

# General Terms and Conditions of Purchase of Hardware (Bell Integration GmbH)

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## 1. BASIS OF CONTRACT

1.1. These terms and conditions below (“**Conditions**”) apply to the agreement (“**Contract**”) between **Bell Integration GmbH**, or its Group Company (“**Customer**”) and the supplier identified in the Customer’s purchase order (“**Supplier**”) each a Party and together the Parties, for the sale and purchase of computer and telecommunications equipment and all cabling and peripherals associated with such equipment (“**Hardware**”) set out in the Customer’s purchase order (“**Order**”). Once the Order is issued by the Customer, the Contract is formed between the Customer and the Supplier. These Conditions shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate within its quotation, or which are implied by trade, custom, practice or course of dealing.

## 2. DEFINITIONS

2.1. “**Group Company**” means with respect to the relevant party, any company which is a subsidiary or holding company of such party or a subsidiary of its holding company.

## 3. PROVISION OF HARDWARE

3.1. The Supplier shall make available all standard information made available by the manufacturer of the Hardware without charge along with the Hardware relating to the installation, use and/or operation of the Hardware (“**Documentation**”).

3.2. Unless expressly stated otherwise in the quotation, the Customer is responsible for providing any cabling, wiring and any other equipment needed for the installation of the Hardware or its connection to or interfacing with any other equipment, system or network.

3.3. Unless expressly stated otherwise in the quotation, delivery of Hardware shall not include installation which shall be the Customer’s responsibility.

## 4. WARRANTY

4.1 The Supplier shall:

4.1.1 pass to the Customer for its own benefit and the benefit of its end users, the benefit of all manufacturer and other third-party warranties and/or guarantees relating to the Hardware; and

4.1.2 give the warranties more specifically set out in the quotation.

4.2 The Supplier warrants, represents and undertakes to the Customer that, for the period of two (2) years from the date of Customer’s or Customer end user’s receipt of the Hardware (“**Warranty Period**”) that the Hardware shall:

4.2.1 comply with all legislation and government regulations applicable to a party’s rights and obligations set out in this Contract from time to time (“**Applicable Laws**”) relating to the Hardware at the time of delivery;

4.2.2 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer whether expressly or by implication;

4.2.3 correspond in all material respects with any relevant specification in the Order; and

4.2.4 be free from material defects in design, materials and workmanship.

## 5. BREACH OF WARRANTY

5.1 If, during the Warranty Period the Hardware does not comply with the warranties in Condition 4, then without prejudice to any other rights and remedies of the Customer arising under the Contract, the Supplier shall at its own cost, at the Customer’s discretion, either (i) promptly remedy the breach at the Supplier’s own cost; (ii) replace the Hardware to comply with the Contract; or (iii) provide a refund to the Customer for the price of the non-compliant Hardware.

## 6. DELIVERY

6.1 The Supplier shall deliver the Hardware to the delivery location on the delivery date set out in the Order or as amended in writing between the parties from time to time, during the hours of 9.00 am to 5.30 pm GMT (“**Working Hours**”) on a day other than a

Saturday, Sunday or a bank holiday in the jurisdiction of the Customer (“**Working Day**”).

The Supplier shall deliver the quantity stated in the Order and if there is any shortfall the price shall be adjusted accordingly

6.2 Unless expressly stated otherwise in the Order

6.2.1 the Hardware shall be delivered in accordance with Incoterms 2020, Delivery Duty Paid (“**DDP**”).

6.3 The Hardware shall be delivered on the delivery date specified in the Order, or if there is no date specified, delivery of the Hardware shall be within a reasonable time. Each party shall inform the other of any delay in delivery of which it becomes aware and seek in good faith to agree an alternative date for delivery. The Customer shall not unreasonably refuse to take delivery of late Hardware but may cancel any Contract without liability if any alternative date is not achieved or delivery is not within a reasonable time.

6.4 Time for delivery shall not be of the essence of the Contract, unless expressly stated otherwise within the Order, which is accepted by the Supplier by including it in the quotation.

6.5 Where time for delivery is of the essence (as agreed in accordance with Condition 6.5), if the Hardware is not delivered on the delivery date or is delayed beyond a reasonable period of time, then, without limiting any other right or remedy the Customer may have, the Customer may: (a) refuse to take any subsequent attempted delivery of the Hardware; or, (b) terminate the Contract with immediate effect without any liability to the Supplier, or; (c) subject to Condition 15 (Limitation of Liability), claim damages for any direct costs, expenses or losses resulting from the Supplier’s failure to deliver the Hardware on the delivery date, only as far as set out in the Contract, provided that the Supplier shall have no liability for any failure or delay in delivering the Hardware to the extent that such failure or delay is directly caused by the Customer’s failure to comply with its obligations under the Contract.

6.6 The Supplier shall ensure that: (a) the Hardware is marked in accordance with the Customer’s instructions as set out in the Order and any Applicable Laws; (b) properly packaged and stored so as to reach their destination in an undamaged condition; and, (c) each delivery is accompanied by a prominently displayed delivery note and all handling, storage, operating and safety instructions.

6.7 The Supplier agrees on request to provide the Customer with any necessary declarations and documents stating the origins of any Hardware.

6.8 Unless expressly stated otherwise in the Order, delivery of Hardware shall not include installation.

6.9 The Supplier shall comply with the Customer policies (including but not limited to the supplier charter) as made known to the Supplier by the Customer from time to time, to the extent not inconsistent with the Contract.

6.10 The Customer shall be responsible for ensuring the place for delivery of the Deliverables is ready and able to take delivery on the delivery date and the Customer shall not unreasonably refuse to take delivery at any other time, so long as delivery is made within Working Hours.

6.11 When seeking to return any Hardware that is the subject of a claim under any of the Warranties, the Customer shall comply with the returns procedure of the manufacturer or Supplier of the Hardware.

## 7. PRICE AND PAYMENT

7.1 The Customer shall pay all undisputed invoices within thirty (30) days from the date of the invoice unless expressly stated otherwise in the Order.

7.2 All payments shall be made in Euro (€), unless otherwise agreed in writing between the Parties.

7.3 If any charges payable under any Contract is not paid when due then Supplier shall be entitled to payment and may claim interest from the due date until payment is made in full both before and after any judgment, at two per cent (2%) per annum over the Bank of England Bank Rate from time to time.

7.4 If the Customer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier ("**Disputed Sum**"), the Customer shall notify the Supplier in writing of that dispute within five (5) Working Days of receiving the invoice, giving details of the nature of the dispute and the amount that it claims should have been invoiced and:

- 7.4.1 the Customer will pay that part of the invoice which is not the Disputed Sum in accordance with Condition 7.1;
- 7.4.2 the Customer will be entitled to withhold payment of the Disputed Sum;
- 7.4.3 the Supplier will provide all such information and evidence as may be reasonably necessary to verify the Disputed Sum; and
- 7.4.4 following resolution of the dispute under this Condition, the Customer will promptly pay to Supplier that part of the Disputed Sum as it is resolved is payable by the Customer.

7.5 The Customer may cancel an Order at any time but shall be liable for all costs and expenses incurred by the Supplier as a result of such cancellation. The Supplier shall use reasonable endeavours to avoid or minimise such costs and expenses.

## 8 TITLE AND RISK

- 8.1 Risk in the Hardware shall pass on delivery and title to the Hardware shall pass to the Customer upon payment in full.
- 8.2 All Hardware rejected or returned for any reason other than defective Hardware shall be at the risk and expense of the Customer during transit back.
- 8.3 The passing of title shall not prejudice any other of the Customer's rights and remedies and the Customer may use or resell the Hardware in the ordinary course of its business.

## 9 CONFIDENTIALITY

9.1 The Parties shall:

- 9.1.1 protect all information, disclosed by the other party ("**Disclosing Party**"), or its employees, officers, advisers, agents or representatives ("**Representatives**"), to the other party ("**Receiving Party**") pursuant to the Contract, including but not limited to, financial, end customer information, business or technical or other data and all other confidential information (whether written, oral, visual or in electronic form or in magnetic or other media) ("**Confidential Information**") and, in doing so, must use no less than the equivalent degree of care that such party applies to its own Confidential Information which shall in no case be less than a reasonable standard of care;
- 9.1.2 have internal systems to ensure that the Disclosing Party's Confidential Information is stored and handled in such a way as to prevent unauthorised disclosure;
- 9.1.3 procure that its personnel and any third parties do not; disseminate, copy, employ, exploit, adapt, modify or in any other manner whatsoever utilise the Disclosing Party's Confidential Information other than strictly for the provision of Hardware. For the avoidance of doubt, the Supplier shall be liable for all acts and/or omissions of its personnel and any third parties.

9.2 The obligations contained in Condition 9.1 shall not apply to any Confidential Information which: (a) is lawfully in the possession of the Receiving Party prior to receipt from the Disclosing Party, as reasonably evidenced in writing; (b) is or becomes publicly known, other than as a consequence of a breach of the Contract; (c) can be reasonably evidenced by written records that it has been developed independently by the Receiving Party without access to, use of, or incorporation of the Confidential Information; (d) is required to be disclosed by a court of competent jurisdiction or operation of law, provided the Receiving Party, where reasonably practicable, provides notice to the Disclosing Party of such disclosure; (e) is

received from a third party without breach of any other relevant confidentiality obligations.

9.3 Where the Receiving Party is required to disclose the Disclosing Party's Confidential Information by a court of competent jurisdiction or operation of law, the Receiving Party shall:

- 9.3.1 where reasonably practicable and legally permitted, provide notice to the disclosing party of such disclosure;
- 9.3.2 co-operate with the disclosing party, at the disclosing party's costs and expense, in such manner as it may reasonably require to prevent or limit such disclosure; and
- 9.3.3 limit the disclosure of Confidential Information only to the extent required.

## 10 DATA PROTECTION

- 10.1 For the purpose of this Condition 10, "Controller", "Personal Data" and "Process" shall have the meanings given to them in the General Data Protection Regulation (Regulation (EU) 2016/679) and the UK Data protection General Regulation as applicable, and any of its successor legislation ("**Data Protection Legislation**");
- 10.2 The Parties each acknowledge and agree that they may need to Process Personal Data (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Hardware; (b) request and receive the Hardware; (c) compile, dispatch and manage the payment of invoices relating to the Hardware; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Hardware; and (f) comply with their respective regulatory obligations.
- 10.3 Each party shall Process Personal Data for the purposes set out in Condition 10.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Condition 10.2, and in doing so each party will ensure that the sharing and use of this Personal Data complies with Data Protection Legislation.
- 10.4 Where the Supplier is Processing end user Personal Data, the Customer will require the Supplier to agree to a data protection agreement with the end user directly.

## 11 CUSTOMER MATERIALS

- 11.1 The Supplier including any of its employees, agents, consultants, contractors and any third party shall:
  - 11.1.1 not store, copy, disclose, or use material which is made available or supplied by the Customer or the Customer's end user to the Supplier ("**Customer Materials**") except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise expressly authorised in writing by the Customer; and
  - 11.1.2 take all precautions necessary to preserve the integrity of Customer Materials and to prevent any corruption, destruction or loss of data relating to the Customer or the Customer's end users which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of, the Supplier or any of its employees, agents, consultants, contractors and any third party.

## 12 INSURANCE

- 12.1 The Supplier agrees to take out and maintain insurance in respect of employer's liability, public liability and professional liability as is commercially prudent and reasonable with a reputable insurance company unless otherwise agreed in the Contract. The Supplier shall provide the Customer with a copy of such insurance certificates upon request in order to verify the extent and level of insurance cover taken out by the Supplier and the payment of the relevant premiums.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Any intellectual property rights includes but is not limited to; patents, designs and trade marks (whether registered or unregistered), copyright, database rights and know how (collectively, "IPR").
- 13.2 Unless otherwise agreed by the Parties in this Contract, nothing in this Contract shall transfer any IPR from one party to the other party and the Supplier or its licensor, shall retain ownership of all IPR in the Hardware.
- 13.3 The Customer hereby authorises the Supplier to use any IPR in materials provided to it by the Customer for the purposes only of performing its obligations under the Contract for the duration of the Contract.
- 13.4 The Customer acknowledges that the Hardware may contain any software licensed by a third party at no additional charge and embedded in or pre-loaded on the Hardware and necessary for the proper functioning of the Hardware ("**Embedded Software**"). Ownership of the IPR in Embedded Software does not transfer to the Customer or the Customer's end user and its possession and use are subject to the licence terms of the licensor.
- 13.5 The Supplier hereby grants (or shall procure the grant of) the right for the Customer and Customer's end user to possess and use the Hardware for the purposes for which the Hardware has been supplied.
- 13.6 The Customer shall not remove, deface or obscure any identifying or proprietary mark on or relating to the Hardware.
- 14 IPR INDEMNITY**
- 14.1 The Supplier shall indemnify and hold the Customer harmless from and against any and all liability or damage (including reasonable and verifiable costs and expenses) suffered or incurred by the Customer and arising from any action, claim or proceedings brought against the Customer by a third party alleging that the proper possession or use of the Hardware by the Customer or the Customer's end user infringes such third party's IPR ("**Claim**") provided that: (a) the Supplier is given prompt written notice of such Claim; (b) the Supplier is given information, reasonable assistance, and exclusive authority to defend or settle the Claim; (c) that the Customer complies with all reasonable instructions of the Supplier with regard to the continuing use of the Hardware and/or Software; and (d) that Customer does not prejudice the Supplier's defence or settlement of the Claim.
- 15 LIMITATION OF LIABILITY**
- 15.1 Neither party excludes or limits its liability to the other for:
- 15.1.1 personal injury or death caused by its negligence;
  - 15.1.2 any matter for which, Applicable Laws, a party cannot exclude or limit or attempt to exclude or limit its liability; and
  - 15.1.3 fraud or fraudulent misrepresentation.
- 15.2 Subject to Condition 15.1, neither party shall have any liability to the other party for any indirect, special or consequential loss, loss of profits, loss of revenue, loss of savings, damage to reputation or goodwill; or loss of data.
- 15.3 Subject to 15.1 and 15.2, the Supplier's total liability to the Customer arising under or in connection with the Contract whether for breach of contract, tort, breach of statutory duty or otherwise shall not exceed:
- 15.3.1 £5 million for any and all liability resulting from defects in the products; any Claim under Condition 14.1 (IPR Indemnity); for breach of Condition 9 (Confidentiality); or, negligence; and,
  - 15.3.2 for all other liability, the price of the Hardware paid by the Customer under the Contract, unless otherwise agreed in the Contract.
- 15.4 Subject to 15.1 and 15.2, the Customer's total liability to the Supplier for breach of contract, tort, breach of statutory duty or otherwise shall not exceed the price of the Hardware paid by the Customer under the Contract, unless otherwise agreed in the Contract.
- 16 ANTI-BRIBERY, CORRUPTION AND FACILITATION OF TAX EVASION**
- 16.1 The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with this Contract shall:
- 16.1.1 comply with all applicable laws statutes, regulations, and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**");
  - 16.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements;
  - 16.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Relevant Requirements and to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with **Error! Bookmark not defined.**16.1.2;
  - 16.1.4 notify Customer (in writing) if it becomes aware of any breach of clause 16.1.1. or clause 16.1.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract;
  - 16.1.5 immediately notify Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement;
  - 16.1.6 if requested, provide Customer with any reasonable assistance, at the Customer reasonable cost, for Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with Relevant Requirements.
- 16.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition 16. The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Customer for any breach by such persons of any of the Relevant Terms.
- 16.3 Any breach of this Condition 16 shall be deemed a material breach and a Party shall terminate under Condition 18.
- 17 ANTI-SLAVERY**
- 17.1 The Supplier shall and shall take reasonable measures to procure that its sub-contractors shall at all times:
- 17.1.1 comply with any and all Applicable Laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking ("**Anti-slavery Laws**");
  - 17.1.2 comply with the the supplier charter as amended from time to time;
  - 17.1.3 not engage in any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol), (c) human trafficking or (d) the arrangement or facilitation of the travel of another person with a view to that person being exploited;
  - 17.1.4 not do or omit to do any act or thing which constitutes an offence under applicable Anti-Slavery Laws; not knowingly employ or engage in any practices that constitute an offence under Anti-Slavery Laws; and
  - 17.1.5 not do or omit to do any act or thing which causes any Customer to be in breach of and/or to commit an offence under any Anti-Slavery Laws.
- 17.2 The Supplier will:

- 17.2.1 impose upon the third parties, the obligation to conduct proper and appropriate checks on any agency or person used by the third parties to provide labour, employees, contractors or other persons to undertake tasks (in each case whether on a permanent or temporary basis) in the provision of supplying the Hardware designed to ensure that any such agency or person does not engage in any modern slavery practice;
- 17.2.2 to the extent that it forms part of the Hardware, provide the Customer with such reasonable assistance and information as it may require from time to time to assist it to:
- 17.2.2.1 perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws;
- 17.2.2.2 where legally required, prepare a slavery and human trafficking statement;
- 17.2.2.3 comply with any requirement to report on respect for human rights or to enable a Service Recipient to demonstrate compliance with any human rights code or policy to which it adheres or which applies to it;
- 17.2.2.4 identify any non-compliance with the supplier charter; and
- 17.2.2.5 conduct due diligence and to measure the effectiveness of the steps that the Customer is taking or wishes to take to ensure that modern slavery practices are not taking place in its business or supply chains; to the extent it does not form part of the Hardware the Supplier may make a fair and reasonable charge for such assistance.
- 17.3 The Supplier will promptly give written notice to the Customer upon becoming aware of the occurrence of a breach or suspected breach of any of its obligations under this Condition 17.
- 17.4 Any breach of Condition 17.1 by the Supplier will be a material breach of this Contract which is not capable of being remedied, irrespective of whether any financial loss or reputational damage arises, and irrespective of the level of any financial loss or deprivation of benefit arising, as a consequence of such breach.
- 17.5 The Supplier will indemnify the Customer against all liability or damage (including reasonable and verifiable costs and expenses), in each case arising out of or in connection with any breach by the Supplier of Condition 17 (including any failure or delay in performing, or negligent performance or non-performance of, any of its obligations under this Condition 17.
- 18 TERMINATION**
- 18.1 Either party may by written notice terminate the Contract if the other party is in material breach of any Condition(s) of the Contract, which is either (i) not capable of remedy; or (ii) being capable of remedy, has not been remedied within thirty (30) days after written notice from the other party requiring it to do so.
- 18.2 Either party may terminate the Contract at any time with immediate effect if:-
- 18.2.1 a resolution is passed, or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other party, otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction;
- 18.2.2 the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over any of its property or assets;
- 18.2.3 the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent or ceases to be able to pay its debts as they fall due;
- 18.2.4 the other party suffers any event analogous to 18.2.1 to 18.2.3 (inclusive) in any other jurisdiction;
- 18.2.5 the other Party commits a breach under Condition 16 (Anti-Bribery, Corruption and Facilitation of Tax Evasion) or Condition 17 (Anti-Slavery); or
- 18.2.6 a Force Majeure Event (defined in Condition 24.1) continues for a period of sixty (60) days.
- 18.3 If the Contract is terminated: (i) the Contract shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination; and (ii) the rights of either party accrued on or prior to termination shall remain unaffected.
- 18.4 Upon early termination of the Contract in accordance with its terms by either party, where the Customer has paid the Supplier the price for Hardware that has not been supplied at the date of termination, the Supplier shall, upon demand, either repay such price to the Customer or deliver the Hardware to the Customer.
- 19 AUDIT AND INSPECTION**
- 19.1 The Customer is entitled to carry out an audit of the Supplier in accordance with the terms of this Condition. Such audit shall be carried out no more than once per annum, upon providing thirty (30) days prior written notice.
- 19.2 The Supplier shall:
- 19.2.1 allow the Customer, its auditors, authorised agents and/or representatives, access on any Working Day to such records held by the Supplier (including the right to make copies thereof), subject to any confidentiality undertaking required by the Customer; and
- 19.2.2 provide all reasonable assistance for the purposes of auditing the Suppliers compliance with the Contract in its performance of the provision of Hardware.
- 19.3 If any audit or inspection by or on behalf of the Customer reveals any material breach by the Supplier of its obligations under the Contract in carrying out the provision of Hardware, the Customer may, without prejudice to any other remedies it may have, require the Supplier to:
- 19.3.1 remedy the cause of such non-compliance as soon as reasonably practicable;
- 19.3.2 carry out a further audit within six (6) months on the same basis; and/or
- 19.3.3 refund the Customer all reasonable and verifiable third party costs and expenses relating to such audit or inspection (including those of third party advisors).
- 20 ASSIGNMENT AND SUB-CONTRACTING**
- 20.1 The Supplier shall not assign, transfer or sub-contract its rights or obligations under the Contract without the Customer's prior written consent. Any such consent shall not relieve the Supplier of its obligations under the Contract.
- 21 NOTICES**
- 21.1 Where the Contract requires notice to be given by one party to the other such notice shall be in writing and shall be delivered by hand, e-mail, courier, first class post or special delivery post to the following:
- 21.1.1 in the case of delivery to the Customer, to the CFO or General Counsel at New Hampshire Court, St. Paul's Road, Portsmouth, PO5 4AQ;
- 21.1.2 in the case of e-mail, to an email address previously used by the receiving party for the purposes of issuing or receiving Orders and which the sender has reasonable grounds to believe is in use, if a non-automated confirmation of receipt is not received within 24 hours of sending then another method of delivery shall also be used but this shall not affect the deemed receipt of the e-mail;
- 21.1.3 in the case of delivery to the Supplier to a Director at the Supplier's registered office address.
- 21.2 Notices will be deemed to have been duly served if delivered by hand or by courier at the time of delivery; if by e-mail at the time of

sending; if delivered by first class post or special delivery post 48 hours after being posted, if by email at the time of sending, provided that where in the case of delivery by hand, e-mail or courier such delivery occurs either after 4.00 pm on a Working Day, or on a day other than a Working Day, service will be deemed to occur at 9.00 am on the next Working Day.

## **22 SEVERABILITY**

22.1 If any Condition(s) under the Contract are deemed or found to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be deemed omitted, all other provisions shall remain in full force and effect.

## **23 THIRD PARTY RIGHTS**

23.1 A Contract is not intended to confer a benefit on any person who is not a party to it. A person who is not a party to the Contract may not enforce the Contract.

## **24 FORCE MAJEURE**

24.1 Neither party shall be liable for the failure to perform its obligations under the Contract, if such failure results from any circumstance or event which is beyond such party's reasonable control, that was not known or reasonably foreseeable by the affected party at the date of the relevant Contract and which prevents that party from performance of its obligations under this Contract in whole or part including but not limited to; acts of God, fire, flood or earthquake, war, civil commotion affecting a third party (for which a substitute third party is not readily available), government action, regulations, guidelines, terrorist attack, computer or network failure or malfunction, strikes or industrial action other than by that party's employees ("**Force Majeure Event**").

24.2 A party which relies upon a Force Majeure Event to excuse performance may only do so if it has taken reasonable steps to mitigate the effects upon it of the Force Majeure Event and continues to perform the obligations that are not affected.

## **25 VARIATION AND WAIVER**

25.1 No variation of this Contract shall be effective unless it is in writing and signed by the Parties.

25.2 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

25.3 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict

any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **26 ENTIRE AGREEMENT**

26.1 The Contract contains all the terms which the Customer and the Supplier have agreed in relation to the supply of the Hardware and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Hardware. The Supplier's standard terms and conditions referred to in any correspondence or quotation form shall not apply to the Contract.

26.2 The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Customer which is not set out in the Contract and agrees that it shall have no claim in respect of the same. Nothing in the Contract will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

## **27 NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYMENT**

27.1 Nothing contained in the Contract, and no action taken by the parties pursuant to the Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

## **28 PUBLICITY**

28.1 The Supplier shall not: (a) make any public announcement or issue any public circular (including a media or press release) relating to the Contract or its subject matter without the prior written approval of the Customer; or (b) use the name or logos of the Customer and member of its group of companies or of its customers, as a reference or in any advertising or promotional materials without the Customer's prior written consent (on every occasion), which may be withdrawn at any time if it is given.

## **29 JURISDICTION AND GOVERNING LAW**

29.1 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 at all times in accordance with the laws of Germany and the Parties submit to the exclusive jurisdiction of the courts of Cologne.