of any nature of the Customer whether expressed to be by way of offer, acceptance, counter-offer or otherwise.
- 2.5 The Customer hereby agrees and acknowledges that the Conditions are the only terms and conditions which will regulate the Contract.
- 2.6 No variation to these Conditions (including any special terms and conditions agreed between the parties) shall apply unless confirmed in writing by the Company.
- 2.7 The Company's employees, agents, sub-contractors and/or other representatives are not authorised to make any promises, representations, assurances and/or warranties concerning the Equipment and/or Services unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on any such promises, representations, assurances and/or warranties which are not so confirmed or which are not set out in the Contract.
- 2.8 If subsequent to any Contract, a contract is made without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed subject to these Conditions.
- 2.9 All of these Conditions shall apply to the supply of both the Equipment and the Services except where application to one or the other is specified.

3. **ORDER AND SPECIFICATION**

- 3.1 If the Equipment and/or Services are to be supplied by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all liabilities, losses, damages, costs and expenses awarded against, suffered or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Company's use of the Customer's specification. This clause 3.1 shall survive the termination of the Contract.
- 3.2 The Company reserves the right to make changes to any specifications issued in connection with the Equipment and/or Services which are required to conform with any applicable statutory or regulatory requirements or, where the Equipment and/or Services are to be supplied to the Company's specification any changes which do not materially affect their quality or performance.
- 3.3 The Customer may not cancel any Offer which has been accepted by the Company except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the cancellation.
- 3.4 All drawings, specifications, information on dimensions whether contained in price lists and/or other trade literature or specially prepared for the Customer are approximate and shall not form part of the Contract or have any contractual force.
- 3.5 Any drawings, sketches, technical leaflets and/or specifications produced by the Company in connection with the Equipment and/or Services are the property of the Company and may not be copied, reproduced or used in any way without the prior written consent of the Company and the Company may make an additional charge for any drawings, sketches or technical leaflets it makes available to the Customer.

4. **CONTRACT PRICE**

- 4.1 The Quotation is based upon the cost of materials, labour, equipment and operations at the time of the Company's last price review. The Quotation is subject to amendment at any time prior to acceptance by the Company of an Offer made by the Customer in response to such Quotation. The Quotation is only in respect of the Equipment and/or Services specified therein.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time before an Offer made in response to the Quotation is accepted, to increase the price(s) set out in that Quotation to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company such as, without limitation, significant increase in the costs of labour, materials or other cost of manufacture or delivery, taxes and duties or any increase in cost as a result of a delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any Quotation or any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices given by the Company exclude packaging and delivery charges to the Delivery Location. Special packaging requirements must be advised and may be the subject of an additional charge.
- 4.4 If the Customer requires delivery of the Equipment and/or the provision of the Services outside normal working hours the Company shall be entitled to make an additional charge which reflects any additional expense incurred by the Company in accommodating such request.
- 4.5 The Contract Price is exclusive of any applicable value added tax or any other applicable Governmental tax, charge or levy, which the Customer shall be additionally liable to pay to the Company.

5. **PAYMENT**

- 5.1 The Customer shall pay to the Company the Contract Price on or before the 30th day following the last Working Day of the month in which the Company has invoiced the Customer for the Equipment and/or Services (the "**Due Date**"). Time for payment of the Contract Price is of the essence.
- 5.2 If the Customer fails to make payment on the Due Date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-

- 5.2.1 cancel the Contract immediately without notice and recover all costs reasonably incurred by the Company in fulfilling the Offer which has been accepted by the Company pursuant to clause 2.2 until the date of cancellation;
 - 5.2.2 suspend the provision of the Services or suspend any further deliveries of the Equipment to the Customer;
 - 5.2.3 appropriate any payment made by the Customer to such of the Equipment and/or Services (or goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);
 - 5.2.4 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 8% per annum above the Bank of England's base rate from time to time until payment is made. 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 Customer shall pay the interest together with the overdue amount; and/or
 - 5.2.5 provided title in the Equipment has not passed to the Customer, enter any premises of the Customer or of any third party where the Equipment is stored to recover it.
- 5.3 The Customer shall pay all amounts due under the Contract in full without any set-off, counter-claim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 5.4 Any extension of credit allowed by the Company to the Customer may be changed or withdrawn at any time.
- 5.5 If in the sole opinion of the Company, the creditworthiness of the Customer has deteriorated from the date the Contract is formed but prior to the date the Equipment and/or the Services are supplied, the Company may require full or partial payment of the Contract Price by the Customer or the provision of security for the payment by the Customer in a form acceptable to the Company.

6. **DELIVERY**

- 6.1 The Customer shall provide the Company with a clear indication of the route between the Company's premises from which the Equipment is to be dispatched and the place agreed between the parties for delivery of such Equipment (the "**Delivery Location**").
- 6.2 Delivery of the Equipment shall be made as close as reasonably practicable to the Delivery Location via a public highway or private road over which the Company has authority to pass and re-pass. The Customer shall procure access to any and all private roads over which the Company must pass and re-pass to the extent necessary to enable the Company to deliver the Equipment as close as reasonably practicable to the Delivery Location. The Customer shall indemnify the Company against all liabilities, losses, costs, proceedings, claims, demands or injury to any property owned by the Company or to any person employed by the Company or acting as the Company's agent, representative or sub-contractor:
- 6.2.1 which is caused by, relates to or arises as a result of the Customer's failure to procure access to any and all private roads over which the Company must pass and re-pass to the extent necessary to enable the Company to deliver the Equipment as close as reasonably practicable to the Delivery Location; and
 - 6.2.2 which is caused by or arises as a result of the Customer's failure to provide a clear indication of a route to the Delivery Location in accordance with clause 6.1.
- 6.3 Subject to clause 6.2, responsibility for unloading the Equipment at the Delivery Location shall rest with the Customer who shall provide a proper and safe means of access to the Delivery Location with adequate maneuvering space for the Company's vehicle. The Company's employee(s), agent(s), representatives or sub-contractors shall determine the safety and suitability of the means of access to the Delivery Location and the adequacy of the maneuvering space at the Delivery Location and delivery of the Equipment shall not be made where the safety and suitability of the means of access to the Delivery Location and the adequacy of the maneuvering space at the Delivery Location is in their opinion unsafe and/or unsuitable.
- 6.4 The Company shall use its reasonable endeavors to adhere to any date or time given for delivery of the Equipment but any such date or time is an estimate only and the Company shall not be liable for a failure to deliver the Equipment by the time or date given if such delay is caused by an event beyond the Company's reasonable control or the Customer's failure to comply with clause 6.1 and/or any other term of the Contract. Time for delivery of the Equipment is not of the essence of the Contract.
- 6.5 The Customer or its authorised representative shall sign the delivery note provided by the Company prior to the unloading of the Equipment at the Delivery Location and any such signature shall be deemed to be that of the Customer itself.
- 6.6 Delivery of the Equipment shall be completed on the arrival of the Equipment at the Delivery Location.
- 6.7 If the Company fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Company shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by an event beyond the Company's control, the Customer's failure to provide the Company with adequate delivery instructions for the Equipment pursuant to clause 6.1 (or otherwise) or any relevant instruction related to the supply of the Equipment.
- 6.8 If the Customer fails to take delivery of the Equipment or fails to give the Company adequate delivery instructions otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's failure to comply with its obligations under the Contract in respect of the Equipment then, without prejudice to any other right or remedy available to the Company, the Company may:-
- 6.8.1 store the Equipment until actual delivery takes place and charge the Customer for the reasonable costs (including insurance) of storage;
 - 6.8.2 if the Customer has paid the Contract Price, sell the Equipment at the best price readily obtainable and, after deducting all reasonable storage and selling expenses account to the Customer for the excess over the Contract Price; and/or
 - 6.8.3 divert the Equipment elsewhere and shall not be obliged to re-deliver such Equipment to the Customer unless it agrees in writing to re-deliver such Equipment to the Customer. Such re-delivery may be the subject of an additional charge.

- 6.9 The Company will not be liable for Equipment lost or damaged in transit:-
- 6.9.1 unless, in respect of Equipment:
 - 6.9.1.1 which is lost in transit, the Customer gives notice in writing to the Company as soon as reasonably practicable following the completion of delivery of the Equipment but prior to the completion of the installation of the Equipment identifying the Equipment which has been lost in transit;
 - 6.9.1.2 damaged in transit where such damage is apparent on normal visual inspection, the Customer gives notice in writing to the Company as soon as reasonably practicable following the completion of delivery of the Equipment but prior to the completion of the installation of the Equipment identifying the Equipment which has been damaged in transit; or
 - 6.9.1.3 damaged in transit where such damage is not apparent on normal visual inspection, the Customer gives notice in writing to the Company as soon as reasonably practicable but no later than 7 days from the date of discovery of such damage identifying the Equipment which has been damaged in transit,
 - 6.9.2 unless the Company is given a reasonable opportunity of examining the Equipment which has been allegedly damaged in transit;
 - 6.9.3 where such damage is not apparent on normal visual inspection, if such damage arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions of the Customer, failure by the Customer to follow the Company's instructions (whether oral or in writing) and/or misuse or alteration of the Equipment without the Company's approval.
- 6.10 The Company may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7. **RISK AND TITLE**

- 7.1 Risk of damage to or loss of the Equipment shall pass to the Customer on the completion of delivery in accordance with clause 6.6.
- 7.2 Title to the Equipment shall not pass to the Customer and the Equipment shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company both the Contract Price and all monies owed by the Customer to the Company on any account whatsoever in full and in cleared funds.
- 7.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- 7.3.1 maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price on the Company's behalf from the date of delivery;
 - 7.3.2 notify the Company immediately if it becomes subject to any of the events listed in clauses 11.2.2 to 11.2.9 (inclusive); and
 - 7.3.3 give the Company such information relating to the Equipment as the Company may require from time to time.
- 7.4 Where Equipment has been delivered prior to the payment of the Contract Price, notwithstanding that in accordance with clause 7.2 title in the Equipment remains vested in the Company, if the Customer fails to make payment by or on the Due Date, the Company shall be entitled to commence and maintain proceedings against the Customer for payment of the Contract Price. The remedy available under this clause shall not affect any other remedies that may be available to the Company.
- 7.5 If before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clauses 11.2.2 to 11.2.9 (inclusive), then, without limiting any other right or remedy the Company may have the Company may at any time:
- 7.5.1 require the Customer to deliver up all Equipment in its possession which has not been resold, or irrevocably incorporated into another product; and
 - 7.5.2 if the Customer fails to do so promptly, enter any premises of the Customer or any third party where the Equipment is stored in order to recover it.

8. **WARRANTIES AND LIABILITIES**

- 8.1 Subject to the other provisions of this clause 8, the Company warrants that the Equipment will be free from defects for a period of 12 months from the date of delivery, unless agreed otherwise in writing between the parties.
- 8.2 The Company warrants that the Services will be provided with reasonable care and skill. The Company shall use its reasonable endeavours to meet any performance dates given for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 If the Equipment and/or the Services do not comply with the warranties set out in clause 8.1 and 8.2 (respectively), the Company shall (subject to the other provisions of this clause 8):-
- 8.3.1 in respect of the Equipment, at its option, repair or replace such defective Equipment;
 - 8.3.2 in respect of the Services, at its option, re-perform such Services or refund to the Customer such proportion of the Contract Price as relates to the breach of the warranty regarding such Services.
- 8.4 The warranties given in clauses 8.1 and 8.2 are given by the Company subject to the following conditions:-
- 8.4.1 the Company shall be under no liability in respect of any defect in the Equipment arising from any specification supplied by the Customer save to the extent that the same is due to any negligence, breach of contract or breach of statutory duty by the Company;
 - 8.4.2 the Company shall be under no liability in respect of any defect or any failure in the Equipment which arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions of the Customer, failure by the Customer to follow the Company's instructions (whether oral or in writing) and/or misuse or alteration of the Equipment without the Company's approval;

- 8.4.3 the Company shall be under no liability under the warranties given in clauses 8.1 and 8.2 (or any other warranty, condition or guarantee) if the element of the Contract Price attributable to the alleged defective Equipment and/or Services which the Customer alleges have not been provided with reasonable care and skill has not been paid by the date upon which such claim is issued to the Company pursuant to this clause 8;
- 8.4.4 any claim that the Equipment does not conform to clause 8.1 shall be notified to the Company:
- 8.4.4.1 in the case of a defect that is apparent on normal visual inspection, within 14 days of the date of delivery; or
- 8.4.4.2 in the case of a latent defect, within a reasonable time of the latent defect having become apparent,
- all defective Equipment shall be returned to the Company within 14 days of the date of such notification carriage paid,
- 8.4.5 the Company must have been given a reasonable opportunity to examine any alleged defective Equipment;
- 8.4.6 any claim that the Services do not conform to clause 8.2 shall be notified to the Company within 14 days' of the date the Customer is notified by the Company that the provision of such Services is complete; and
- 8.4.7 the warranty given in clause 8.1 does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 8.5 The Company will provide the Services based on an assessment of the Customer's requirements as expressed in any information supplied by the Customer. The Company shall not be liable for any failure to provide the Services with reasonable care and skill insofar as it is caused by an omission, error, inaccuracy or ambiguity in any information provided by the Customer. The Customer warrants that any and all such information is complete and accurate.
- 8.6 Except as provided in this clause 8, the Company shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 8.1 or the failure of the Services to comply with the warranty set out in clause 8.2.
- 8.7 The terms of these Conditions shall apply to any replacement Equipment supplied by the Company under clause 8.3.1 unless agreed otherwise by the parties.
- 8.8 Any samples submitted to the Customer will, wherever possible, be sourced from current bulk production or stock. Notwithstanding this, the Company does not warrant or guarantee that the Equipment supplied will conform to any such samples. Any alleged discrepancy between samples and delivered Equipment must be notified to the Company in writing before the Equipment is incorporated or installed in any structure or used in any other way, to enable inspection.
9. **LIMITATION OF LIABILITY : THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 9.1.5 defective products under the Consumer Protection Act 1987.
- 9.2 Subject to clause 9.1, the Company shall not have any liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, for:
- 9.2.1 loss of profits;
- 9.2.2 loss of sales or business;
- 9.2.3 loss of agreements or contracts;
- 9.2.4 loss of anticipated savings;
- 9.2.5 loss of or damage to goodwill;
- 9.2.6 loss of use or corruption of software, data or information; and
- 9.2.7 any indirect or consequential loss.
- 9.3 Subject to clause 9.1 and 9.2, the Company's liability in respect of damage to the Customer's property whether arising as a result of negligence, breach of contract, breach of statutory duty or otherwise of the Company or its agents or employees shall not exceed £5,000,000 for any one occurrence or series of connected occurrences.
- 9.4 Subject to clause 9.1, 9.2 and 9.3, the Company's total liability arising under or in connection with the 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 125% of the Contract Price.

- 9.5 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.
- 9.6 This clause 9 shall survive termination of the Contract.

10. **FORCE MAJEURE**

- 10.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Equipment and/or Services, if the delay or failure was due to an event beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as events beyond the Company's reasonable control:-
- 10.1.1 act of God, explosion, flood, tempest, fire or accident;
- 10.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- 10.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 10.1.7 power failure or breakdown in machinery.
- 10.2 If an event beyond the Company's reasonable control prevents the Company from providing any of the Services and/or Equipment for more than 4 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11. **TERMINATION**

- 11.1 Without limiting its other rights or remedies, the Company may terminate the Contract by giving the Customer not less than 1 month's written notice.
- 11.2 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:
- 11.2.1 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;
- 11.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.2.3 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;
- 11.2.4 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;
- 11.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 11.2.6 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;
- 11.2.7 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);
- 11.2.8 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;
- 11.2.9 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;
- 11.2.10 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 11.2.2 to clause 11.2.9 (inclusive);
- 11.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 11.2.12 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.

- 11.3 Without limiting its other rights or remedies, the Company may cancel the Contract with immediate effect by giving written notice to the Customer if:
- 11.3.1 the Customer fails to pay any amount due under this Contract on the Due Date for payment; and/or
 - 11.3.2 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.4 On cancellation of the Contract for any reason:
- 11.4.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Equipment and/or Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 11.4.2 the accrued rights and remedies of the parties as at cancellation 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 cancellation; and
 - 11.4.3 clauses which expressly or by implication have effect after cancellation shall continue in full force and effect.
- 11.5 Without limiting its other rights or remedies, the Company may suspend the supply of the Services and/or all further deliveries of the Equipment under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 11.2.2 to clause 11.2.12 or the Company reasonably believes that the Customer is about to become subject to any of them.

12. ADDITIONAL CONDITIONS

- 12.1 Where the Company is required to undertake preparatory works or work in order to comply with health and safety legislation by way of consultation, measurements or otherwise prior to or after delivery of the Equipment, the Customer or any other person nominated by the Customer shall provide the following facilities free of charge to the Company or its employees or agents upon request:
- 12.1.1 labour and assistance for unloading of the Equipment;
 - 12.1.2 storage facilities for the Equipment and machinery or equipment of the Company in close proximity to the agreed work area and/or Delivery Location;
 - 12.1.3 erection of scaffolding to the satisfaction of the Company;
 - 12.1.4 protective tarpaulin and other apparatus for protection of the Company's employees and agents and the general public together with such artificial lighting as may be required by the Company, such protective measures to be in accordance with all applicable health and safety legislation.
- 12.2 The Customer warrants to the Company that it has complied with all applicable health and safety legislation and the Customer shall indemnify the Company against any and all damages, expenses, costs, claims or liabilities incurred or suffered by the Company as a result of the failure of the Customer to comply with such legislation.
- 12.3 The Customer shall:
- 12.3.1 ensure that the terms of the Offer and (if submitted by the Customer) any specification are complete and accurate;
 - 12.3.2 co-operate with the Company in all matters relating to the Services;
 - 12.3.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Company to provide the Services;
 - 12.3.4 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 12.3.5 prepare the Customer's premises for the supply of the Services;
 - 12.3.6 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; and
 - 12.3.7 keep and maintain all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 12.4 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 12.4.1 the Company shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 12.4.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 12.4; and
 - 12.4.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

13. GENERAL

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.2 The Company 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.
- 13.3 The Customer shall not, without the prior written consent of the Company, 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.
- 13.4 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.
- 13.5 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. 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.
- 13.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.7 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 Company.
- 13.8 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.
- 13.9 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 13.9 shall survive termination of the Contract.
- 13.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. 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).

14. **SOFTWARE AND ONLINE SERVICES**

- 14.1 The Customer warrants that any content supplied by the Customer (including but not limited to: text, images, audio) for use by the Company under or in connection with the Contract is owned by the Customer or that the Customer has acquired appropriate permission from the owner to use it and to permit the Company to use it in connection with the performance of their respective obligations under the Contract. The Customer shall indemnify the Company against all liabilities, losses, damages, costs and expenses awarded against, suffered or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Company's use of any content supplied by the Customer. This clause 14.1 shall survive the termination of the Contract.
- 14.2 All Intellectual Property Rights in or arising out of or in connection with the Services including source code and designs remain the property of the Company. The Company may grant a non-exclusive, royalty-free, non-transferable, non-sub-licensable licence to the Customer to use such Intellectual Property Rights for the duration of the Contract in the territories specified by the Company in that licence. The Company may also assign any such Intellectual Property Rights to the Customer upon full payment of the Contract Price and/or any additional charges which the Company may prescribe.
- 14.3 Miss-use of the Service: The Customer shall comply with the terms of any software licence(s) issued to the Customer by the Company in respect of any software which is provided pursuant to or in connection with the provision of the Services. The Company reserves the right to remove access to individual users, groups or the entire system should it detect or suspect miss-use of the system with intent to damage the product, services or any hardware or software supplied or used to provide the Services.
- 14.4 In the event of a detected or suspected fraud against the system, the Company, in the interest of protecting the Customer, reserves the right to immediately suspend access to the system. Such access may only be restored on the instructions of the Customer.
- 14.5 Access to the Service will be granted to the Customer and their agents with relevant permission levels. Only the Customer (as the direct customer) will have superior access to the system. This level of access does not transfer to other group companies or third parties associated with the Customer. In the event of a Customer name change or merge, access would be transferred to the new.
- 14.6 The Customer will not have the right to resell or provide in any way the Equipment or Services to other persons without the prior written agreement of the Company.
- 14.7 No software components or design elements developed or provided by the Company may be copied, replicated, shared, re-used or reproduced in

any format without prior written agreement of the Company.

- 14.8 Software solutions provided by the Company may only be installed at agreed, designated location, by a suitable qualified the Company employee.
- 14.9 No products and/or the Equipment provided by the Company may be modified in any way or re-installed at other locations either simultaneously or as part of a disaster recovery plan by any person other than a Company employee.
- 14.10 The Company provides all of its software as is, without warranty implied or otherwise.
- 14.11 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to licence such rights to the Customer.

15. **CONNECTIVITY**

- 15.1 The Company will provide telephone (PSTN), broadband (ADSL) and mobile (3G/4G) data services using 3rd party suppliers. The Company is not liable for any loss of service outside of its control, such as 3rd party supplier network outages, loss of signal, etc. The Company is also not liable for the effects or costs of those types of outages, but will endeavour to notify Customer promptly and arrange alternative connections or services (possibly at additional cost to the Customer). The Company will accept liability of loss of service within its control, such as accidental line or tariff cancellation.
- 15.2 The Company is not liable for the contents of data or emails transmitted over a connection, unless performed by its employees. Should a 3rd party provider notify the Company of any illegal data transfer (such as threats, child pornography or copyright infringement), the Customer shall assist in any investigations, including that of the Customer's employees. The Customer will take all necessary precautions to prevent such illegal activity by employees or customers.
- 15.3 Remote access to the Company's systems will be provided to the Customer on request and where possible. When this is provided using a mobile data connection (3G/4G) or satellite connection, the following apply:
 - 15.3.1 Only SuperSIMs (on Vodafone) and Satellite Connections support this feature, therefore on existing live sites the Company may need to perform a SIM/Router swap prior to enabling remote access. If the site is not yet live, then a SuperSIM should be requested prior to install.
 - 15.3.2 All 3G and 4G SIMs have a set data allowance on the tariff. The Company purchases the largest tariffs available, therefore nothing larger is available. All of the viewing the Company does, the alerts and the remote viewing site performs gets added together throughout the month. Once the tariff is used up, the Company is then charged data at a per MB increased rate. The tariff and data allowance is reset every calendar month on a specific date set by the mobile network. If the usage or incurred charges become excessive (theoretically, but not limited to £2,000 per month), then the mobile network provider may disable the SIM without warning. It will only be reactivated on the day of the month that the data allowance is normally reset. Whilst the SIM is deactivated, the Company loses all access to the site for monitoring, alerts, etc. The Company is able to contact the mobile network provider during the month to get an idea of the usage or charges at any point, however the mobile network provider is normally only able to give information up to 3 days old, making it difficult to get an accurate reading or to forecast excess charges or pre-empt deactivation. Depending on the number of cameras, the entire month's tariff could be used up with 3 hours of combined viewing. The Company normally uses about 80% of this allowance for monitoring. Since the Company cannot control the Customer's usage of remote access, it cannot be responsible for excess charges the Customer incurs. The Customer accepts these terms and additional charges when it uses this feature.

16. **TIME LAPSE AND WEBCAM**

- 16.1 The Company reserves the right to use any time lapse images or videos within its sales literature or website(s) for the purposes of demonstration of its time lapse products (during and after the site's life), and any WebCam (whilst deployed) may be linked to the Company's website or electronic sales information for the purposes of demonstrating its WebCam solutions.
- 16.2 Other than usage described in 16.1, the Company will not provide any images (raw or edited) or video (unedited or produced) to other companies without the prior consent of the Customer.
- 16.3 The Company will provide any captured images, unedited videos, interim videos or final cut videos to the Customer as pre-agreed in the time lapse order. Additional supply, production or duplicates of such media will be at the Company's discretion and the Customer may be obliged to pay additional charges to the Company.
- 16.4 Any additional content included within a final cut video (such as music, logos, images or video) requested and supplied by the Customer must adhere to clause 16.1.

End of Terms and Conditions.
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