

- 8.8.3 the Customer must insure all such Products.
- 8.9 The Customer shall have the right to sell the Products in the ordinary course of business unless, or until:
- 8.9.1 the Company revokes that right by informing the Customer in writing, which revocation shall have immediate effect; or
- 8.9.2 the Customer becomes or is deemed to be insolvent in accordance with clause 15.2 herein.
- 8.10 If the Customer's right to use and sell the Products in the ordinary course of business ends, the Customer must permit the Company to reclaim the Products.
- 8.11 The Customer agrees to give the Company permission to enter any premises where the Products are stored:
- 8.11.1 at any time to inspect them; and
- 8.11.2 to remove them, using reasonable force if necessary, after the Customer's right to use or sell them has finished.
- 8.12 Despite the Company's retention of title to the Products, the Company reserves the right to take legal proceedings to recover the cost of Products supplied should the Customer not make full payment by the invoice due date.
- 8.13 The Customer is not entitled to pledge or in anyway charge by way of security for any indebtedness any of the Products which remain the property of the Company. Should the Customer do so, all monies owing by the Customer to the Company shall without prejudice to any other rights or remedies of the Company immediately become due and payable.
- 8.14 The Company reserves the right to stop supplying Products to the Customer at any time.
- 9. SPECIFICATION OF PRODUCTS**
- 9.1 The Company will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data of the Products.
- 9.2 The Company will not be responsible for any loss or damage resulting from curtailment or cessation of supply of Products following any variation as described in clause 9.1 of this Contract.
- 9.3 The Company will use its reasonable endeavours to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacturer.
- 9.4 Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified.
- 9.5 The Company reserves the right to increase its quoted or listed prices, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will the Company consider cancellation of such orders or the return of such orders.
- 10. INTELLECTUAL PROPERTY**
- 10.1 The Customer hereby acknowledges that any proprietary rights used on or in relation to the Products, or any Third Party Software supplied hereunder, including, but not limited to, any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Company or the Third Party Software owner.
- 10.2 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by the Company (including if so required the execution and return of a Third Party Software licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify the Company in respect of any costs, charges or expenses incurred by the Company as the result of any breach by the Customer of such terms and conditions.
- 10.3 NO TITLE OR OWNERSHIP OF SOFTWARE PRODUCTS OR ANY THIRD PARTY SOFTWARE LICENCED TO THE CUSTOMER UNDER THIS CONTRACT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.
- 11. CONFIDENTIALITY**
- 11.1 The Customer shall safeguard and (save as may be required by law) keep confidential all information entrusted to it by the Company which is not in the public domain and take all reasonable precautions to safeguard the Company's confidential information.
- 11.2 Only those members of staff who need to be aware of confidential information in order for the Customer to fulfil its obligations under this Contract shall be entitled to access to the confidential information.
- 11.3 All confidential information passed to the Customer by the Company shall remain the exclusive property of the Company and the Customer undertakes to return such information at the request of the Company or, at the latest, upon termination or expiration of this Contract.
- 11.4 The communication of any software login credentials to third parties is prohibited and will result in immediate withdrawal of the use of the Suppliers bespoke designed database and the possible instigation of further legal proceedings. This applies to the unlicensed copying and distribution of the Suppliers bespoke designed databases for any reason whatsoever.
- 12. RETURNS**
- 12.1 The Company reserves the right to levy an administration charge in respect of the rotation of Products and returns.
- 12.2 Returns must be made subject to the following:
- 12.2.1 prior authority having been obtained from the Company which will be given at the Company's sole discretion;
- 12.2.2 the request for the return must be made within 14 days of the date of invoice and the Products in issue must be returned within 14 days of the authority to return;
- 12.2.3 subject to the Company stock rotation policy;
- 12.2.4 the Products must be properly packed;
- 12.2.5 the Products must be in a saleable condition;
- 12.2.6 the Products must be accompanied by a list of the Products; and
- 12.2.7 the Products must still be covered by warranty in accordance with clause 13 below.
- 12.3 The Company reserves the right to reject any Products which do not comply with the conditions set out in clause 12.2 of this Contract.
- 12.4 If the Company nevertheless agrees to accept any Products returned which are not in a saleable condition, the Company reserves the right to charge the cost to the Customer of bringing the Products into a saleable condition.
- 13. WARRANTY**
- 13.1 The Company warrants that it has good title to or licence to supply all Products to the Customer.
- 13.2 If any part of the hardware Products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Product or to the system of which the Product forms part have taken place. The Company is not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.
- 13.3 The Company reserves the right to test all Products returned as faulty and to return to the Customer (at the Customer's expense) any Products found not to be faulty. The Company also reserves the right to levy an additional reasonable charge to cover the cost of such testing.
- 13.4 All software Products supplied hereunder are supplied "as is". The sole obligation of the Company in connection with the supply of software Products is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that such software Product should fail to conform to product description PROVIDED ALWAYS THAT the Customer notifies the Company of any such non-conformity within 90 days of the date of delivery of the applicable software Product.
- 13.5 The Company cannot accept any liability in relation to any losses, costs or expenses which arise through any difficulty caused over date changes.
- 13.6 If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 13.2 or 13.4 of these terms and conditions, the Company will only accept the return of such Products as provided in clause 10 of these terms and conditions. The Company will not consider any claim for compensation, indemnity or refund under liability unless it has been established or agreed with the manufacturer and, where applicable, the insurance company.
- 13.7 EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 13, THE COMPANY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- 14. INDEMNITIES AND LIMITS OF LIABILITY**
- 14.1 The Company will indemnify the Customer for direct damage to property caused solely by the Company's assigned employees acting within the course of their employment and the scope of their authority. The Company's total liability under this sub-clause shall be limited to £100,000 for any one event or series of connected events.
- 14.2 Except as stated in clause 14.1 of these terms and conditions, the Company disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customer's use of the Products and in no event shall the Company be liable to the Customer for special, indirect or consequential damage, including, but not limited to, loss of profits arising from loss of data or in connection with the use of the Products.
- 14.3 The Customer shall indemnify and defend the Company and its employees in respect of any claims by third parties which arise from any Company performance or non-performance pursuant to the instructions of the Customer or its authorised representative.
- 15. TERMINATION FOR CAUSE**
- 15.1 This contract may be terminated forthwith by notice in writing:
- 15.1.1 if either party fails to perform any of its obligations under these terms and conditions and such failure continues for a period of 14 days after written notice thereof by the other party; or
- 15.1.2 by the Company if the Customer fails to pay any sums due hereunder by the due-date notwithstanding the provisions for late payment as stated in clause 8.1 of these terms and conditions or if the Customer becomes insolvent.
- 15.2 The Company will deem the Customer insolvent if:
- 15.2.1 the Customer is unable to pay debts as they fall due; or
- 15.2.2 the Customer or any item of the Customer's property becomes the subject of:
- 15.2.2.1 any formal insolvency procedure such as receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy; or
- 15.2.2.2 any application or proposal for any formal insolvency procedure; or
- 15.2.2.3 any application, procedure or proposal overseas with similar effect or purpose.
- 15.3 Any termination of the contract under clause 15 of these terms and conditions shall be without prejudice to any other rights or remedies a party might be entitled to and shall not affect any accrued rights or liabilities of either party.
- 15.4 The confidentiality obligations under 11 shall survive termination of this Contract.
- 16. EXPORT AND/OR RE-EXPORT LIMITATION**
- 16.1 The Customer acknowledges and agrees that the hardware and software Products, and technology subject to this contract, are subject to the export control laws and regulations of the United States, EU and National legislation. The Customer will comply with all these laws and regulations.
- 16.2 The Customer shall not, without prior appropriate government authorisation, export, re-export, or transfer any hardware or software Products, or technology subject to this contract, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other comparable European or local regulation.
- 16.3 In addition, any hardware or software Products, or technology subject to this contract may not be exported, re-exported, or transferred to an end-user engaged in activities related to weapons of mass destruction.
- 17. DATA PROTECTION**
- 17.1 The parties are committed to respecting the privacy rights of individuals. To the extent that a party collects and transfers to the other party any personal data, the receiving party will comply with relevant laws and regulations related to this collection and transfer and agrees also to comply with relevant laws and regulations related to the storage, maintenance and processing of such personal data.
- 17.2 The Customer agrees that the Company may make such enquiries and searches and obtain such references as it considers necessary from any person, firm or company including any credit reference agency (which will keep a record of any search made) and may disclose the results of those enquiries, searches and references and any information given by the Customer ("relevant information") to any credit reference agency or to any other company in any corporate group of which it is a member, to any company or business associated with it and to any person, firm or company acting on the Company's behalf for any purpose connect with the Company's business.
- 18. CONTRACT**
- 18.1 The headings in these terms and conditions are for ease of reference only and shall not affect its interpretation or construction.
- 18.2 No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
- 18.3 The Customer agrees not to assign any of its contractual rights herein without the prior written consent of the Company.
- 18.4 If any of these terms and conditions are unenforceable as drafted it will not affect the enforceability of any other of these terms and conditions and if it would be enforceable if amended, it will be treated as so amended.
- 18.5 Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure including any act of God, fire, terrorism, explosion, accident, industrial dispute or any cause beyond its reasonable control.
- 18.6 Any documents or notices given hereunder by either party must be in writing and may be delivered personally or by first-class post or by fax to the others registered address or principle place of business. The notice period for posted documents will be deemed to have been given 2 working days after the date of posting. All such notices must be signed.
- 18.7 These terms and conditions shall be construed in accordance with the laws of England and Wales and the jurisdiction of which shall be the courts of England and Wales.
- 18.8 No contract will create any right enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not identified as the Company or the Customer.