

Reseller Trade Account Application



Please send to: risk@midwich.com

Midwich Ltd, Vines Road, Diss, Norfolk, IP22 4YT

Please answer all sections (BLOCK CAPITALS)

Full Company/Trading Name:

Trading Address: *(this will be used for the invoice address unless otherwise advised)*

Postcode: Tel No.:

Website:

Registered Office Address: (if different from trading address):

Postcode: Company Reg. No:

Trading Style: ☐ Ltd ☐ PLC ☐ Sole Trader ☐ Partnership ☐ Other

If part of a group - please state group name:

VAT No/s:

EORI No:

Default shipping address (if different from trading address):

Postcode:

Nature of business:

Date commenced trading:

Annual turnover:

Financial year end:

Number of staff employed:

Name of bank:

Name of account:

Sort code: Account No.:

Please indicate if you currently trade with any of the following UK businesses within the Midwich Group:

☐ DVS Ltd ☐ HHB Communications Ltd ☐ Nimans Ltd

Conditions on granting credit accepted by the applicant

All invoices are net, plus carriage and VAT charged at the appropriate rate. You must be aged 18 years or older to obtain a Trade Credit Facility. To process an application for Trade Credit Facilities we may supply your personal information (sole proprietors or partners) or that of statutory directors for incorporated businesses to credit reference agencies (CRAs) and they will give us information such as your financial history. We do this to assess creditworthiness, carry out identity checks, manage your account, trace and recover debts and prevent criminal activity. We will also continue to exchange information about you with CRAs on an ongoing basis, including your settled accounts and any debts not fully repaid on time. CRAs will share your information with other organisations for the purposes of credit risk assessment. The identities of the CRAs, and the ways in which they use and share personal information, are explained in more detail at <http://www.experian.co.uk/crain/index.html>. Where appropriate we may share information obtained with Midwich Group PLC and its subsidiaries. We will maintain a record of the information obtained for the purpose of credit risk assessment and only keep this information for as long as necessary. It is understood that we may contact the referees provided for information and that a credit facility may not be opened until satisfactory references have been received. We will undertake compliance checks on your business, and you as a sole trader, partner, and/or statutory director. These checks include but are not limited to Anti Money Laundering (AML), KYC & identity checks, PEPs and sanction screening. The personal information we collect from you may also be shared with fraud prevention agencies who will use it to prevent fraud and money laundering and to verify your identity. We reserve the right to withdraw the trade credit facility without notice to you if you fail to achieve the above conditions and / or our periodic reviews of the trade credit facilities provided (which includes but is not limited to) financial statements, CRA reports, trade credit insurance, market intelligence and utilisation; indicates the trade credit facility is no longer appropriate, in which case all orders placed thereafter shall be subject to advance payment as set out in the relevant clause unless we withdraw the availability of a trade account.

All applications are subject to status.

We are aware that title of goods delivered within the UK shall not pass until all outstanding indebtedness has been discharged.

On behalf of the applicant, I understand and accept the conditions printed above and the conditions of sale as attached and state that I am duly authorised by the above company to sign this application and give the following warranty.

Warranty

In consideration of the granting of credit facilities, I agree to make settlement of accounts within thirty (30) days from date of invoice.

To be signed by Director, Sole Trader, Partner or Authorised Signatory

Signature

Position:

Print Name Date:

Name of the person to be notified when account open:

Name of Statutory Director/s:

Have any of the above been a Director/Person of Significant Control of a company that has been the subject of an insolvency process?

☐ Yes ☐ No

Name and residential address of Sole Trader/each Partner if applicable:

Postcode:

Postcode:

Finance Director/CFO - Name:

Email: Tel No.:

Purchase Ledger Contact - Name:

Email: Tel No.:

Sales Contact - Name:

Email: Tel No.:

Procurement Contact - Name:

Email: Tel No.:

Marketing Contact - Name:

Email: Tel No.:

Your account details will be held on our database and from time to time approved marketing will be sent to you. Please tick here to receive ☐

Amount of credit requested: £

Please tick if no credit required ☐

(If request is greater than £ 5,000 please supply a full set of latest accounts or your most recent management accounts to include profit and loss balance sheet)

Name of trade references

Please quote companies in a similar line of business and where similar credit limits apply:

Midwich Ltd Standard Trading Terms & Conditions

1. MIDWICH LTD STANDARD TERMS AND CONDITIONS OF SALES

MIDWICH LIMITED IS A TRADE-ONLY DISTRIBUTOR OF TECHNOLOGY SOLUTIONS. THESE TERMS AND CONDITIONS (THE “**CONDITIONS**”) GOVERN THE SALE OF PRODUCTS TO COMMERCIAL RESELLERS, RETAILERS, SERVICE PROVIDERS AND SIMILAR COMMERCIAL ENTITIES. YOUR ATTENTION IS PARTICULARLY DRAWN TO THE EXCLUSIONS AND LIMITATIONS OF LIABILITY AT CLAUSE 8.

Contents

1. STANDARD TERMS & CONDITIONS OF SALE

2. APPENDICES:

- A. Standard Conditions of Carriage inc. Overshipments, Undershipments and Incorrect Goods
- B. Transit Loss & Damage
- C. Dead on Arrival (DOA) & Warranty Procedure
- D. Hidden Damages
- E. Returning Unwanted or Incorrectly Ordered Goods or Goods Sent in Error by the Seller
- F. Special Bids

3. MIDWICH LIMITED SOFTWARE SALE TERMS AND CONDITIONS

4. SUPPLEMENTAL TERMS & CONDITIONS - RENTAL SERVICES

1. DEFINITIONS & INTERPRETATION

“**Advance Payment**” means a payment made by You to Us in cleared funds in advance of the related receipt of Goods and/or Services;

“**Authorised Representatives**” means the person or persons appointed on behalf of the relevant Party with authority to approve agreed Variations to the Contract;

“**Buyer**” “**You**” “**Your**” means the person whose order for the Goods is accepted by Us;

“**Conditions**” means these Standard Terms and Conditions of Sale (including the Appendices), as amended in accordance with clause 2.5., and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between You and Us;

“**Contract**” means any contract between the Parties for the sale and purchase of Goods and/or Services incorporating these Conditions and which, subject to clause 2.5, may be varied only by a written variation signed by the Authorised Representatives of the Parties;

“**Custom Build Products**” means non-cancellable, non-refundable bespoke Goods which You have ordered through Us;

“**Damaged In Transit**” means Goods (including packaging) which are visibly damaged upon delivery to the agreed delivery address, and which have been accepted or rejected in accordance with Appendix B;

“**DOA**” means Dead on Arrival and refers to Goods that do not materially conform to their specification, if their non-conformity is or should be apparent immediately after the first time they are removed from the original packaging. DOA does not cover Goods damaged after delivery, e.g. as a result of inspection, unpacking, installation (including attempted installation) or setup;

“**End User**” means Your end customer;

“**Exporter of Record**” means the legal exporting entity for goods exiting a country;

“**Faulty Goods**” means Goods which develop technical problems, problems with connected software provided by Us (and/or have errors in operating which results in bad functioning or defect in working or failure to work). Usually – but not limited to – these faults arise after initial use and are excluded from the relevant manufacturer’s DOA guidelines (if applicable), and as such are covered under a separate period of time and in accordance with the relevant manufacturer’s guidelines;

“**Force Majeure**” has the meaning given to it in Clause 23;

“**Goods**” means the goods (including any instalment of such goods or any parts for them) which We are to supply in accordance with the Contract. Goods do not include software, software licences, SaaS subscriptions, cloud services or other digital products, which shall be governed by the Midwich Software Sale Terms and Conditions. Unless agreed otherwise in Writing, Goods do not include software, which shall be provided separately as set out in clause 6.2

“**Non-visible Damages**” means damages or non-conformities of Goods that by their very nature are not discoverable upon a reasonable visual inspection and which are notified to Us in accordance with Appendix D;

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

“**Installation**” means to apply or attach Goods at a permanent position, or make ready to use, or ready for operation;

“**Items**” means a unit of carriage;

“**Overshipment**” means any excess quantity of Goods received by the Buyer or End User;

“**Party**” “**Parties**” means the Buyer and Seller;

“**Restocking Fee**” means any cancellation or restocking fee charged in connection with the cancellation of an order or the return of Goods as set out in Appendix E, plus any applicable carriage charges You are liable to pay; “**Seller**” “**We**” “**Us**” “**Our**”

means Midwich Limited (registered company number 01436289) with registered offices at Vines Road, Diss, Norfolk IP22 4YT. The Seller’s VAT number is GB 765 3317 22;

“**Services**” means any customisation, implementation, installation or configuration services (or any part of them), relating to the Goods, provided by Us to You from time to time;

“**Special Bids**” means Supplier-funded special pricing or benefits made available to You through Us;

“**Special Bid Terms**” means Terms governing Special Bids that You must comply with as set out in Appendix F;

“**Special Order Products**” means non-cancellable, non-refundable Goods which are not part of Our normal inventory and which have been ordered specifically by You or Goods which have been configured to Your specifications;

“**Third Party**” means a third party who provides Services on Our behalf but is not controlled by Us;

“**Trade Credit Facility**” means a trade account in Your business name and is held by Us for the purchase of Goods from Us and which has been opened and is used in accordance with clause 5;

“**Undershipment**” means Goods as listed on the relevant delivery note or other shipping documents but which are not included in a shipment, or not received by the recipient, notably, when the quantity received is less than the quantity listed and which is attributable to an error prior to the Goods being loaded onto the couriers vehicle, for example, Goods not packed at the Seller’s warehouse, but which are not attributable to a Loss in Transit.

“**Warranty Period**” means the period of time in which DOA and Faulty Goods purchased will be covered by the remedies within the relevant manufacturer’s warranty offering;

“**Website**” means Our internet website, accessed through the address of www.midwich.com;

“**Writing**” includes email, and any other comparable means of communication, and “**Written**” shall be construed accordingly.

1.1. Words importing the singular include the plural and vice versa, references to gender include all genders; and references to persons include bodies’ corporate, unincorporated associations and partnerships.

“**Force Majeure**” has the meaning given to it in Clause 23;

1.2. References to “**including**”, “**include**”, “**in particular**”, “**for example**” or similar expressions are illustrative only and do not limit the preceding words.

1.3. References in these Conditions to any provision of a statute, regulation or other piece of legislation shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4. Headings are for convenience only and do not affect interpretation.

2. BASIS OF SALE

2.1. It is a condition precedent of the Contract that You are or act solely on behalf of a commercial entity (including sole traders and partnerships) who intend to purchase and resell Goods and / or Services from Us in the course of business. You represent and warrant that this is the case.

2.2. Goods are only delivered to Mainland UK. For deliveries outside of Mainland UK, including to UK Islands, Channel Islands, Northern Ireland, EU and Rest of World, prior agreement will be required.

2.3. English is the only language offered for the performance of this Contract.

2.4. Each order submitted by You constitutes an offer to purchase Goods and/or Services under these Conditions and is binding only when accepted by Us in accordance with clause 3.

2.5. These Conditions are the exclusive terms of the Contract. You should review the Conditions prior to placing each order as We may modify them from time to time. The version in force on Our Website at the time You place an order shall apply unless otherwise agreed in Writing and signed by Authorised Representatives of both Parties.

2.5A Where an order includes any software, software licences, SaaS subscriptions, cloud services or other digital products supplied by Us (“**Software Products**”), such Software Products shall also be subject to the Midwich Software Sale Terms and Conditions in force of the date of the relevant order. In the event of any conflict or inconsistency between these Conditions and the Midwich Software Sale Terms and Conditions, the Midwich Software Sale Terms and Conditions shall prevail solely in respect of the relevant Software Products. These Conditions shall continue to apply to all other Goods and Services.

2.6. The Contract is made solely between You and Us. No contract is formed between Us and any End User, and these Conditions do not apply to any End User agreements.

2.7. Our employees and agents are not authorised to make any representations concerning the Goods unless confirmed by Us in Writing. You acknowledge You do not rely on, and waive any claim for breach of, any unconfirmed representation and any such confirmation confirmed by Us in writing is given subject to clause 14 (Specification of Goods).

2.8. Any advice or recommendation not confirmed by Us in Writing is followed or acted upon entirely at Your own risk and We accept no liability for it.

We may correct 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 Us

either in hard copy or any electronic medium without liability and shall use reasonable endeavours to notify You of such correction.

3. ORDER ACCEPTANCE

3.1. All orders constitute offers by You to purchase Goods, subject to availability and Our acceptance.

3.2. All orders are accepted and the Goods supplied exclusively on these Conditions unless otherwise agreed by Us in Writing. These Conditions (and any authorised amendments to them) prevail over any terms proposed by You. Acceptance of an order does not constitute acceptance of Your terms.

3.3. You are responsible for the accuracy and completeness of all order details and for providing them in sufficient time to enable performance of the Contract.

3.4. Custom Build Products. You shall indemnify Us against all losses, liabilities, costs and expenses arising from any claim awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim that Our use of Your specification infringes any third-party intellectual property rights.

3.5. We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to Our specification, which do not materially affect quality or performance.

3.6. Cancellation. Orders may not be cancelled without Our prior written consent and a Restocking Fee shall apply. Custom Build Products and Special Order Products are non-cancellable.

3.7. Returns. Goods may not be returned without Our prior written consent and payment of a Restocking Fee. Custom Build Products and Special Order Products are non-returnable.

3.8. Clauses 3.6 and 3.7 do not apply where returns are permitted under clauses 7.2 or 7.4, or Appendices A-E (as applicable).

3.9. Goods made to Your order (other than Our standard Goods) may vary within normal trade tolerances from specified dimensions and no claim shall arise in respect of such variation.

3.10. No Contract is formed until We accept an order, which may be by written confirmation, delivery or part-delivery (whichever occurs first).

3.11. We may introduce a minimum order value at any time.

3.12. Without prejudice to the generality of the foregoing any particular purpose for which You propose to use the Goods shall be deemed not to be known by or have been made known to Us unless specifically recorded in a schedule signed by one of Our directors. You hereby acknowledge that any purpose stated in such schedule shall be deemed to have been specified by You.

4. QUOTES, PRICE

4.1. Quote Validity. Quotes are valid for the period stated in Our quotation or as otherwise agreed in Writing. Validity may be communicated by email, other written means or via Our Website.

4.2. Prices and Charges. Prices exclude Value Added Tax (VAT), transport, insurance, packaging and any import or export costs, all of which You are liable to pay.

4.3. Price Increases. We may increase the price of the Goods before despatch to reflect cost increases beyond Our control (including exchange rate changes, duties, taxes, labour or material costs), changes requested by You or delays caused by You.

4.4. Special Bid Pricing. Where Special Bids are offered for certain orders and such pricing is made available to Us by Our Vendors or Suppliers, You shall comply with the applicable Special Bid Terms.

5. TERMS OF PAYMENT, TRADE CREDIT FACILITIES

5.1. Advance Payment. Unless Trade Credit Facilities have been provided, all orders must be paid for in advance prior to order despatch and are subject to confirmation of clearance of funds by the Your Bank or Card Issuer.

5.2. Applying for Trade Credit Facilities. You must be aged 18 years or older to obtain a Trade Credit Facility. To process an application for Trade Credit Facilities, We may supply Your personal information (sole proprietors or partners) or that of statutory directors for incorporated businesses to credit reference agencies (CRAs) and they will give Us information such as Your financial history. We do this to assess creditworthiness, carry out identity checks, manage Your account, trace and recover debts and prevent criminal activity. We will also continue to exchange information about You with CRAs on an ongoing basis, including Your settled accounts and any debts not fully repaid on time. CRAs will share Your information with other organisations for the purposes of credit risk assessment. The CRA’s have drafted a notice called ‘Credit Reference Agency Information Notice’ (CRAIN) which sets out how Your data will be processed. The identities of the CRAs, and the ways in which they use and share personal information, are explained in more detail at <http://www.experian.co.uk/crain/index.html>, www.equifax.co.uk/drain.html or www.transunion.co.uk/crain to read the notices in full. It is understood that We may contact the referees provided for information and that a credit facility may not be opened until satisfactory references have been received. We will undertake compliance checks on Your business, and you as a sole proprietor, partner, and/or statutory director. These checks include but are not limited to Anti Money Laundering (AML), KYC & identity checks, PEPs and sanction screening. The personal information We collect from you may also be shared with fraud prevention agencies who will use it to prevent fraud and money laundering and to verify Your identity. On occasion

We may require a Personal Guarantee of a Statutory Director(s) or a corporate (parent company guarantee) to support a Trade Credit Facility. We may also undertake land registry searches.5.3. Account Management. If approved for Trade Credit Facilities, You must:

5.3.1. maintain annual purchases of at least five thousand pounds (£5,000) (exc. VAT) over any 12-month period. Where Your purchases fall below this threshold, We reserve the right to withdraw, suspend or amend the Trade Credit Facilities provided to You, without notice; and

5.3.2. notify Us without delay of any material change to Your finances, structure, share ownership and/or value of assets which may affect Your credit status. In addition to any remedy available at law, failure to report any such changes may result in credit being withdrawn as set out in clause 5.4.

5.4. Minimum Spend, Reviews, Withdrawal of Trade Credit Facilities. We reserve the right to withdraw the Trade Credit Facility without notice to You if (i) You fail to achieve the above conditions in which case all orders placed thereafter shall be subject to Advance Payment as set out in clause 5.1. and / or (ii) Our periodic reviews of the Trade Credit Facilities which includes but is not limited to assessment of Your financial statements and CRA reports, utilisation of Your Trade Credit Facility, Your payment behaviour, and the inadequacy of trade credit insurance indicates the Trade Credit Facility is no longer appropriate.

5.5. Payment Methods. You understand and agree that We (unless otherwise agreed in a writing and signed by an Authorised Representative of the Seller) only accept payment by bank transfer and/or card payments. All other payment methods are expressly excluded, including cash delivered to Our premises and / or attempted payments into Our bank account/s via a bank branch. Trade Credit Facilities with a limit of less than £10,000 are to be paid by Direct Debit.

5.6. Exceeding the Trade Credit Facility. In the event You have orders which may cause You to exceed the credit facility, and We are unable to increase the facility, then You shall be notified that orders will be suspended until payment is received to bring the account below the credit facility to allow further orders to be despatched and invoiced.

5.7. Payment Terms. Subject to any special terms agreed in Writing between the Parties:

5.7.1. We shall be entitled to invoice You for the price of the Goods on or at any time after accepted orders are ready for despatch or, if the Goods are to be collected by You from our premises, at the time when We notify You that the Goods are ready for collection or (as the case may be) We have tendered delivery of the Goods.

5.7.2. Where Trade Credit Facilities have been provided by Us, You shall pay the price of the Goods within thirty (30) days of the date of Our invoice. The time of payment of the price shall be of the essence of the Contract.

5.7.3. In the case of Special Order Products and Custom Build Products, You may be required to pay (at Our sole discretion) either the full price of the Goods or a deposit of not less than twenty-five percent (25%) when We accept Your order.

5.7.4. If You fail to make payment on or by the due date then, without prejudice to any other right or remedy available to Us, We shall be entitled to:

5.7.4.1. suspend any further deliveries to You and place Your account on hold;

5.7.4.2. cancel any outstanding orders from You;

5.7.4.3. appropriate any payment made by You to such of the Goods (or the Goods supplied under any other contract between the Parties) as We may think fit (notwithstanding any purported appropriation by You);

5.7.4.4. charge You interest (both before and after any judgment) on the amount unpaid, at the rate of four percent (4%) per annum above the Bank of England base rate from time to time, until payment in full is made; and

5.7.4.5. issue a Money Claim On Line, County Court Judgement, refer the unpaid amount to a third party collection agent or other remedy by law.

5.7.5. Administration Fee on Card Payments. We reserve the right to charge an administration fee on business credit or charge card transactions. You shall be informed of this charge at the point of payment.

5.7.6. Invoice Errors. You must notify Us in Writing within fourteen (14) days of the date of invoice of any errors within the invoice. Failure will result in Us assuming Your acceptance of the invoice in full.

5.7.7. You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

5.7.8. We may at any time, without notice to You, set-off any liability of You to Us against any Liability of Us to You, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, We may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Us of Our rights under this clause 5 shall not limit or affect any other rights or remedies available to Us under the Contract or otherwise.

5.7.9. Delivery by Instalments. If Goods are delivered in instalments, We shall be entitled to invoice each instalment upon despatch thereof.

5.7.10. Payment: Currency. Payment shall be in pounds sterling unless otherwise agreed in writing and signed by Our Authorised Representative.

5.7.11. Changes to VAT Registration. You warrant that You will notify Us if Your VAT registration is amended in any way.

5.7.12. Electronic Invoicing. We reserve the right to issue and send to You all invoices, credit notes or any other company documentation in electronic format and You accept to receive such documentation electronically. 5.7.13. We shall periodically provide an electronic, detailed listing of invoices with transaction dates and values ("**Trading Statement**").

5.7.14. Credit Notes and Credit Balances. Any credit note issued to You should be utilised within twelve (12) months of the date of issue. Any credit balance arising on Your account should be utilised within twelve (12) months of the date on which such credit balance occurs. We will use reasonable endeavours to contact You regarding any outstanding credit notes that may be deducted from a future remittance and/or any credit balances that may be refunded to You. We reserve the right to transfer any credit note or credit balance that remains unutilised after the applicable twelve (12) month period to a suspense account. Any credit note or credit balance transferred to a suspense account shall not accrue interest. Any subsequent claim in respect of such credit note or credit balance shall be subject to Our verification procedures.

6. TITLE RETENTION

6.1. Subject to clauses 6.2 and 6.6, title to Goods delivered within the UK shall not pass to a UK established Buyer until We have received payment in full, in clear funds, for those Goods and all other sums due or owing to Us from the Buyer on any account.

6.2. Any software supplied or made available in connection with the Goods or the Contract is licensed, not sold. All intellectual property rights in such software shall remain vested in Us or the licensor at all times (including after payment). You and/or the End User (as the case may be) may use such software only in accordance with the applicable licencing terms including without limitation any end user license agreement required by the manufacturer or licensor.

6.3. Until title to the Goods passes under clause 6.1, You shall:

a) store the Goods in such a way that they can be readily identified as being Our property; and

b) maintain insurance the Goods for their full replacement value.

6.4. Until title to the Goods passes, You may sell the Goods in the ordinary course of business and pass good title to an End User, acting in good faith and without notice of Our rights, provided that:

6.4.1. Your right of sale shall automatically cease if You fail to pay any sum when due or become subject to any insolvency related event; and

6.4.2. We may revoke Your authority to sell the Goods at any time by notice.

6.5. Nothing in this clause shall:

6.5.1. entitle You to return the Goods (save as expressly permitted under Appendix C) or delay payment;

6.5.2. constitute You as Our agent; or

6.5.3. make Us liable for any unauthorised representation or warranty made or given by You to any such third party.

6.6. Subject always to clause 6.2, where Goods are supplied for export outside of the UK, title to the physical Goods (excluding software and intellectual property) shall pass on export from the UK, and We shall not retain title to such physical Goods thereafter.

7. WARRANTIES

7.1. We warrant that We have good title to, or a valid licence to supply, all Goods to You.

7.2. Goods proving defective in materials or workmanship under normal use or service shall be repaired or replaced only in accordance with the warranty term provided by the manufacturer of the Goods and Appendix C, provided that no unauthorised modifications have been made to the Goods or to any system of which the Goods form part. Unless otherwise agreed by Us or stated in Appendix C, We shall not be responsible for labour, transportation or other costs incurred in repair or replacement. In no circumstances shall We be liable, whether in contract, tort (including negligence or breach of statutory duty) or otherwise for (i) for any loss of profit, business, contracts, revenue, or anticipated savings, or (ii) for any special, indirect or consequential damage of any nature whatsoever.

7.3. All software is supplied "**as is**". Our sole obligation is to use reasonable endeavours to obtain and supply a corrected version from the manufacturer where the software fails to conform to its description provided that You notify Us of the non-conformity within thirty (30) days of the date of delivery of the applicable software product.

7.4. DOA & Warranty. DOA and Warranty claims shall be dealt with solely in accordance with Appendix C.

7.5. Our liability under this clause 7 shall be Your sole and exclusive remedy for any defect in the Goods and for any loss or damage arising from such defect. Subject to any warranties expressly stated in these Conditions, all other conditions, warranties, representations or terms (whether express or implied, statutory, at common law or otherwise) including as to satisfactory quality, fitness for purpose or design, are excluded to the fullest extent permitted by law.

7.6. These Conditions are not intended to apply to any sale of Goods by Us to any consumer. Notwithstanding the foregoing, if any sale by Us is deemed to fall under the Consumer Rights Act 2015, Your statutory rights are not affected.

8. LIMITATION OF LIABILITY

8.1. Subject to clauses 7.2 and 8.3, this clause 8 sets out Our entire liability to You (including for acts or omissions of Our employees, agents and sub-contractors) arising out of or in connection with the Contract, whether for breach of Contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, including any use, resale or onward supply of the Goods.

8.2. You agree that You shall have no remedy in respect of any untrue statement, representation or warranty (whether made innocently or negligently) that is not expressly set out in the Contract, and that Your only remedies shall be for breach of contract, except where such statement was made fraudulently.

8.3. Nothing in these Conditions excludes or limits any liability which cannot legally be limited, including Our liability for:

8.3.1. death or personal injury caused by Our negligence;

8.3.2. defective products under the Consumer Protection Act 1987; or

8.3.3. fraud or fraudulent misrepresentation.

8.4. Subject to clauses 7.2 and 8.3:

a) Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

b) We shall not be liable to You for:

(i) loss of income;

(ii) loss of profit;

(iii) loss of revenue;

(iv) loss of anticipated earnings;

(v) loss of business;

(vi) loss of anticipated savings;

(vii) or loss of or damage to goodwill;

(viii) loss of bargain;

(ix) liability that you have to third parties;

(x) loss of use of, corruption of or damage to software, data or information; or

(xi) any indirect, consequential or special loss or damage, whether of the type list above or otherwise.

9. DELIVERIES, TRANSIT LOSS & DAMAGE

9.1. Deliveries. Deliveries are subject to Appendix A.

9.2. Transit Loss & Damage. Claims for transit loss or damage are subject to Appendix B.

10. RETURNS

10.1. Except for DOA and Warranty Goods, Non-visible Damage, and Goods Lost In Transit or Damaged In Transit, returns are subject to Appendix E.

11. NON-VISIBLE DAMAGES

11.1. All claims regarding Non-visible Damage are subject to Appendix D.

12. EXPORTS, INCOTERMS

12.1. Unless otherwise agreed in Writing between the Parties, the Goods shall be Delivered at Place (DAP) as defined in the Incoterms.

12.2. Unless otherwise agreed in Writing between the Parties, You or the End User shall be solely responsible for complying with all import laws and regulations governing the importation of the Goods into the country of destination and to clear the Goods for import, pay any import duties, local taxes and carry out any import customs formalities if required for delivery in accordance with clause 12.1.

12.3. We shall have no obligation to deliver Goods to, or perform Services in, any country, territory, entity or individual subject to financial, economic, trade or arms sanctions imposed by the UK, US, EU or United Nations (collectively, "**Sanctions**").

12.4. You shall not export, re-export, sell or otherwise supply the Goods to any party subject to Sanctions and shall notify Us at the time of order of any intended export or re-export. We may require end user statements or other information to verify compliance.

12.5. You represent and warrant that neither You nor any of Your affiliates, owners, directors, officers or employees are subject to Sanctions and that you maintain adequate controls to ensure compliance with applicable sanctions laws throughout the supply chain. You shall notify Us immediately if this position changes.

12.6. We shall have no obligation to supply Goods where the manufacturer or supplier prohibits supply to the destination country.

12.7. You shall not sell or deliver the Goods outside of the UK without Our prior written consent (and always subject to clause 12.3), and shall comply with any manufacturer resale or export restrictions notified to You by Us or the manufacturer in Writing.

13. SPECIFICATION OF GOODS

13.1. All samples, drawings, descriptive matter, specifications and advertising We issue and any descriptions or illustrations contained in the Seller's literature or on the Website, and any manufacturer specification or other information regarding the Goods which We receive from the manufacturer of the Goods and pass on to You (together the "**Goods and Services Descriptions**"), are issued or published for the sole purpose of giving You an approximate idea of Our Goods and Services. The Goods Descriptions shall not form part of the Contract nor have any contractual force. Although We make every effort to ensure that information provided by Us about Our Goods and Services is correct, it may be incomplete, out of date or inaccurate. In particular, some details, such as colour and dimensions, may not be a true representation and subject to change without notice.

13.2. We will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data of the Goods.

13.3. We will not be responsible for any loss or damage resulting

from any reliance by You on the Goods and Services Descriptions or any variation as described in clauses 13.1 and 13.5.

13.4. We will use reasonable endeavours to notify You of any material changes to the Goods notified to Us by the manufacturer.

13.5. Commodity codes, tariff codes, export classifications, customs information and similar product classification data supplied by Us ("**Classification Data**") are provided for information only. We give no warranty as to the accuracy, completeness or suitability of any Classification Data. You are solely responsible for verifying the correct classification and regulatory treatment of the Goods and We shall have no liability arising from Your use of or reliance on Classification Data. This clause 13.5 shall prevail in relation to Classification Data notwithstanding any other provision of the Contract.

13.6. Any specifications of Custom Build Products shall be agreed separately between You and Us in writing, and shall always be subject to clause 8 (Limitation of Liability).

13.7. In exceptional circumstances, We reserve the right to increase Our quoted or listed prices, or to charge accordingly in respect of any orders accepted for Goods of non-standard specifications and in no circumstances will We consider cancellation of such orders or the return of such orders.

14. THIRD PARTY PROVIDERS

14.1. We may use Third Party providers, including couriers and warehousing providers, to perform Services on Our behalf. Such providers are independent contractors, and although they perform services for Us, You acknowledge that We do not direct or control the manner in which they perform their services.

14.2. Except to the extent expressly required by law, We make no representation, warranty or guarantee in respect of any Third Party provider. We shall not be liable for any act or omission of a Third Party provider except to the extent caused by Our own negligence or breach of the Contract.

15. INSOLVENCY OF A THIRD PARTY PROVIDER

15.1. If any Third Party provider becomes subject to insolvency, administration, receivership, liquidation, a creditor arrangement or any analogous process, We may terminate or temporarily suspend the provision of any affected Services.

15.2. Where We suspend the Services under clause 15.1, We shall use reasonable endeavours to appoint a new Third Party service provider on commercially reasonable terms and within a reasonable period. We shall not be liable for any delay or failure in performance resulting from the insolvency of a Third Party service provider to the extent such delay or failure could not reasonably have been avoided.

16. CONFIDENTIALITY

16.1. You undertake that You shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of Ours or any member of the group of companies to which We belong, except that You may disclose Our confidential information (i) to Your employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising Your rights or carrying out Your obligations under or in connection with the Contract. You shall ensure that Your employees, officers, representatives, contractors, subcontractors or advisers to whom You disclose Our confidential information comply with this Clause 16.1; and (ii) as may be required by law, a court of competent jurisdiction or any governmental regulatory authority. You shall not use Our confidential information for any purpose other than to exercise Your rights and perform Your obligations under or in connection with the Contract.

16.2. Subject to any separate confidentiality agreement, We shall use reasonable endeavours to keep confidential information relating to Your business, to the same extent We protect Our own confidential information, provided that such information is not publicly available, was not known to Us at the time of disclosure, and is not subsequently lawfully obtained from a third party. We may disclose such information only (i) to Our employees, officers, representatives, contractors, subcontractors or advisors on a need-to-know basis for the performance of the Contract or (ii) as required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17. INTELLECTUAL PROPERTY

17.1. The intellectual property rights (including copyright) subsisting or which subsequently subsists in all Goods, Services, documents, drawings, specifications, designs, programmes or any other material prepared by Us whether readable by humans or by machines, and all Our know-how, shall belong to Us absolutely and they shall not be reproduced or disclosed or used in their original or translated form by You without Our written consent for any purpose other than that for which they were provided.

17.2. We accept no responsibility for the accuracy of any drawings, patterns or specifications supplied by You. Where Goods are produced in accordance with Your drawings, patterns, specifications or instructions, You shall indemnify Us against all losses, liabilities, costs and expenses, (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) arising from actual or alleged infringement of third party intellectual property rights resulting from Our compliance with them. This clause 17.2 shall survive termination of the Contract.

18. DATA PROTECTION

18.1. Each Party shall comply with the UK GDPR, the Data Protection Act 2018 and all other applicable data protection laws, and shall ensure that its employees, agents and subcontractors also comply. Each Party shall implement appropriate technical and organisational security measures.

18.2. Each Party acts as an independent controller in respect of the personal data it processes under the Contract, unless otherwise agreed in Writing, in which case the Parties shall enter into an Article-28-compliant data processing agreement. No Party is required to comply with an instruction that would breach applicable data protection law.

19. CALL RECORDING

19.1. Calls to Us may be recorded or monitored for training, quality, security, compliance and evidential purposes in accordance with applicable interception laws.

20. COMPLIANCE WITH LAWS

20.1. You shall comply with all laws and regulations relating to Your activities under the Contract, as they may change from time to time, and with any conditions binding on you in any applicable licences, registrations, permits and approvals.

21. WEEE / END OF LIFE OBLIGATIONS

21.1. You acknowledge and agree that, unless otherwise agreed by Us in Writing, You shall be solely responsible, at Your own cost and risk, for the collection, take-back, treatment, recovery, recycling, disposal and other end-of-life management of all Goods and any associated packaging supplied under the Contract, including compliance with all applicable obligations under the Waste Electrical and Electronic Equipment Regulations 2013 (as amended) ("**WEEE Regulations**") and any equivalent laws or regulations in any jurisdiction.

21.2. We shall have no responsibility or liability for:

- (a) the removal, collection, return, recycling, recovery or disposal of any Goods or packaging;
- (b) any costs, charges, fees, taxes, contributions or liabilities arising under the WEEE Regulations or any similar environmental legislation;
- (c) any producer compliance, distributor take-back, environmental or recycling obligations relating to the Goods once delivered; or
- (d) any claims, losses, fines, penalties or enforcement actions arising from Your or any End User's failure to comply with applicable environmental or waste disposal laws.

21.3. You shall indemnify and keep indemnified Us against all liabilities, costs, expenses, damages, fines, penalties, claims and losses suffered or incurred by Us arising out of or in connection with:

- (a) the disposal or end-of-life treatment of the Goods or packaging;
- (b) any breach by You or any End User of the WEEE Regulations or equivalent legislation; and/or
- (c) any act or omission by You or any End User relating to the reuse, recycling or disposal of the Goods.

21.4. Where We agree to accept returned Goods or dispose of Goods on Your behalf, We reserve the right to charge You for all associated handling, transport, storage, recycling, recovery and disposal costs.

22. DANGEROUS GOODS

22.1. Where Goods supplied by Us are dangerous goods, hazardous materials or contain hazardous components (including lithium-ion or lithium-metal batteries) ("**Dangerous Goods**"), risk passes to You on delivery in accordance with these Conditions.

22.2. You are solely responsible for the storage, handling, transport, use, recycling, disposal and return of Dangerous Goods after delivery and shall comply with all applicable laws, regulations, industry guidance and any instructions provided by the manufacturer or Us.

22.3. We shall have no liability arising from Your storage, handling, transport, use, recycling, disposal or return of Dangerous Goods, except to the extent such liability cannot be excluded by law

22.4. Dangerous Goods may only be returned with Our prior written consent and in accordance with Our instructions and all applicable legal and carrier requirements. We may refuse any non-compliant return.

22.5. You shall indemnify Us against all losses, liabilities, damages, costs, expenses, claims, fines and penalties arising from Your breach of this clause, including any improper storage, handling, transport, use, recycling, disposal or return of Dangerous Goods.

23. FORCE MAJEURE

We shall not be under any liability for any failure to perform any of Our obligations under the Contract due to Force Majeure. Following notification by Us to You of such cause, We shall be allowed a reasonable extension of time for the performance of Our obligations. Force Majeure includes (but is not limited to) the following non-exhaustive list of events such as acts of God, explosion, flood, tempest, fire or accident; war or threat of war, terrorist atrocities, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery; non-performance by suppliers or Third Party service providers undergoing an insolvency event; epidemic or pandemic; economic recession.

24. TERMINATION

24.1. Without prejudice to Our other rights or remedies, We may terminate the Contract immediately by giving written notice if You:

- 24.1.1. commit a material breach and where remediable, fail to remedy it within 30 days of written notice;
- 24.1.2. fail to make any sum due within 30 days of its due date;

24.1.3. breach any of clauses 16, 20, 21, 22 or 25;

24.1.4. become subject to any insolvency-related event, including administration, liquidation, moratorium, arrangement with creditors or appointment of a receiver (other than a solvent restructuring) or any analogous procedure in the relevant jurisdiction;

24.1.5. suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of Your business; or

24.1.6. suffer a deterioration in financial position reasonably jeopardising performance of the Contract.

24.2. Without prejudice to Our other rights or remedies, We may suspend supply of Goods or Services under this or any other Contract between Us and You without liability if You fail to pay any sum when due or if any events in clause 24.1.4 to clause 24.1.6 occurs or is reasonably anticipated. Where Goods have been delivered but not paid for, the price shall become immediately due. Where Goods have not been delivered, We may sell the Goods at the best readily obtainable price and account to You for any surplus (or recover any shortfall) after deducting reasonable costs. We shall notify Our trade credit insurers if You become subject to any of the events listed in clause 24.1.4 to clause 24.1.6.

24.3. On termination of the Contract for any reason, all outstanding invoices and interest shall become immediately due. We may invoice for Goods or Services supplied but not yet invoiced, and such invoices shall be payable on receipt.

24.4. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

24.5. Any provision intended to survive shall remain in full force and effect.

24.6. Following determination of Your power of sale under clause 6.4.1, We or Our agents may enter any of Your premises to repossess Goods or their sale proceeds in the event of Your insolvency.

25. GENERAL

25.1. We reserve the right to subcontract the fulfilment of the Contract (including any installation) or any part thereof.

25.2. You shall not assign any rights under the Contract without the prior consent in Writing of one of Our directors.

25.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and shall be:

25.3.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice: or

25.3.2. sent by email to the address as may at the relevant time have been notified to the party giving the notice

25.4. Any notice shall be deemed to have been received:

25.4.1. if delivered by hand, at the time the notice is left at the proper address; 25.4.2. if sent by registered post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

25.4.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25.4.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

25.5. No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

25.6. 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.

25.7. Subject to variations under clause 2.5, no variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

25.8. The Contract constitutes the entire agreement between the Parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

25.9. The Contract does not give rise under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

25.10. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

25.11. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

2. APPENDICES

APPENDIX A – STANDARD CONDITIONS OF CARRIAGE

1. SCOPE

This Appendix applies to all deliveries of Goods to You and/ or any End User, including Overshipment, Undershipment and incorrect Goods.

2. CONDITIONS OF CARRIAGE, INCORRECT GOODS, OVER/UNDERSHIPMENT

2.1. Delivery Dates & Times.

a) Deliveries are normally made Monday to Friday, 08:00 – 18:00 (excluding bank and public holidays in applicable regions) to the doorstep of the delivery address unless otherwise agreed and accepted in advance between both Parties. Additional charges may apply which You agree to pay in full. We may deliver Goods earlier than the estimated delivery date.

b) Saturday deliveries may be available at additional cost.

c) Delivery dates and times are estimates only. Time for delivery is not guaranteed by Us and shall not be of the essence of the Contract (unless previously agreed by You and Us in Writing).

2.2. Delayed and Failed Deliveries.

a) If delivery is delayed or prevented due to Your or an End User's acts (including incorrect instructions or access restrictions) We may charge You for resulting costs including but not limited to storage, re-delivery and insurance.

b) Subject to clause 2.2a) of this Appendix and clause 23 (Force Majeure) Our liability for non-delivery is limited to:

(i) redelivery at no extra cost;

(ii) replacement of undelivered Goods; or

(iii) issuance of a credit note equal to the invoice value (net of VAT) of the undelivered.

c) For paid timed deliveries made late due to Our fault, any refund that We may offer shall be limited to the difference between the timed delivery charge and the standard delivery charge, for example, if a pre-9am delivery costs £10 and standard next day delivery costs £6, the maximum refund we may offer is the difference of £4.

2.3. Acceptance Criteria.

a) You shall ensure suitable arrangements are in place to accept delivery.

b) If You or an End User request assistance beyond agreed delivery (for example, unloading assistance) We exclude liability for any resulting loss, damage or injury.

c) On delivery, You or the End User must check quantities and external packaging for damage or tampering.

d) Delivery may be evidenced by signature or photographic/ scan records and We may rely on acceptance by any person reasonably appearing to have authority.

2.4. Passing of Risk.

a) For instalment deliveries, risk passes on delivery of each instalment.

b) Risk in the Goods passes from Us to You on collection from Our premises or delivery to the agreed address.

2.5. Overshipment.

You must notify Us of any Overshipment within two (2) working days of delivery. Failure to do so shall constitute acceptance of the Goods and an invoice shall be raised accordingly by Us to You for the overage in accordance with Section 30 (3) of the Sales of Goods Act 1979.

2.6. Undershipment.

a) You must notify Us if there is a shortage within two (2) working days of delivery.

b) If We confirm an error by Us (for example, Goods were not despatched) We shall either supply the missing Goods subject to stock availability, or In the event that such price shall already have been paid by You to Us or if such price has not been paid, relieve You of all obligation to pay the sum by issuance of a credit note in favour of You in the amount of such price within twenty-eight (28) days of Us receiving Your notification of the shortage.

c) You shall not offset or withhold payment (full or in part) of any sums due.

2.7. Incorrect Items.

a) You must notify Us of any incorrect Goods supplied within two (2) working days of delivery.

b) Incorrect Goods must be unopened, unused,

APPENDIX B – TRANSIT LOSS AND DAMAGE

1. SCOPE

This Appendix applies to Goods lost or damaged in transit.

2. TRANSIT LOSS & DAMAGE

2.1. Damaged In Transit

a) Where damage is on delivery You (and You shall procure that any End User) must either reject them or clearly mark the POD as 'DAMAGED'. POD's must not be signed as 'unchecked', 'unexamined' or similar.

b) If damaged Goods are accepted, they must be stored safely at the delivery address stated on the invoice and must not be moved. You must report these to Us within seventy-two (72) hours from delivery.

c) Failure to comply with this clause excludes Our liability to replace the Goods or issue a credit.

2.2. Lost In Transit

a) Goods shall not be treated as 'Lost in Transit' until seven (7) days after despatch have elapsed, and Our investigations confirm (or deem) them lost.

b) Claims for alleged Undershipment where the POD has been signed, by You or the End User or delivery driver, or the carrier has supplied photographic evidence of delivering the Goods shall be dealt with under Appendix A, clause 2.6.

2.3. Remedies

a) Our sole liability for proven loss or damage under this Appendix shall be limited to either:

(i) replacement Goods of the same or similar specification and value ; or

(ii) a credit note equal to the invoice value (net of vat) of the lost

or damaged Goods including applicable carriage charges (or part thereof) paid by You.

2.4. Lost in Transit - Credit Note Reversal

a) If Goods previously credited as Lost in Transit are later delivered to or found in the possession of You or an End User, You must notify us immediately. We may reverse any credit note and:

(i) re-invoice the Goods if You retain them; or

(ii) Require You to return them at Your cost and risk, provided they are unopened, unused and in original packaging.

If the Goods are not returned in that condition the credit note may not be reversed,

APPENDIX C – DEAD ON ARRIVAL (DOA) & WARRANTY PROCEDURE

1. SCOPE

This Appendix applies to all DOA and warranty claims relating to Goods which develop a potential fault. All claims shall be handled in strict accordance with the applicable vendor or supplier DOA and warranty procedures, which We, You and / or any End User shall comply with.

2. DOA AND WARRANTY HANDLING MODELS

DOA and Warranty claims shall be managed in accordance with the relevant vendor or supplier requirements as either:

a) Vendor/Supplier Direct – the vendor or supplier deals directly with the Buyer and/or End User;

b) Hybrid – the vendor/supplier and Seller each manage specified stages of the process; or

c) Seller Direct – where authorised, the Seller processes claims on the vendor's behalf.

3. WARRANTY PROCEDURE

3.1. Fault Reporting

a) Suspected faults must be reported using the procedure published on Our Website (

<https://store.midwich.com/services/returns>) or, if none is available, by contacting Us directly.

b) You must provide all information reasonably required to assess the claim, including date of purchase, where it was purchased from (if you have to deal directly with vendor/supplier), model number / partcode, invoice number, serial number/s (if applicable), fault description, Goods location, contact details

and proof of purchase.

c) Claims may be rejected where the Goods are outside the applicable DOA/Warranty period, the fault is excluded, or the Goods are found to be No Fault Found ("NFF"), for example, user error.

3.2. Return Authorisation

a) Approved returns will usually be issued with a reference number, which must be quoted in all correspondence.

b) Where multiple reference numbers are issued, all must be quoted.

c) A reference number does not guarantee credit, replacement or repair.

3.3. Replacements

a) Where We are authorised to exchange Goods, You must obtain Our prior written approval.

b) Subject to availability, We shall despatch replacement Goods at Our cost to the original delivery address, raise a new invoice on Your account for the same Goods at the same price, and credit the original invoice upon successful completion of the return.

3.4. Packaging

Unless We agree otherwise in Writing, returned Goods must:

a) be in original manufacturer packaging;

b) undefaced;

c) adequately protected for transport;

d) include all standard accessories and literature.

Failure to comply may invalidate the claim and We shall have no liability for resulting loss or damage.

3.5. Collection

a) For mainland UK deliveries, We shall arrange collection from the original delivery address at Our cost.

b) For deliveries outside mainland UK where You were the original Exporter of Record, You shall re-import the Goods to the UK at Your sole cost and risk, after which We shall collect them from the location specified by You to Us.

c) We accept no liability for any unauthorised or incorrectly returned Goods.

3.6. Testing /No Fault Found

a) We and/or the vendor/supplier reserve the right to test returned Goods to verify the fault.

b) If a fault is confirmed, We shall, in the event that such price shall already have been paid by You to Us or if such price has not been paid, relieve You of all obligation to pay the sum by issuance of a credit note in favour of You in the amount of such price within twenty-eight (28) days of receipt of the expected Goods.

c) Goods found to be NFF shall be rejected, no credit issued, and You must arrange collection within fourteen (14) days from Our premises or the relevant manufacturer's premises.

d) Uncollected Goods may be disposed of by Us at Your cost and without compensation.

APPENDIX D – NON-VISIBLE DAMAGE

1. WHAT THIS APPENDIX COVERS

- 1.1. This Appendix applies to damage not apparent on delivery to the agreed delivery address.
- 1.2. Visible damage on delivery shall be dealt with under Appendix B.

2. CLAIMS PROCEDURE

- 2.1. To assess a non-visible damage claim, You must:
- a) notify Us within seventy-two (72) hours of delivery. Claims must be submitted to Your dedicated ACE contact or by email

- ace@midwich.com.
- b) not move, use or install (or attempt to install) the Goods; and
- c) provide clear photographs of:
- (i) the front, back, sides and top of the box;
- (ii) the damage (including screen turned on and off, where applicable); and
- (iii) the serial numbers on the box and the Goods, where applicable.
- We shall investigate and notify you of the outcome within

- fourteen (14) days.
- 2.2. If the claim is upheld, Our sole liability shall be to either replace the affected Goods with the same product/s (subject to stock availability) or issue a credit for their value. We shall have no liability for consequential or other losses.
3. NON-PAYMENT
- 3.1. Your payment obligations shall not be suspended or delayed pending investigation of a non-visible damage claim.

APPENDIX E – RETURNING UNWANTED OR INCORRECTLY ORDERED

1. SCOPE

This Appendix applies to return requests not covered by another Appendix, including unwanted or incorrectly ordered Goods and Goods supplied by Us in error. Any deviation to this Appendix requires Our prior written approval.

2. UNWANTED OR INCORRECTLY ORDERED GOODS

- 2.1. Time Limit. Return requests must be made within thirty (30) days of the date invoice for the Goods in question.
- 2.2. Exclusions. End-of-Life (EOL), graded, Custom Build Products and Special-Order Products are non-returnable.
- 2.3. Minimum Value. Returns will not be accepted where the invoiced value of the item is one-hundred pounds (£100) or less, net of any applicable VAT except for;
- (a) proven Lost or Damaged in Transit Items (Appendix B) or;
- (b) proven Goods supplied by Us in error (clause 3).
- 2.4. Condition. Goods approved for return must be unused, undamaged, unmarked, in original condition and not have been

- installed (or show signs of attempted installation).
- 2.5. Costs and Charges. You shall pay all return, transport and insurance costs and a restocking fee of fifteen percent (15%) of the original invoice value, net of VAT.
- 2.6. Accepted Returns. If Goods are received in the required condition, We shall issue a credit note to You equal to the original invoice of the returned Goods,(net of VAT), less the Restocking Fee and any costs incurred by Us.
- 2.7. Rejected Returns. If Goods are not in the required condition:
- a) the return shall be rejected and no credit note issued; and
- b) You must collect the Goods within fourteen (14) days of notice of rejection, at Your own cost and risk.
- Uncollected Goods may be disposed of by Us at Your cost.

3. GOODS RETURNED DUE TO OUR ERROR

- 3.1.. Time Limit. Returns requests must be made within thirty (30) days of the invoice date.
- 3.2. Condition. Goods must be unopened, unused in original

- packaging with all accessories etc.
- 3.3. Accepted Returns. If the Goods are received in the required condition, We shall issue a credit note to You equal to the original invoice value of the returned Goods (net of VAT).
- 3.4. Rejected Returns. If the Goods are not in the required condition:
- a) the return will be rejected and no credit issued;
- b) and You must collect the Goods within fourteen (14) days of Our notice of rejection, Your own cost and risk.
- If We agree to retain non-A1 Goods, You shall pay all resulting costs and losses.
- Uncollected Goods may be disposed of by Us and all related costs shall be payable by You.

APPENDIX F – SPECIAL BIDS

1. WHAT THIS APPENDIX COVERS

This Appendix applies to Special Bids.

2. TERMS & CONDITIONS

- 2.1. Where Special Bids are made available to You, you shall:
- a) comply fully with all applicable terms notified by Us and the relevant vendors or suppliers ("Special Bid Terms"); and
- b) indemnify Us against all losses, charges and supplier claims arising from Your non- compliance with the Special Bid Terms; and

- c) pay any applicable service fees relating to the pass-through of Special Bids and other supplier driven benefits You may receive, including marketing funds, price protection and individual rebates. The pass-through of such benefits is conditional upon Our receipt of the relevant amounts from the vendor or supplier.
3. FAILURE TO COMPLY WITH SPECIAL BID TERMS
- 3.1. If You fail to comply with any Special Bid terms, We and/ or the relevant vendor or supplier may recover any discounts, rebates or other special pricing granted in connection with the Special Bid. Any resulting invoice issued to You shall be payable immediately.

3. MIDWICH LIMITED SOFTWARE SALE TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these Terms:

“Customer” means the entity purchasing Products from the Supplier (acting as reseller to End User).

“End User” means the ultimate user of the Products.

“Order” means the Supplier’s written acceptance of the Customer’s order.

“Order Form” means the document (electronic or written) setting out the Products, fees and subscription terms agreed between the parties.

“Products” means any software, whether packaged, licensed or provided as a cloud service, and instalments of the Products or any parts of or for them, offered for sale by Midwich “Services” means any Supplier Services or Vendor Services, which may be offered as a product.

“Supplier” means Midwich Ltd, with its registered address of Vines Road, Diss, Norfolk, IP22 4YT, company number 01436289.

“Vendor” shall mean third-party manufacturer, publisher or service provider of the Products and Services.

These Terms apply to all Products supplied by the Supplier and shall prevail over any conflicting terms unless agreed in writing.

The Seller’s Privacy Policy and Website Terms of Use are incorporated into these Terms by reference.

The Buyer’s use of the Products may also be subject to additional product-specific terms and conditions.

2. ORDER OF PRECEDENCE

2.1 This clause applies to and governs the interpretation of this Agreement as a whole.

2.2 In the event of any conflict between the following documents, they shall prevail in the following order:

- (a) the Order Form;
- (b) any applicable third-party licence terms; and
- (c) these Terms.

2.3 Nothing in this Agreement shall limit or override any applicable third-party licence terms governing the use of the Products.

3. LICENCE GRANT

3.1 Subject to payment of the applicable fees, the Supplier grants the Customer a non-exclusive, non-transferable licence (except as permitted in this clause) to:

- market, distribute and resell the Products to End Users; and
- grant End User rights to use the Products in accordance with third-party licence terms.

3.2 The Customer shall ensure that each End User is bound by, and complies with, all applicable licence terms (including any third-party EULAs).

3.3 The Customer shall not, and shall not permit any End User to use the Products other than in accordance with:

- a) these Terms; and
 - b) the applicable order form; and
 - c) any applicable licence terms.
- 3.4. Except as expressly set out in this Agreement, no rights are granted to the Customer to use the Products for its own internal business purposes.

3.5. Licences are provided for the minimum term as specified / selected in the applicable Order Form and shall automatically renew in accordance with clause 7.1.

4. LICENCE RESTRICTIONS

4.1 The Customer shall not, and shall procure that End Users do not:

- a) copy the Products (except as permitted for backup), or modify, adapt or make derivative works;
- b) reverse engineer, decompile or disassemble the Products except to the extent such restriction is prohibited by applicable law;
- c) distribute, sublicense or otherwise make the Products available to any third-party except as expressly permitted under clause 3;
- d) access or use the Products in breach of applicable law or third party terms.
- e) circumvent or attempt to circumvent any security, licence control or access restrictions.
- f) use the Products in breach of applicable law or any applicable third-party licence terms.

5. DELIVERY AND ACCEPTANCE

5.1 Products shall be deemed delivered upon the Customer’s Order being processed, and delivery shall be satisfied by the provision or activation of licence entitlements, whether or not separately acknowledged by the Supplier.

6. FEES AND PAYMENT

6.1 Fees are as stated in the Order Form and are exclusive of VAT.

6.2. Invoices are payable within 30 days of invoice date.

6.3. The Customer shall not withhold, deduct or set off any payments.

6.4. If the Customer fails to make payment on or by the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

- suspend any further deliveries to the Customer and place the Customer’s account on hold;

- cancel any outstanding orders from the Customer;
- charge interest (both before and after any judgment) on the amount unpaid, at the rate of four percent (4%) per annum above the Bank of England’s base rate; and
- recover all reasonable costs of collection.

7. SUBSCRIPTION TERMS, AUTO-RENEWALS, CHANGES TO SUBSCRIPTION QUANTITIES

7.1 Subscriptions automatically renew for successive periods equal to the initial term unless either party gives at least 14 days written notice prior to the Subscription term end date. Notice must be sent to cloudukorders@midwich.com

If notice is late, the subscription will automatically renew and the Customer shall be liable for payment of the renewal. End User cancellation or non-payment does not cancel the Reseller’s renewal obligation to the Supplier unless the Supplier agrees otherwise in writing.

7.2. Renewal Fees shall be:

- a) as set out in the Order Form; or
- b) if not specified, the Supplier’s then-current reseller pricing for the relevant Products (including any Partner price changes passed through);

7.3. The Vendor may update renewal fees or migrate the subscription to a nearest equivalent offering where necessary.

7.4. Additional licences, users, or capacity added during a Subscription Term may be:

- invoiced immediately on a prorated basis; or
- added to the next renewal invoice.

7.5. Reductions in subscription quantities shall only take effect at renewal, and do not entitle the Customer to refunds or credits.

8. THIRD-PARTY TERMS AND TITLE

8.1. The Products may be subject to third-party licence terms (including EULAs).

8.2. The Customer shall ensure compliance with such terms.

8.3. Without prejudice to clause 2 (Order of Precedence), where the Products are subject to third-party licence terms, those terms shall govern the use of the Products and shall prevail in the event of any inconsistency relating to such use.

8.4. The Supplier shall have no liability for failures, interruptions, or changes caused by third-party licensors.

9. TITLE

Title to the Products remains with the Supplier and / or its licensors at all times.

10. INTELLECTUAL PROPERTY

10.1. All intellectual property rights in the Products remain vested in the Supplier or its licensors.

10.2. No rights are granted other than those expressly set out in these terms.

11. WARRANTIES AND DISCLAIMERS

11.1. The Supplier warrants that it has the right to supply the Products.

11.2. Except as expressly set out in this Agreement, the Products are provided “as is” and the Supplier gives no warranties, whether express or implied, including as to satisfactory quality, fitness for purpose, or uninterrupted or error-free operation.

11.3. The Supplier’s sole obligation for non-conformity is to use reasonable endeavours to

procure a correction from the relevant Vendor (where available), provided the Customer notifies the Supplier of the non-conformity within thirty (30) days of the date of delivery.

11.4. All warranties, conditions and terms implied by statute or common law are excluded to the fullest extent permitted by law, including those relating to satisfactory quality and fitness for purpose.

12. INTELLECTUAL PROPERTY INDEMNITY

12.1 Subject to clause 13, the Supplier shall indemnify the Customer against third-party claims that the Products infringe intellectual property rights, provided that the Customer:

- a) promptly notifies the Supplier;
 - b) the Supplier has sole control of the defence and settlement; and
 - c) provides reasonable assistance.
- 12.2. The Customer shall not admit any liability or settle any claim without the Supplier’s prior written consent.
- 12.3. The indemnity shall not apply to claims arising from:
- a) use of the Products outside the terms of this Agreement or applicable documentation;
 - b) unauthorised modification of the Products;
 - c) combination with non-approved products;
 - d) use of the Software in accordance with instructions provided by the Customer or End Users;
 - e) continued use after notice of an alleged infringement;
 - f) breach of applicable third-party terms.

12.4 Where a claim arises, the Supplier may, at its option:

- procure the right to continue use;
- replace or modify the Products; or
- terminate the affected Products and refund any unused fees.

12.5. This clause sets out the Customer’s sole and exclusive

remedy for any intellectual property infringement claims.

12.6. The Supplier’s liability under this clause is subject to:

- a) clause 13; and
- b) shall not exceed and is limited to the extent the Supplier is entitled to recover from the relevant third-party licensor.

13. LIMITATION OF LIABILITY

13.1 Neither party excludes liability for:

- a) death or personal injury caused by negligence;
- b) fraud or fraudulent misrepresentations; or
- c) any liability that cannot be excluded by law.

13.2. Subject to clause 13.1, the Supplier’s total aggregate liability arising out of or in

connections with this Agreement (including under clause 12 and following termination) shall not exceed the lower of:

- a) £5,000 (or equivalent in local currency); or
- b) 100% of the fees paid by the Customer in the 12 months immediately preceding the event giving rise to the claim.

13.3. The Supplier shall not be liable for indirect or consequential loss including loss of profit, revenue or business.

13.4. The Supplier shall have no liability for:

- a) acts or omissions of third-party licensors; or
- b) the availability, performance, or withdrawal of third-party software.

14. TERM AND TERMINATION

14.1. The Agreement continues for the subscription term.

14.2. Either party may terminate immediately by written notice if:

- the other commits a material breach not remedied within 30 days;
- the other becomes insolvent.

14.3. The Supplier may suspend or terminate where:

- payment is overdue in accordance with clause 6 of this Agreement ;
- the Customer breaches licence terms;
- required by law or third-party licensors.

14.4. Upon termination:

- all outstanding fees become payable.
- All fees are non-cancellable and non-refundable.

14.5. Clauses 11, 12 and 13 shall survive termination of the Agreement.

15. COMPLIANCE AND DATA PROTECTION

15.1. Each party shall comply with applicable laws, including:

- data protection laws;
- export control laws.

15.2. The parties shall comply with any applicable data processing agreement where personal data is processed.

16. AUDIT

The Supplier may, on reasonable notice, audit the Customer’s compliance with licence terms.

17. FORCE MAJEURE

Neither party shall be liable for failure or delay caused by events beyond reasonable control.

18. ASSIGNMENT

The Customer may not assign this Agreement without prior written consent. The Supplier may assign to an affiliate or as part of a business transfer.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and supersedes all prior agreements.

20. VARIATION

No variation shall be effective unless agreed in writing, except that the Supplier may update these Terms for future Orders.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the English courts.

4. SUPPLEMENTAL TERMS & CONDITIONS - RENTAL SERVICES

These terms and conditions (the **"Supplemental Terms"**) relate to rental services and are in addition to our Standard Terms and Conditions of Sale. By accepting these Supplemental Terms, you agree to be bound by them. If you do not agree with these Supplemental Terms, you are unable to comply with these Supplemental Terms, or you do not have the power, right or authority to act on behalf of or bind your company, then you must not proceed with your order.

1. DEFINITIONS & INTERPRETATION

In these Conditions the following words shall have the following meanings:

- **"Carrier"** means the person, firm or organisation and its agents carrying the Equipment or collecting the Equipment on our behalf under any contract of carriage.

- **"Charges"** means our charges for renting the Equipment to you as set out in the Order Confirmation.

- **"Collection"** means our collection of the - Equipment from you.

- **"Contract"** means our Standard Terms and Conditions of Supply for the purchase and sale of the Goods plus these supplemental Terms and Conditions which is governed by these Conditions and, if applicable, any further supplemental terms (as advised by the company from time to time) and which may be varied only by a writing signed by the duly authorised representatives of the Buyer and Seller respectively.

- **"Delivery"** means our delivery of the Equipment to the Premises or when you collect the Equipment from us.

- **"DOA"** means Dead or Defective on Arrival;

- **"Documentation"** means all manuals and instructions accompanying the Equipment including but not limited to manufacturer's operating instructions.

- **"Equipment"** means all or any equipment (including any part of parts of them) that we agree to rent to you as set out in the Order Confirmation.

- **"Force Majeure"** means any event outside of our reasonable control, including but not limited to, acts of God, war, terrorism, flood, fire, labour disputes, supplier and/or subcontractor delays, technology or telecommunication failures, strikes, lockouts, riots, civil commotion, and governmental actions.

- **"Location"** means the place where we have agreed you may store and use the Equipment as set out in the Order Confirmation. The Equipment may be moved or used at other locations, but you must provide us with the Equipment's current location upon request at any time during the hire period. You remain fully responsible for the Equipment, regardless of its location.

- **"Order"** means your request for us to supply you with Equipment for the Rental Period in consideration of the Charges, which you make by requesting the Equipment in writing (whether electronically or otherwise) and/or orally.

- **"Order Confirmation"** means when we confirm our acceptance of your Order in writing (whether electronically or otherwise) by sending you a Rental Quotation Form.

- **"Premises"** means the delivery address you have stipulated in the Order.

- **"Rental Delivery Note"** means a form to be signed by an authorised representative of both parties confirming Delivery of the Equipment.

- **"Rental Period"** means the period of time for which you will rent the Equipment from us as set out in the Order Confirmation.

- **"Rental Return Note"** means a form to be signed by a representative of both parties to confirm return of the Equipment.

- **"Supplemental Terms"** means this document specifying the additional terms and conditions applicable to rental equipment.

- **"We", "us" and "our"** means Midwich Ltd a company incorporated in England and Wales (company number 01436289) whose registered office is Vines Rd, Diss, Norfolk, IP22 4YT and is branded as PSCo or Dry Hire Lighting.

- **"Website"** means our websites located at

www.midwich.com, www.pscoco.uk or www.dryhirelighting.co.uk

- **"You", "your"** means the person, firm or organisation that places an Order with us.

2. ORDER ACCEPTANCE & CANCELLATIONS

2.1 Any Order you place will constitute an offer capable of acceptance by us. We will not be obliged to accept an Order and we reserve the right to refuse an Order without giving any reason.

2.2 You may cancel an Order at any time prior to commencement of the Rental Period (which for the avoidance of doubt shall be deemed to begin when the Equipment is ready for collection or delivery) by giving us written notice. You agree to pay us a reasonable administration charge, in addition to a proportion of the Charges as calculated in accordance with Condition 2.3.

2.3 If you cancel an Order, we reserve the right to charge you:

2.3.1 25% of the Charges if you cancel within 2 weeks of the commencement of the Rental Period;

2.3.2 50% of the Charges if you cancel within 7 days of the commencement of the Rental Period;

2.3.3 100% of the Charges if you cancel within 24 hours of the commencement of the Rental Period.

2.4 Each Order if accepted by us shall constitute a separate severable contract.

2.5 We shall provide the Equipment to you subject to and in accordance with these Conditions. We reserve the right to amend these Conditions from time to time, any such changes are effective immediately from the time they are notified to you.

3. EQUIPMENT

3.1 We endeavour to provide the equipment in line with your requirements. All Equipment will be subject to availability, and we reserve the right to offer substitute Equipment with equipment of no lesser functionality with notice.

3.2 The Equipment will not necessarily be brand new or unused and may have been previously rented out to our other customers. Accordingly, we do not warrant that the Equipment will be free from minor defects, including without limitation, minor surface scratches. The presence of minor defects that do not materially affect the operation of the Equipment shall not entitle you to any refund or deductions.

3.3 Any description or pictures of the Equipment on the Website or in promotional material are for information purposes only and are not intended to be 100% accurate.

4. CHARGES

4.1 Unless expressed otherwise, our Charges are exclusive of Delivery and Collection charges, VAT and any similar taxes. All such taxes are payable by you at the prevailing rate and due for payment to us at the same time as our Charges.

4.2 Unless agreed otherwise in writing by us, you agree to pay our Charges in full before Delivery.

4.3 All Charges are payable without any deduction, set off, counterclaim, discount, and abatement or otherwise.

4.4 If you fail to pay any Charges due or you fail to comply with any credit terms agreed in writing up to the date of actual payment, we may, without prejudice to any other right or remedy available to us, charge interest on the amount unpaid from the due date up to the date of actual payment (both before and after Judgment) at the current rate set out under the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

4.5 Notwithstanding condition 4.4, if you fail to pay us any Charges, we may, without prejudice to any other right or remedy available to us, either suspend any Delivery or suspend provision of any services under any other contract between us and/or cancel any other contract between us.

4.6 We reserve the right to increase the Charges at any time before Delivery on notice to you if for any reason the cost to us of renting the Equipment increases between the Order Confirmation and Delivery.

5. RENTAL PERIOD

5.1 The Contract comes into force when we send you an Order Confirmation.

5.2 The Rental Period shall commence on Delivery of the Equipment or on collection of the Equipment by you.

5.3 We may at any time and on seven (7) days' written notice to you request that you return the Equipment or at our election allow us and our Carrier facilities to collect the Equipment. You agree to return the Equipment in good working order together with all Documentation.

5.4 On or before expiry of the Rental Period, you may request an extension of the Rental Period by placing a further Order. Any extension to the Rental Period is in our sole discretion and shall be subject to these Conditions. You agree to pay any additional Charges as set out in a further Order Confirmation.

5.5 If the Equipment is returned late, you agree to pay additional Charges calculated on our standard rate for the Equipment, our additional costs for aborted collection and our reasonable administration costs.

6. DELIVERY AND COLLECTION

6.1 Any indication we may give as to the time of Delivery and/or Collection will be a good faith estimate only. Whilst we will use all reasonable endeavours to effect Delivery and/or Collection at the time we have estimated, time of Delivery and/or Collection is not of the essence.

6.2 You agree to ensure that the required access to the Premises is provided upon the agreed date for Delivery. You agree to ensure that you have an authorised representative present on Delivery and/or Collection. If you fail to have an authorised representative present and/or fail to sign the Rental Delivery Note, you will be deemed to have accepted the Equipment on Delivery.

6.3 You acknowledge that our ability to perform our obligations under the Contract is dependent on your full and timely cooperation with us. If on any date that the parties have agreed in advance, you are away from the Premises or you fail to grant us access to the Premises or to such facilities at the Premises as we may reasonably require to deliver or collect the Equipment, we shall be entitled to charge you (as appropriate) an additional reasonable sum to cover our call-out, storage and delivery costs.

6.4 We reserve the right to affect delivery by instalment in which case each instalment will be a separate contract.

6.5 Subject to condition 6.3, should you wish to cancel or reschedule any order, you must immediately notify us in writing, and you agree to pay our reasonable storage and administration charges in addition, if appropriate, to the Charges.

6.6 Unless agreed otherwise in writing, Delivery shall not be deemed to include installation of the Equipment.

7. RISK AND INSURANCE

7.1 Risk of damage to or loss of Equipment shall pass to you on Delivery and remain with you throughout the Rental Period. You agree to insure the Equipment throughout the Rental Period for its full market replacement value and you agree to note our

interest on such insurance cover. On request, you will supply us with written confirmation of such insurance cover.

7.2 Risk will only pass back to us when the Equipment is received by us and a Rental Return Note has been signed by an authorised representative of both parties. You acknowledge and agree that we will test the returned Equipment and notify you within 72 hours of any additional Charges that have become due arising from loss or damage.

7.3 In the event that the Equipment is broken, damaged, lost or stolen whilst in your possession, you agree to pay us promptly on demand the Equipment's full market repair or replacement value plus our administration costs for repairing damaged or replacing irreparably damaged, lost, or stolen Equipment. You also agree to pay us, at our sole option for:

7.3.1 the ongoing Charges to be calculated on a pro-rated daily basis from the end of the Rental Period until such time as the Equipment is repaired or replaced by us; or

7.3.2 any loss of earnings that we have incurred as a result of not having the Equipment available to rent.

7.4 We will use all reasonable endeavours to repair or replace such Equipment as rapidly as is practicable.

7.5 You grant us, our agents, and employees an irrevocable licence at any time to enter any location where the Equipment is or may be stored in order to inspect it, or where your right to possession has terminated, to recover the Equipment.

8. TITLE

8.1 Title in the Equipment shall remain vested in us at all times.

8.2 You agree:

8.2.1 to hold the Equipment on a fiduciary basis as our bailee; and

8.2.2 not to remove, destroy or obscure any labelling on the Equipment that identifies that the Equipment is our property

9. USE OF THE EQUIPMENT

9.1 You acknowledge and agree:

9.1.1 to use the Equipment only in accordance with the Documentation and such instructions and recommendations as may be issued by the manufacturer or us from time to time;

9.1.2 not to modify the Equipment in any way;

9.1.3 not to use the Equipment for any purpose for which it is not designed;

9.1.4 to keep the Equipment secure and take all reasonable precautions to lock it securely when your employees or agents are not using it;

9.1.5 to install the Equipment in a suitable environment or, in the event of installation by us, not to move, without obtaining our prior written consent, the Equipment from the location where we have installed it;

9.1.6 not to allow any person other than us or any of our contractors to adjust, maintain, repair, replace or remove any part of the Equipment;

9.1.7 to ensure that our representatives have full and free access to the Equipment and to any records of its use kept by you to enable us to perform our duties;

9.1.8 to provide us with such information concerning the Equipment, your application, use, location and environment as we may reasonably request to enable us to carry out our duties; and

9.1.9 to take all such steps as may be necessary to ensure the safety of any of our representatives who visit any location that the Equipment is stored or installed at.

9.2 You warrant that you and your employees, contractors and agents are suitably qualified to use the Equipment. We will not be liable (in contract tort or otherwise) for any loss or damage arising from your or any third party's failure to use the Equipment in accordance with Condition 9.1.

9.3 You agree to notify us immediately in the event any part of the Equipment is worn or damaged and agree not to allow any third party other than us to undertake any necessary repair or replacement works to the Equipment. In the event of any notifiable damage, you agree to cease using the Equipment immediately. You agree to notify us immediately if any other equipment or third party is damaged by the Equipment or if the Equipment is lost or stolen.

9.4 You will not hold yourself out as the owner of the Equipment, nor will you sell, lease, rent, charge, or otherwise interfere with the ownership rights or right to the return of the Equipment as set out in Condition 5.3.

10. YOUR OBLIGATIONS

10.1 On expiry of the Rental Period, you agree to return the Equipment to us as per the Order Confirmation and in good working order. If you fail to do this, you agree to reimburse us our reasonable costs for reinstating the Equipment into good working order.

10.2 You agree to keep us fully and effectively indemnified against any breach by you of these Conditions.

10.3 If at any time you wish to purchase the Equipment, please refer to the terms and conditions on our website. However, we will not be obliged to sell the Equipment to you and we reserve the right to refuse to do so without giving a reason.

11. OUR OBLIGATIONS

11.1 We warrant that the Equipment will meet its specification as set out in the Documentation but we do not warrant that the Equipment will be fit for a particular purpose.

11.2 Subject to Condition 11.1 above, all warranties, conditions

and other terms implied by statute of common law are to the fullest event by law excluded from the Contract.

12. REJECTION AND RETURN

12.1 If you sign a Rental Delivery Note and/or if you take Delivery of the Equipment you will be deemed to have examined the Equipment and accepted that the Equipment is in good working order.

12.2 If the Equipment appears to be visibly damaged ("DOA") or does not comply with the Order Confirmation, you may reject the Equipment on Delivery. You must notify the Carrier immediately and you must note any issues on the Rental Delivery Note. If you fail to notify the Carrier at the time of Delivery you will be deemed to have accepted the Equipment.

13. SOFTWARE

13.1 Where the Equipment incorporates software, you agree to comply fully with terms of any software licence that is supplied with the Equipment. Failure to do so may lead to such software licence being revoked by the owner of the software.

13.2 Where the Equipment incorporates software belonging to a third party and such software fails to conform to its specification or is otherwise defective, our sole liability in respect of the software will be to obtain a corrected version of such

software from that third party for your use.

14. SUSPENSION AND TERMINATION

14.1 We may, in our absolute discretion, suspend any Delivery and/or terminate any Contract immediately on notice to you if:

14.1.1 You are unable to pay your debts, or you become insolvent, or you are subject to a resolution for your liquidation, administration, winding up or dissolution, or you have a receiver or administrator appointed over all or any of your assets or business, or if you cease or threaten to cease to carry on business, or you are subject to any equivalent or similar event or process in any jurisdiction; or

14.1.2 You are in material breach of any of these Conditions and (if such breach is remediable) you fail to remedy such breach within thirty (30) days of being notified to do so; or

14.1.3 We deem that the Equipment is being used in an unsuitable environment such as is likely to cause damage to the Equipment; or

14.1.4 You are in default with regards to the settlement of any and all Charges on any contracts, whether partly or wholly unfulfilled; or

14.1.5 We are unable to effect Delivery due to an event of Force Majeure.

14.2 Termination of any Contract between us shall not affect your liability to pay us any Charges due, such Charges become immediately due on termination. If on termination of any Contract we owe you any sums, we reserve the right to set off against such sums any outstanding Charges that you owe us.

14.3 In the event of termination, you agree that you will immediately (within a maximum of 24 hours from notification by us) return all Equipment, packaging, and Documentation at your own expense (except where Condition 14.2 applies, whereby we will arrange Collection at our expense), and in the same condition, subject to reasonable wear and tear, as when Delivery took place. You agree that where the Equipment is not returned within 24 hours, you will grant us a right of access to recover the Equipment ourselves at your expense.