



**MEYERTECH**

**SECURITY *with* VISION**

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# MEYERTECH LIMITED

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## CONDITIONS OF SALE OF GOODS AND SERVICES

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# 1 Interpretation

## 1.1 In these Conditions:

“**Buyer**” means the person who accepts a quotation of the Seller for the sale of the Goods and Services or whose order for the Goods and Services is accepted by the Seller,

“**Confidential Information**” means secret or confidential commercial, financial, marketing, technical or other information that is of value to the Seller in any form or medium whether disclosed orally or in Writing before or after the date of the order or Contract, together with any reproductions of such information in any form or medium or any part of such information,

“**Conditions**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller which refer to the Quotation,

“**Confidential Information**” means secret or confidential commercial, financial, marketing, technical or other information that is of value to the Seller in any form or medium whether disclosed orally or in Writing before or after the date of the order or Contract, together with any reproductions of such information in any form or medium or any part of such information,

“**Services**” means the consultancy, commissioning, support, training and design services described in the Quotation,

“**Contract**” means any contract between the Seller and the Buyer for the sale of Goods and Services incorporating these Conditions;

“**Equipment**” means the machine(s) identified by type and serial number in the Quotation;

“**Estimated Delivery Date**” the date set out in the Sales Order Acknowledgement by which the Seller will use its reasonable endeavours to make available to the Buyer each Stage of the Project as set out in the Quotation,

“**Functional Specification**” means the functional specification(s), in accordance with which the Programmed Products are to be written,

“**Goods**” means all articles, materials, equipment, goods, software and hardware (including any instalment of these or any parts for them) that the Seller is to supply in accordance with these Conditions,

“**Incoterms**” means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made,

“**Intellectual Property Rights**” means patents, registered designs, trademarks and service marks (whether registered or not), copyright, design right, and all similar property rights including those subsisting anywhere in the world and in applications for protection of any of such rights,

“**Licensed Program(s)**”- means the software in object code form which has been produced by the Seller or on its behalf (excluding any Programmed Products), and which is to be licensed to the Buyer by the Seller. This therefore is software in which the Seller owns the Intellectual Property Rights, and which exists other than as a result of the Contract,

“**Maintenance Fee**” means the fee for the Maintenance Services specified in the Quotation,

“**Maintenance Services**” means the maintenance services described in Part 3 of these Conditions subject to any restrictions or any additional maintenance services referred to in the Quotation;

“**Normal Business Hours**” means the hours referred to in Condition 28.1 (a);

**“Product”** means any configuration of Equipment, Licensed Program(s) and/or Programmed Products sold, developed or licensed by the Seller,

**“Program Documentation”** means the instruction manuals and user guides made available by the Seller, at its discretion in either printed or machine readable form to the Buyer for use with certain software which the Seller supplies to the Buyer;

**“Programme of Work”** the agreed time-table for completion of the Project for the performance of the Programming Services as set out in the Quotation or Sales Order Acknowledgement;

**“Programmed Products”** means any bespoke software or modifications to any software created pursuant to Part 5 of these Conditions. This therefore is software, which has been specifically developed as a result of the Contract and pursuant to the functional specification referred to in Condition 29,

**“Programming Services”** means the programming services described in the Quotation;

**“Project”** the development, supply and delivery of Programmed Products and all other work in relation to it that is carried out by the Seller as detailed in the Quotation,

**“Project Charges”** the charges for each Stage as shown in the Quotation,

**“Quotation”** the quotation issued in Writing by the Seller to the Buyer for the Goods and/or Services,

**“Sales Order Acknowledgement”** means the sales order acknowledgement issued in Writing by the Seller to the Buyer for the Goods and/or Services,

**“Seller”** means the company shown as Seller or the front of this document

**“Services”** means any Commissioning Services, Training Services, Design Services, Consultancy Services and/or Programming Services that the Seller provides to the Buyer pursuant and which is subject to these Conditions,

**“Site”** means the installation address, given by the Buyer,

**“Software Programs”** means the Licensed Programs and Programmed Products,

**“Stage”** means each agreed module of the Programmed Products specified in the Quotation,

**“Third Party Software”** means software other than the software provided by the Seller to the Buyer,

**“Writing”** means in writing including email, telex, cable, facsimile transmission, electronic transmission and comparable means of communication.

- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience of reference only and shall not affect their interpretation.
- 1.4 References in these Conditions to a person include an individual, company, corporation, firm or partnership.
- 1.5 References in these Conditions to goods shall be deemed to include a software.

## 2 Basis of the Sale and Duration of Services

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and Services in accordance with any quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to the Contract shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.4 The Seller's obligation to provide the Services will start on the date specified in the Quotation or otherwise specified by the Seller in Writing, and if no period is specified for the duration of the Services, then they will continue until terminated by the Seller in accordance with the terms for earlier termination set out in Condition 7 or unless terminated by either party giving not less than 3 months' written notice to the other.

## 3 Orders and Specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by true Seller or delivered to the Buyer, whichever is the earlier
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient period of time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 Where the Goods other than the Seller's standard products are obtained and delivered by the Seller to the Buyer's order, the Goods may vary in accordance with normal trade tolerances from dimensions specified by the Buyer in the order and the Buyer shall not be entitled to make any claim against the Seller in respect of any such variations.
- 3.6 Notwithstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample and subject to the normal variation between the bulk and sample accepted by the trade.
- 3.7 Any particular purpose for which the Buyer proposes to use the Goods and/or Services shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by one of the Seller's directors.

## 4 Price

- 4.1 The Price of the Goods and the Services shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for the period notified by the Seller or in the absence of notification for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery of the Goods or performance of the Services to increase the price of the Goods and/or Services to *reflect: any* increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, increases in the manufacturer's price for whatever reason), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer; or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Unless otherwise agreed by the Seller in writing the Goods and/or Services shall be the price set out in the Seller's price list published on the date of delivery or deemed delivery of the Goods, or completion as deemed completion of performance of the Services. Unless otherwise agreed in writing the price for the Goods and/or Services shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to packaging, labelling, loading, unloading, carriage, freight and insurance all of which amounts the Buyer will pay, where appropriate, in addition to, when it is due to pay for the Goods and/or Services.
- 4.4 All prices are exclusive of any applicable value added tax, which will be charged to and paid by the Buyer in addition to the price of the Goods and the Services at the rate applicable at the *relevant tax* point together with any other duty or tax imposed by any competent authority payable on the sale of the Goods and the Services.

## 5 Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Services on or at any time after commencing performance of the Services and for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods and Services within Net 30 days of the date of the Seller's invoice unless otherwise agreed in Writing between the Buyer and the Seller, and the Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to
- (a) cancel the Contract or suspend any further deliveries and services to the Buyer;
  - (b) demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer,
  - (c) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) and/or Services as the Seller may think fit (notwithstanding any purported appropriation by the Buyer), and

(d) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of eight (8) per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made.

- 5.4 In the case of export orders, payment shall be in pounds sterling unless otherwise agreed in Writing signed by the Seller's authorised representative
- 5.5 The Buyer shall not be entitled to set-off against or deduct from sums due to The Seller under the Contract any amount that the Buyer claims from the Seller, whether under the Contract or any other contract between the Buyer and the Seller.
- 5.6 The Seller reserves the right to require that payment of all amounts due to the Seller shall be made by letter of credit. Where the Seller specifies that payment will be made by letter of credit, the Buyer must establish and maintain in favour of the Seller an irrevocable and unconditional letter of credit with or confirmed by a bank in England satisfactory to the Seller. No delivery of Goods or provision of Services will take place until such a letter of credit has been opened and the Seller is satisfied with all arrangements relating thereto. If for any reason the bank is liable to make payment to the Seller under any letter of credit established for that purpose and fails to do so the Buyer shall nevertheless remain liable to pay for the processing of the Goods and Services.
- 57 Each Contract shall be subject to the Seller being satisfied as to the Buyer's credit status both prior to and during the period of the Contract. If the Seller becomes dissatisfied with the Buyer's credit status the Seller may suspend performance of the Contract or withhold delivery of Goods and/or Services until the Buyer satisfies the Seller as to the Buyer's creditworthiness or gives the Seller such security, as the Seller shall deem appropriate for the price.

## 6 Export Terms

- 6.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 6.2 The Buyer shall be responsible for complying with any legislation or regulation governing the export or import of the Goods from any country into the country of destination and for the payment of any duties on them, the transportation and storage of Goods including without limitation any obligation to translate any instructions, labelling or packaging into any other language.
- 6.3 If the Seller agrees to arrange for carriage of the Goods on the Buyer's behalf the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 6.4 The Buyer undertakes to comply with all relevant English, US and EU legislation relating to the export of goods and not to offer the Goods for resale in any other country notified by the Seller to the Buyer at or before the time the Buyer's order is accepted, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

## 7 Termination

- 7.1 The Seller shall be entitled to terminate or suspend the Contract without liability to the Buyer by giving notice to the Buyer at any time if one or more of the following events occur:
- (a) the Buyer commits a serious breach of any of its obligations under the Contract that is incapable of remedy,



- (b) the Buyer fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been required in Writing to remedy or desist from such breach within a period of 14 days,
- (c) the Buyer undergoes a change of Control and for the purposes of this Condition 7.1 (c), "Control" has the meaning specified in Section 416 of the income and Corporation Taxes Act 1988,
- (d) the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or
- (e) an incumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer, or
- (f) the Buyer ceases, or threatens to cease, to carry on business, or

the Seller reasonably believes that any of the events specified in Condition 7.1 (a) to (f) inclusive above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 7.2 Notwithstanding any such termination or suspension in accordance with Condition 7.1 above the Buyer shall pay the Seller for all Goods delivered and Services fully or partially performed up to and including the date of suspension or termination and termination of any Contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

## 8 Risk

Risk of damage to or loss of the Goods shall pass to the Buyer on delivery in accordance with Condition 11 below. The Buyer shall insure the Goods from the date of delivery until title in the Goods has passed to the Buyer and the Seller shall be entitled to call for details of the insurance policy. If the Buyer does not insure the Goods or fails to supply details of its policy on demand to the Seller then the Buyer shall reimburse the Seller for the cost of any insurance that the Seller may reasonably arrange in respect of any of the Goods during the whole or any part of the period from the date of the Seller's delivery of the Goods until the date of payment to the Seller of the price.

## 9 Title Retention

Until the purchase price of the Goods comprised in the Contract or any other contract between the Seller and the Buyer and all other sums whatsoever which are or shall become outstanding from the Buyer to the Seller have been paid or satisfied in full (and if by cheque, then only upon clearance):

- (a) the property in the Goods remains vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein);
- (b) the Buyer shall store the Goods in such a way that they can be readily identified as being the Seller's property,
- (c) the Buyer shall on request inform the Seller of the precise location of each item of the Goods identified where applicable by its serial number, by supplying the Seller at the Buyer's expense within seven days of the Seller's request with a schedule in Writing of the said locations;



- (d) the Buyer may sell the Goods in the normal course of its business and may pass good title to its customers being a bona fide purchaser for value without notice of the Seller's rights on the following conditions:
  - (i) the Seller shall be entitled, immediately as a result of its ownership of the Goods, to the beneficial ownership of the proceeds of such sale which the Buyer shall accordingly hold as fiduciary for the Seller, and
  - (ii) the Buyer shall account to the Seller on demand with the said proceeds of sale provided that no such demand shall be made by the Seller in the absence of its having reasonable cause to believe that the Buyer might default in making payment for the Goods on the terms contained herein; and
  - (iii) the Seller may at any time revoke the Buyer's said power of sale in the circumstances set out in Condition 7 of these Conditions; and
  - (iv) the Buyer shall notify the Seller without delay of any attachment of the Goods or actions by third parties, which might infringe the Seller's title to the Goods.
- (e) Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession,
- (f) Until title in the Goods has passed to the Buyer, the Buyer shall not purport to be the owner of the Goods and shall not show the Goods as stock in the Buyer's accounts.

9.2 Nothing in these Conditions shall:

- (a) entitle the Buyer to return the Goods or to delay payment thereof ' or
- (b) constitute or be deemed to have constituted the Buyer as the seller's agent, or
- (c) render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods.

9.3 For the purposes of Condition 9.1, references to Goods shall be deemed to exclude software.

## 10 Lien

The Seller retains a general lien on any of the Buyer's goods and property in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 days of notice given to the Buyer by the Seller of its exercise of the lien. The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale and payment of the said balance, and the Seller shall account for any surplus.

## 11 Delivery

- 11.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 11.2 The Buyer will provide at its expense adequate and appropriate equipment and manual labour for loading the Goods and shall be solely responsible for loading the Goods and for inspection of the Goods at the Seller's premises before delivery. The Seller shall have no Liability for any claim in

respect of any defect in the Goods which would be apparent on inspection and which are made after delivery.

- 11.3 Any dates quoted for delivery of the Goods is approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 11.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 11.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may
- (a) store the Goods, until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage insurance and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 12 Warranty

- 12.1 If the Buyer establishes to the Seller's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured, then the Seller shall at its option, at its sole discretion and within a reasonable time,
- (a) arrange for the repair or making good such defect or failure in such Goods free of charge to the Buyer (including the costs of transportation of any Goods back to the Buyer for that purpose),
  - (b) replace such Goods with Goods which are in all respects in accordance with the Contract, or

subject, in every case, to the remaining provisions of this Condition 12 provided that the liability of the Seller under this Condition 12,1 shall in no event exceed the purchase price of such Goods and performance of anyone of the above options shall constitute an entire discharge of the Seller's liability under this warranty.

- 12.2 Condition 12,1 shall not apply unless the Buyer:
- (a) notifies the Seller in Writing of the alleged defect within 12 (twelve) months from delivery or such other period or periods as may be agreed in Writing between the Seller and the Buyer, and
  - (b) allows the Seller a reasonable opportunity to inspect the relevant Goods.
- 12.3 For the avoidance of doubt, the Seller shall be under no liability under the warranty in Condition 12.1 above:
- (a) where such defects arise from any drawing, design or specification supplied by the Buyer; or

- (b) where such defects arise from fair wear and tear, wilful damage, or negligence of a party other than the Seller (or its employees or authorised personnel), abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval; or
  - (c) where such defects arise in parts, materials or equipment which have not been manufactured or designed by the Seller but have been purchased at the Buyer's request by the Seller from the Buyer's designer and manufacturer or from some other third party (the "**Third Party Supplier**").
  - (d) if the total price of the Goods has not been paid by the due date for payment
  - (e) in respect of any type of defect, damage or wear specifically excluded by the Seller by notice in Writing: or
  - (f) if the Buyer makes any further use of the Goods after giving notice in accordance with Clause 12.1
- 12.4 Any repaired or replaced Goods shall be redelivered to the Buyer free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions.
- 12.5 Alternatively to Condition 12.1 the Seller shall be entitled at its absolute discretion on return of the defective Goods to the Seller (at the Seller's request) to refund the price of the defective Goods in the event that such price shall already have been paid by the Buyer to the Seller, or, if such price has not been paid, to relieve the Buyer of all obligation to pay the sum by the issue of a credit note in favour of the Buyer in the amount of such price.
- 12.6 In respect of all Goods supplied to the Seller by a Third Party Supplier the Seller will on request pass on to the Buyer (in so far as reasonably possible) the benefit of any warranty given to the Seller by such Third Party Supplier and will (on request) supply to the Buyer details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such Third Party Supplier and the Buyer shall be solely responsible to the entire exclusion of the Seller for complying with the same.
- 12.7 For the purposes of Condition 12.1 references to Goods shall be deemed to exclude software.
- 12.8 The Buyer acknowledges that software in general is not error-free and agrees that the existence of such errors in the Software Programs shall not constitute a breach of this Contract.
- 12.9 In the event that the Buyer discovers a material error which results in the Programmed Products not performing substantially in accordance with the Functional Specification, or the Licensed Programs not performing substantially in accordance with the relevant Program Documentation and notifies the Seller of the error within 90 days from the date of the Seller making available the respective software to the Buyer (the "**warranty period**") the Seller shall at its sole option either refund the price which the Buyer has paid to the Seller (or if such price has not been paid, relieve the Buyer of all obligations to pay the sum) in respect of the respective software or use all reasonable endeavours to correct by patch or new release (at its option) that part of the software which does not so comply provided that such non-compliance has not been caused by any modification, variation or addition to the software not performed by the Seller or caused by its Incorrect use, abuse or corruption of the software by use of the software with other software or on equipment with which it is incompatible,
- 12.10 To the extent permitted by English law, the Seller disclaims all other warranties, with respect to the software which it provides pursuant to the Contract, either express or implied, including but not limited to any implied warranties of satisfactory quality or fitness for any particular purpose.
- 12.11 The Buyer is solely responsible for various scanning the software that it receives from the Seller pursuant to the Contract.

12.12 The Seller warrants that it will use reasonable skill and care in providing the Services to the buyer.

## 13 Product Recall

13.1 If the Seller notifies the Buyer in Writing of:

- (a) any defect in the Goods previously delivered to the Buyer at any time, or
- (b) any error or omission in the instructions for the use and/or assembly of the Goods,

(whether or not any such defect, error or omission represents a breach of the warranty in Condition 12 or any other provision of the Contract) which exposes or may expose consumers to any risk of death, injury or damage to property, the Buyer shall co-operate fully and promptly with any steps taken by the Seller under Condition 13.2.

13.2 The Seller may at its discretion:

- (a) recall any Goods already sold by the Buyer to its customers (whether for a refund or credit or for replacement of the Goods which shall in each case be undertaken by the Seller), and/or
- (b) issue any written or other notification to its customers about the manner of use or operation of any Goods already sold by the Buyer to its customers,

in each case on the basis of the identification whether by the Seller, its customers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of the warranty in Condition 12 above or any other provision of the Contract) which the Seller reasonably concludes affects or probably affects any of the Goods supplied and exposes or may expose any of its customers to any risk of death, injury or damage to property.

## 14 Sellers Liability

14.1 The Seller shall in no circumstances have any liability to the Buyer

- (a) for any direct economic loss (save as expressly provided in these Conditions) or for any indirect or consequential loss (including without limitation loss of profits, future revenue, reputation, goodwill or anticipated savings) or damage (whether arising under contract, in tort (including but not limited to negligence) or otherwise) of the Buyer or for any liability of the Buyer to any other person for any economic loss, claim for damages or awards howsoever arising, or
- (b) for and to the extent that any Goods were adjusted or altered by anyone other than the Seller or without the Seller's prior consent in Writing or were used other than in strict accordance with the Seller's instructions; or
- (c) unless all drawings, designs, specifications, and other information to be provided by the Buyer in connection with the Contract were furnished to the Seller in such forms and states which enabled the Seller to perform its obligations under the Contract ' or for Goods which are to be manufactured and/or Services which are to be provided in accordance with the Buyer's designs drawings specifications and other data, information or materials supplied or instructions furnished by the Buyer, provided that the Goods are so manufactured and/or the Services are so provided, and shall in particular have no liability for any loss or damage which the Buyer may suffer because the Goods subsequently prove not to be of satisfactory quality or the Goods and/or Services prove to be unsuitable for the purpose or purposes for which the Buyer required them, or

- (c) any loss or damage which the Buyer may suffer whether in contract, tort (including but not limited to negligence) or for breach of statutory duty or otherwise whatsoever save as otherwise provided in these Conditions.
- 14.2 The Seller's liability for any physical damage to the premises or any other tangible property of the Buyer resulting from the negligence of the Seller shall be subject to the limitations set out in Condition 14.3 below.
- 14.3 (a) In the event that, notwithstanding the provisions of Condition 14.1, the Seller is found liable for any loss or damage suffered by the Buyer or the Seller is liable for any physical damage pursuant to Condition 14.2 above, the Seller's liability for each claim shall in no event exceed:
- (i) the insurance cover which the Seller has available in respect of the physical damage which is contemplated by Condition 14.2, or
  - (ii) the price of the Goods and/or Services in respect of which the Buyer suffered or incurred such loss or damage plus additional liability up to the Seller's available insurance cover for the respective type of liability.
- (b) Details of the Seller's insurance cover are available on request from time to time (including before entering into the Contract) for the Buyer to satisfy itself that the Seller's limitations of liability are reasonable for its purposes.
- (c) It should be noted that the liability which the Seller assumes pursuant to Condition 14.3 is subject to the fact that where any one event or series of two or more connected events gives rise to more than one claim that limit shall apply to all such claims as though they were a single claim.
- 14.4 All Goods sold by the Seller (other than software) are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto all other conditions, warranties and other terms express or implied, statutory or otherwise are expressly excluded, save insofar as contained in these Conditions or as otherwise expressly agreed by the Seller in Writing.
- 14.5 The price of the Goods and Services has been calculated on the basis that the Seller will exclude or limit its liability as set out in the Contract these Conditions and the Buyer by placing an order agrees and warrants that the Buyer shall insure against or bear itself any loss for which the Seller has excluded or limited its liability in the Contract these Conditions, and the Seller shall have no further liability to the Buyer.
- 14.6 The Buyer shall not be entitled to rely on and the Seller excludes all liability (howsoever occurring) for any oral statement or representations made by the Seller's employees, agents or servants whether before or after the date of the Contract saves to the extent such statement or representation was made fraudulently
- 14.7 The Seller shall not be liable to the Buyer in any civil proceedings brought by the Buyer against the Seller in respect of a breach of the user instructions or any health and safety regulations, orders or directions made pursuant to the Health & Safety at Work Act 1974 or under any other directive, regulation, order or other instrument relating to health and safety where and to the extent that such exclusion of liability is permitted by law.
- 14.8 Nothing in these Conditions shall exclude or restrict the Seller's liability in respect of death or personal injury caused by its negligence.

## 15 Force Majeure

- 15.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform any of the Seller's obligations relating to the Goods and/or Services if the delay or failure was caused by any event beyond the Seller's reasonable control including without limitation the causes listed in Condition 15.2 below and shall be entitled at its option (to be notified in Writing to the Buyer) either to cancel any Contract to which these Conditions apply or, without any liability to the Buyer, to extend the time or times for delivery or otherwise performing such Contract by a period at least equivalent to that during which such delivery or performance has been prevented or delayed by any such cause
- 15.2 For the purposes of Condition 15.1, events beyond the Seller's reasonable control include without limitation acts of God, explosion, fire, flood, tempest or accident, war, sabotage, terrorism, insurrection, civil disturbance or requisition or threats of the same, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority, import or export regulations or embargoes or sanctions, strikes, lock-outs or other industrial actions or trade disputes (whether involving the Seller's employees or those of a third party), difficulties in obtaining raw materials, labour, fuel, transport, parts or machinery, power failure or breakdown in machinery, defaults of suppliers to the Seller

## 16 Indemnity

- 16.1 The Buyer acknowledges that the Seller places particular reliance upon the provisions of the Contract these Conditions and in addition to any other remedy available to the Seller, the Buyer irrevocably and unconditionally agrees to indemnify the Seller and its employees and agents in full and on demand and keep them so indemnified from and against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including legal and other professional advisers' fees and all economic loss whether direct or indirect (including loss of profit, future revenue, reputation or goodwill and anticipated savings)) which are made or brought against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the entering into of this Contract and this indemnity shall cover all consequential and indirect losses suffered by the Seller and its employees and agents and they shall have no duty to mitigate any such loss:
- (a) the manufacture or development and sale of the Goods and/or provision of the Services by the Seller in accordance with the Buyer's designs, drawings, specifications or other data or information furnished or instructions given by the Buyer,
  - (b) where Goods are developed or manufactured and/or Services provided by the Seller in accordance with the Buyer's designs, drawings, specifications or other data or information furnished or instructions given by the Buyer any claims that any patent, trade mark, design, copyright, design right, confidential information or other intellectual property or other exclusive right of any third party has been infringed through the development, manufacture, sale or use of the Goods and/or provision of Services,
  - (c) the cancellation of any order by the Buyer after its acceptance by the Seller,
  - (d) any breach by the Buyer of its obligations under the Contract:
  - (e) any breach by the Seller of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Seller, its employees and agents in excess of the liability of the Seller under the Contract, or
  - (f) any claims or proceedings brought against the Seller by any other person in connection with the Goods including, without limitation, any liability of the Seller under the Health and Safety At Work Act 1974.

- 16.2 Without prejudice to any duty of the Buyer in common law, the Seller shall be entitled to require the Buyer to take all steps, which the Seller may reasonably require to mitigate or reduce any costs or expenses for which the Seller may be liable to indemnify any complaint.

## 17 Confidentiality

- 17.1 The Buyer shall keep and procure to be kept secret and confidential the Contract and all Confidential Information belonging to the Seller disclosed or obtained as a result of the relationship of the parties under this the Contract and shall not use nor disclose the same save for the purposes of the proper performance of this the Contract or with the prior written consent of the Seller. Where disclosure is made to any employee, consultant or agent, it shall be done subject to obligations equivalent to those set out in this Condition and the Buyer agrees to ensure that if the Seller so requests prior to such disclosure such employee, consultant or agent enters into a deed of covenant with the Seller in a form reasonably acceptable to the Seller containing obligations equivalent to those set out in this Condition. The Buyer shall use its best endeavours to procure that any such employee; consultant or agent complies with such obligations. The Buyer shall be responsible to the Seller in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 17.2 The obligations of confidentiality in Condition 17 shall not extend to any matter, which the Buyer can show:
- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Conditions, or
  - (b) was in its written records prior to the date the Buyer entered into the Contract; or
  - (c) was independently disclosed to it by a third party entitled to disclose the same, or
  - (d) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 17.3 The Buyer shall immediately upon receipt of a request in Writing from the Seller to do so, deliver up to the Seller or to its order all Confidential Information in Writing (including any copies, analyses, memorandum or other notes on or concerning the Confidential Information made by the Buyer or in the Buyer's possession or under the Buyer's custody and control) and so far as is practicable to do so, expunge any Confidential Information from any computer, word processor or other device in the Buyer's possession or under the Buyer's custody and control.

## 18 Intellectual Property

Any Intellectual Property Rights or know-how created by the Seller in the course of the performance of the Contract or otherwise in the manufacture or development of the Goods shall remain the Seller's property. Nothing in this Contract shall be deemed to have given the Buyer a licence to or any other right to use any of the intellectual Property Rights or know-how of the Seller, except as provided for in Condition 22.1

## 19 General

- 19.1 The Buyer may not assign or transfer or purport to assign or transfer any of its rights or sub-contract any of its obligations under the Contract to any other person whatsoever. The Seller shall be freely entitled to assign the Contract or part thereof and to sub-contract any of its obligations under the Contract to any third party.
- 19.2 Subject to Condition 21, No person who is not a party to the Contract (including without limitation any employee, officer, agent, representative or sub-contractor of either party) shall have a right to enforce any term of the Contract which expressly or by implication confers a benefit on that



person without the express prior agreement in writing of the parties which agreement must refer to this Condition 19.2.

- 19.3 Even if a person who is not a party to the Contract (including without limitation, any employee, officer, agent representative or sub-contractor of either party) has a right to enforce any term of the Contract by virtue of any law the parties may vary or cancel the Contract by agreement between them without requiring the consent of such third party
- 19.4 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.
- 19.5 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision,
- 19.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 19.7 The Contract shall be governed by and be construed in all respects in accordance with English law and the Buyer and the Seller both hereby irrevocably agree to submit to the non-exclusive jurisdiction of the English Courts.
- 19.8 The parties agree that the United Nations Convention on Contracts for the international Sale of Goods 1980 shall not apply to the Contract.

## 20 Software Prohibitions

- 20.1 Save as permitted in these Conditions or by English law, the Buyer is not permitted:
  - (a) to sell, transfer, rent, lease, sub-licence or loan the Software Programs to any third party or transfer or sub-licence its rights under these Conditions to any third party, or
  - (b) to copy, modify, adapt, merge, translate the Software Programs or any part of it or create derivative works based on the whole or any part of the Software Programs, or
  - (c) to reverse engineer, decompile or disassemble the Software Programs.
- 20.2 To the extent that English law gives the Buyer the right to decompile the Software Programs in order to obtain information necessary to render the Software Programs interoperable with other computer programs, the Seller undertakes to make that information readily available to the Buyer where it has the right to such information. The Seller shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the Buyer receives the appropriate information, the Buyer must first give the Seller sufficient details of the Buyer's objectives and the other software concerned.

## 21 Non-solicitation of Staff

- 21.1 The Buyer undertakes with the Seller that during the term of this the Contract and for the period of 6 months after its termination, it shall not
  - (a) make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the Seller or any associated company of the Seller at any time during the period of the Contract and with whom it has had Personal contact or dealing ("**Employee**"):

- (b) solicit or attempt to solicit services from any Employee on its own account,
- (c) have business dealings with or attempt to have business dealings with any Employee (other than pursuant to the Contract), or
- (d) entice or attempt to entice any Employee away from the Seller or any associated company of the Seller.

21.2 The Buyer shall pay liquidated damages to the Seller if it breaches its undertaking given in Condition 21.1, the amount of such liquidated damages being calculated in accordance with Condition 21.3

21.3 The amount of liquidated damages payable pursuant to Condition 21.2 shall be a sum equal to the gross salary of the Employee in question for the 12 month period prior to during which the said breach of undertaking occurs and for the avoidance of doubt the parties agree that the liquidated damages referred to in this Condition 21 are a genuine pre-estimate of the loss that the Seller or its associated company each party may suffer as a result of the Buyer or other breaching its undertaking given in Condition 21 1

## 22 Licence

22.1 The Seller hereby grants and the Buyer hereby accepts a non-exclusive licence to use the Program Documentation and the Software Programs in any machine-readable form upon the Equipment subject to the terms and conditions contained in these Conditions.

22.2 The licence is personal to the Buyer and may not be transferred, assigned or sub licensed to any third party without the Seller's prior written consent.

## 23 Reproduction

23.1 One back up copy of each of the Software Programs may be reproduced by the Buyer in machine-readable form for its own internal use for the purpose of back up only. The Buyer will maintain appropriate written records of the number and location of such copies to which the Seller may have access at any time upon reasonable request. Any such back up copies will in all respects be subject to the terms and conditions of these Conditions and will be deemed to form part of the Software Programs.

23.2 The original and any copy of the Software Programs will remain the exclusive property of the Seller. The Buyer may not modify the Software Programs or merge the Software Programs into other program material (except in accordance with the Program documentation and to the extent permitted by law) without the prior written consent of the Seller.

23.3 The Buyer will reproduce and include the Seller's current notice of copyright on any back up copy in whole or in part of the Software Programs in any form, including partial copies and authorised modifications of the Software Programs.

23.4 No portion of any Software Programs or the Program Documentation, which is provided by the Seller in written form, will be copied by the Buyer. Additional copies of the Program Documentation may be obtained under licence from the Seller at the Seller's charges then in effect.

## 24 Program Updates

- 24.1 Under the provisions of Part 3 of these Conditions, the Seller may from time to time issue new versions of the Licensed Program(s) to the Buyer for reasons of improved performance or design, the Seller reserves the right to incorporate modifications into any new versions which may not be compatible with the previous versions, PROVIDED that the Buyer will be advised in writing of the known incompatibilities at the time the Seller first releases any new version. The newest version of the Licensed Programs) is designated the Current Version. All previous versions will be designated Prior Versions.
- 24.2 The Buyer may use Prior Versions subject to the terms and conditions of these Conditions, but the Seller's obligations to maintain Current Versions will be governed by the provisions of Condition 25.

## 25 Maintenance Services

The Seller will only provide the following maintenance services if so indicated in the Quotation:

- 25.1 The Seller will provide to the Buyer a telephone enquiry and advice service during Normal Business Hours on any matters relating to the Licensed Program(s)
- 25.2 The Buyer will receive from the Seller, on an as-released basis, Minor Software Updates. Minor Software Updates represent the Current Version of the licensed Program(s) as defined in Condition 24.1 above. For the purposes of these Conditions, a "Minor Software Update" is one, which includes enhancements of the Licensed Program(s) as well as corrections of bugs found in Prior Versions. Installation of Minor Software Updates may be performed directly by the Buyer, or by the Seller at an agreed fee payable by the Buyer.
- 25.3 For the purposes of these Conditions a "Major Software Release" is one which includes new Licensed Program(s) functionalities or new Licensed Program(s) architecture and is specifically excluded from the update provisions of Condition 25.2 above.
- 25.4 The Seller will, when notified in writing of Licensed Program(s) errors, use its reasonable endeavours to provide Licensed Program(s) corrections to the Buyer during Normal Business Hours. No guarantees are given as to the time required to correct Licensed Program(s) errors but the Seller will attempt to provide the means whereby the error can be circumvented until it is corrected.
- 25.5 The Seller will from time to time provide updated Program Documentation to the Buyer in respect of the Licensed Program(s), which it provides to the Buyer.
- 25.6 The Seller will not be obliged to provide the Maintenance Services in respect of faults resulting from:
- (a) any use of the Licensed Program(s) other than substantially in accordance with the Program Documentation,
  - (b) the improper use, operation or neglect of the Licensed Program(s) or the Equipment or the subjection of the Licensed Program(s) to unusual physical or electrical stress or any failure or fluctuation in electrical power, air-conditioning or humidity controls,
  - (c) the modification or merger of the Licensed Program(s) (in whole or in part) with any other software,
  - (d) the use of the Licensed Program(s) on equipment other than the Equipment or at a place other than the Site,
  - (c) the failure by the Buyer to implement recommendations in respect of, or solutions to, faults previously advised by the Seller,

- (f) any repair, adjustment, alteration or modification of the Licensed Program(s) by any person other than the Seller without the Seller's consent '
- (g) the use of the licensed Program(s) for a purpose for which it was not intended;
- (h) the use of the Licensed Program(s) on or with programs not supplied by or approved in writing by the Seller.

25.7 The Seller may in at its discretion upon request by the Buyer provide Maintenance Services notwithstanding that the fault results from any of the circumstances described in Condition 25.6. In such circumstances the Seller will be entitled to levy additional charges for any such Maintenance Services.

## 26 Buyer's Obligations

26.1 The Buyer will provide at no charge to the Seller any information or data required by the Seller's maintenance personnel where these are required by the Seller to enable it to comply with its obligations under these Conditions.

26.2 The Buyer will.

- (a) ensure that the Licensed Program(s) and the Equipment are used in a proper and skilful manner by competent and trained employees only in accordance with best computing practice and in accordance with the terms of these Conditions;
- (b) at all times comply with the Seller's instructions and advice in relation to the use of the Licensed Program(s);
- (c) keep full security copies of the Licensed Program(s) and of its databases and computer records in accordance with best computing practice,
- (d) not permit, request or authorise anyone other than the Seller to provide any maintenance or support services in respect of the Licensed Program(s),
- (e) allow, the Seller's personnel full and free access to the Site at all times together with adequate working space and facilities, (including, without limitation, heat, light, ventilation, electric current and outlets, computer runs, data preparation, office accommodation, printouts, typing and photo copying) to enable the Seller to carry out its obligations hereunder;
- (f) provide such telecommunications facilities as are reasonably required by the Seller for testing and diagnostic purposes at the Buyer's expense;
- (g) register under the Data Protection Act where use of the Licensed Program(s) necessitates such a registration;
- (h) ensure that in the interests of health and safety the Seller's personnel, while on the Buyer's premises for the purposes of these Conditions, are at all times accompanied by a member of the Buyer's staff familiar with the Buyer's premises and safety procedures.

## 27 Scope of Maintenance Services

27.1 Maintenance Services are not intended to cover modifications to the Licensed Program(s) necessitated by changes to the computer operating system. The Seller will not be held liable for the consequences of such operating system changes on the Licensed Program(s).

27.2 The Maintenance Services are applicable only to the Current Version of the Licensed Program(s)

## 28 Consultancy/Commissioning Services

28.1 The Seller agrees to:

- (a) (unless enhanced arrangements are specified in the Quotation) make available the levels of personnel specified in the Quotation to perform the Consultancy/Commissioning Services during Normal Business Hours, which are as follows:
  - (i) 9.00 am to 5.00 pm Monday to Friday - if performed at the Seller's premises
  - (ii) 10 am to 5.00 pm Monday to Friday - if performed at the Buyer's premises,
  - (iii) up to one hour per day for lunch; and
  - (iv) U.K. Bank and U.K. Public Holidays are excluded in all cases.
- (b) nominate prior to the provision of Consultancy Services a responsible representative to be the Seller's prime point of contact with the Buyer during performance of the Consultancy Services.

28.2 The Buyer agrees to:

- (a) promptly supply the Seller with such information as the Seller may reasonably require to perform the Consultancy Services (taking reasonable steps to ensure its validity and accuracy in all cases).
- (b) nominate prior to the provision of the Consultancy Services a responsible representative to be the Buyer's prime point of contact with the Seller during performance of the Consultancy /Commissioning Services.
- (c) sign a Consultancy/Commissioning Services report to signify that the Buyer has satisfactorily received the services (which signature may not be unreasonably withheld)
- (d) allocate, monitor and control the work to be undertaken by the Seller and accept responsibility for its technical acceptability.
- (e) ensure that the work allocated to the Seller is not outside the Seller's represented areas of experience.
- (f) provide to the Seller all reasonable access to its officers, materials and such other facilities as the Seller may reasonably require from time to time.

28.3 The Buyer shall reimburse such agreed travelling, subsistence and other expenses as are properly incurred by the Seller's personnel in the performance of their duties under the Contract. Such expenses shall be based on the Sellers' standard scales and procedures as the Seller may vary the same from time to time.

## 29 Functional Specification

29.1 The Seller will supply Programmed Products in accordance with the Functional Specification to be produced by the Seller and agreed by the Buyer in accordance with Condition 29.2 below.

29.2 The Buyer will provide the Seller with written agreement to all parts of the Functional Specification before any programming work is commenced on the project. In the event that the Buyer does not

agree to the Functional Specification, the Buyer will promptly return the same (together with all copies) to the Seller.

- 29.3 Should the Buyer wish to change the finally agreed Functional Specification, the Seller will use its reasonable endeavours to do so but reserves the right to alter the Project Charges and to agree a revised Estimated Delivery Date with the Buyer.

## **30 Delivery and Installation**

- 30.1 The Seller will use its reasonable endeavours to make available a copy of each Stage in machine-readable form to the Buyer by the Estimated Delivery Date, along with the relevant Program Documentation. Each Stage will then be submitted to acceptance testing in accordance with Condition 30.2.
- 30.2 Product acceptance will be accomplished by using test procedures and/or programs established by the Supplier, which are applicable to the Programmed Products. Acceptance will take place when the Supplier demonstrates that these test procedures have been successfully completed.
- 30.3 If the Seller's demonstration of the test procedures and/or programs at the Site is delayed for more than 7 working days other than through any fault of the Seller, the Programmed Products will be deemed accepted by the Buyer.

## **31 Licence**

The Buyer is licensed to use the Third Party Software pursuant to and subject to the Third Party Software licence agreement, which accompanies the software.

## **32 Warranties**

The Buyer acknowledges and agrees that the Third Party Software is provided on an "as is" basis by the Seller to the Buyer as the Seller has not produced the Third Party Software.

## **33 Indemnity**

The Buyer will indemnify and keep indemnified the Seller against any and all costs, claims, demands, (arising directly or indirectly) damages and expenses (including limitation all legal and other professional advisers' fees) whether foreseeable or not arising from any claim that the Buyer has breached the Third Party Software licence agreement.

## **34 Maintenance/Support Services**

The Seller will provide the hardware maintenance services specified in the Quotation to the Buyer.

## **35 Scope of Maintenance/Support Services**

- 35.1 The Seller is not obliged to provide any services if the need for such services is wholly or partly attributable to:
- (a) electrical work external to the hardware,

- (b) Maintenance/Support of accessories, attachments, machines or other devices not supplied by the Seller nor listed in the Quotation,
- (c) repair of damage arising from:
  - (i) transportation or relocation of the hardware not performed by the Seller,
  - (ii) failure of electrical power, air conditioning or humidity control;
  - (iii) changes, alterations or additions not performed by the Seller;
  - (iv) operator error or omission,
- (d) maintenance rendered more difficult because of changes alterations in or additions not performed by the Seller,
- (e) attendance to faults caused by operating the hardware outside design specifications or outside any documentation or manuals supplied with the hardware,
- (f) cleaning, refinishing or touching-up, specification changes, addition/removal of accessories, attachments and other devices,
- (g) repair of any malfunction due to radiation in the environment of the hardware;
- (h) diagnosis and/or rectification of problems not associated with the hardware;
- (i) diagnosis and/or rectification of problems arising from the operating environment;
- (j) workshop overhauls or repair of hardware, which, as a result of fair wear and tear, can no longer be maintained in good working order. For such items the Seller will upon request by the Buyer submit a cost estimate of the work required. In the event that the Buyer does not authorise the work to be carried out, the item or items concerned may be deleted from the Quotation and such deletion will be initialled by an authorised signatory of the Seller:
- (k) refusal, difficulty or inability of the Seller to obtain access to the hardware for the performance of its obligations hereunder:

however, if the Seller decides to provide maintenance/support services to the Buyer in relation to any of the situations referred to in this Condition 35, then the Seller shall be entitled to impose an additional charge on the Buyer for such services at its then standard rates.

## 36 Alterations and Additions

Alterations and additions to or in connection with any of the hardware which the Seller has supplied or which the Seller is obliged to maintain Equipment may only be carried out by the Seller and no liability whatsoever shall be accepted by the Seller for any alterations or additions carried out in contravention of this Condition nor for any effect such alterations or additions may have on the hardware