

**COBHAM SATCOM  
GENERAL TERMS AND CONDITIONS FOR THE  
SALE OF GOODS AND SUPPLY OF SERVICES**

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**PART A - GENERAL**

**1. Formation**

- 1.1 These Conditions apply to Contracts made between the Supplier and the Buyer.
- 1.2 These Conditions are the only terms and conditions upon which Supplier will supply goods and services to Buyer and will apply to the exclusion of all other terms and conditions, including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by custom, practice or course of dealing. In the event of a conflict or inconsistency between these Conditions and the Supplier written acceptance of order, the terms set out in the Supplier written acceptance of order will prevail.
- 1.3 Each order or acceptance of a quotation for Works will be deemed to be an offer by Buyer to purchase Works upon these Conditions. Supplier may acknowledge receipt of the order to Buyer, but this shall not form an acceptance of the order. The Contract is only formed when the order is accepted by Supplier (by way of a written acceptance of order) or as set out in clause 1.5.
- 1.4 Any quotation made by Supplier is valid for a period of thirty days only from its date (or such other period if specified in such quotation), provided Supplier has not previously withdrawn it. The acceptance of a quotation does not create a contract. A contract will only be created on written acceptance of order by Supplier as set out in clause 1.3 or as set out in clause 1.5.
- 1.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of Buyer's acceptance of these Conditions and formation of a Contract on these Conditions, even in cases where there has been no written acceptance of order by Supplier in terms of clause 1.3.
- 1.6 Except as set out in the Contract, these Conditions may only be varied or amended in writing, signed by a duly authorised officer of each Party.

**2. Miscellaneous**

- 2.1 If any provision of the Contract is found by any court or tribunal of competent jurisdiction to be illegal, invalid or unenforceable then that provision will be severed from the Contract but this will not affect any other provisions of the Contract which will remain in full force and effect.
- 2.2 Any failure or delay by Supplier to exercise any right, power or remedy will not operate as a waiver of it.
- 2.3 Supplier may assign or subcontract all or any of its rights or obligations under the Contract.
- 2.4 The Contract is personal to Buyer which may not assign or subcontract all or any of its rights or obligations under the Contract without Supplier's prior written consent.
- 2.5 The Contract and any NDA contain all the terms which Supplier and Buyer have agreed in relation to the Works and supersede any prior written or oral agreements, representations or understandings between the Parties relating to such Works. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

**3. Notices**

- 3.1 Any notice must be in writing addressed to the recipient (if Supplier) at its registered office or principal place of business or (if Buyer) to the address on its purchase order or address on Supplier's written acknowledgment of order or sent to such other address or person as the recipient may have notified the sender in writing.
- 3.2 A notice will be deemed to have been duly served:
  - 3.2.1 if delivered by hand or commercial courier, at the time of delivery;
  - 3.2.2 if delivered by email, the time the email was received;
  - 3.2.3 if delivered by post (airmail if overseas) 10 days after being posted.

**4. Invoicing and payment**

- 4.1 Supplier will invoice Buyer for the Goods or Services as set out in Supplier's written acceptance of order or in Part D of these Conditions and immediately after Supplier's written acceptance of order unless credit terms are expressly set out in Supplier's written acceptance of order or Part D of these Conditions, in which event Supplier will invoice Buyer on Delivery of the Goods or achievement of the relevant payment milestone, as applicable.
- 4.2 Production of the Goods or commencement of the Services and any period agreed for Delivery of the Goods or performance of the Services will not begin until payment has been received in full in cleared funds, unless stated otherwise in the Supplier's written acceptance of order or Part D of these Conditions.
- 4.3 Payment by Buyer will be made in the currency stated in Supplier's written acceptance of order. Payment must be made by electronic transfer to the bank account details stated on the Supplier's invoice for the relevant Goods or Services within net 30 days of the date of Supplier's invoice or as stated in Part D of these Conditions.
- 4.4 All sums payable to Supplier under the Contract will become due immediately upon termination of the Contract.
- 4.5 All payments to be made by Buyer under the Contract will be made in full without any set-off, counterclaim or condition and without any deduction or withholding for or on account of any taxes, levies, duties, charges or fees of any nature, unless Buyer is required by law to make any such deduction or withholding. Where Buyer is so required, Buyer will increase the amount payable by such sum as will ensure that, after the deduction or withholding has been made, the Supplier receives a net amount equal to the full amount that it would have received had no such deduction or withholding been required.
- 4.6 If Buyer fails to pay for the Goods and/or Services on the due date for payment, Supplier is entitled to charge interest pursuant to applicable law from the due date for payment until payment in full and both before and after judgment.

**5. Confidentiality**

- 5.1 The Receiving Party will keep confidential any and all Confidential Information that it may acquire from the Disclosing Party and agrees that:

5.1.1 it will only use such Confidential Information to perform its obligations and exercise its rights under these Conditions (the "Purpose"); and

5.1.2 it will only disclose such Confidential Information to its employees, officers or representatives who need to know the information for the Purpose, and agrees that it is responsible for any breach of this clause 5.1 by any of them.

5.2 The obligations in clause 5.1 will not apply where disclosure is required to comply with an order of a court of competent jurisdiction, but only to the extent stated in such order.

5.3 Copies or reproductions of the Confidential Information shall not be made except to the extent reasonably necessary for the Purpose and all copies and reproductions made shall be the property of the Disclosing Party. All Confidential Information and all copies and reproductions thereof shall be returned to Disclosing Party or certified as destroyed by the Receiving Party within thirty days of receipt of a written request from the Disclosing Party or otherwise on completion or earlier termination of the Contract.

5.4 Nothing contained in the Contract shall be construed as overriding or prejudicing any Trade Controls applicable to any part of the Confidential Information and the Disclosing Party will declare in writing when such rules are applicable. Where Trade Controls apply, a Receiving Party shall not in any way transfer Confidential Information outside of the country in which it received it or to foreign persons, businesses or governments without the prior written consent of the Disclosing Party.

## 6. Intellectual Property

6.1 Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under the Contract in any Goods or arising out of the performance of any Services shall vest in and be the exclusive property of Supplier, and Buyer hereby assigns title to and all present and future rights in such Intellectual Property Rights to Supplier.

6.2 No right or licence is granted to Buyer in respect of the existing or future Intellectual Property Rights of Supplier, except the right to use the Goods or resell the Goods (excluding the Software which may only be sub-licensed to the extent permitted in these Conditions) or use the Services, in each case in Buyer's ordinary course of business and, in the case of the Software, solely for the purpose of the use of the Works.

6.3 Buyer will not allow any trademarks of Supplier or other words or marks applied to the Works to be obliterated, obscured or omitted nor add any additional marks or words without the prior written consent of the Supplier.

6.4 Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, except to the extent required by law.

6.5 If the Software is subject to a separate license agreement between Buyer and Supplier the terms of such separate license agreement shall supersede the terms of any Contract to the extent they explicitly relate to the licensing of such Software.

## 7. Force Majeure

7.1 Supplier will not be in breach of the Contract or otherwise liable to Buyer for any failure to perform or delay in performing its obligations under the Contract due to Force Majeure.

7.2 If Supplier's performance of its obligations under the Contract is affected by Force Majeure it will give written notice to Buyer as soon as reasonably practicable,

specifying the nature and extent of the Force Majeure, and will use its reasonable endeavours to mitigate the effects of the Force Majeure but without being obliged to incur any expenditure.

7.3 If the Force Majeure in question continues for more than 180 days, either Party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 30 days after the date on which the notice is given.

## 8. Termination

8.1 Either Party may terminate the Contract immediately by notice in writing to the other Party if that other Party:

8.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Party in breach fails to remedy such breach within 30 days of a written notice from the Party not in breach, specifying the breach and requiring it to be remedied. The Parties agree that failure to pay any sum due in accordance with the Contract is a material breach of the terms of the Contract; or

8.1.2 is Insolvent or ceases to trade or appears in the reasonable opinion of the other Party likely to cease to trade.

8.2 Supplier may by notice in writing to the Buyer terminate the Contract immediately if Buyer commences the manufacture of any goods which are similar to or may compete with the Goods.

8.3 The termination of the Contract is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination and any terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

8.4 Supplier will be entitled to suspend any deliveries and/or performance otherwise due to occur following a notice specifying a breach under clause 8.1.1, or if Buyer is in breach of clause 12.1 or is in breach under any other agreement between the Parties, until such breach is remedied or the Contract terminates, whichever occurs first.

## 9. Exclusion and Limitation of Liability

9.1 Supplier does not exclude or limit its Liability (if any) to Buyer for any matter for which it would be illegal for the Supplier to exclude or limit or attempt to exclude or limit.

9.2 Except as provided in clause 9.1 and clause 24.2, Supplier's aggregate Liability under each Contract will be limited to the greater of (i) 115% of the amount paid by Buyer to Supplier under that Contract; and (ii) USD10,000.

9.3 Except as provided in clause 9.1, Supplier has no Liability to Buyer for:

9.3.1 any claim arising out of an event which is caused, or contributed to, by the Goods and such event occurs after the commencement of the launch procedure of the vehicle carrying such Goods into space;

9.3.2 loss of profits, loss of business, loss of revenue, loss of goodwill, loss of anticipated earnings or savings, loss of or loss of use of or corruption of any data or software, pure economic loss or any special, indirect, punitive, incidental or consequential loss.

9.4 Except as expressly set out in the Contract, all warranties, conditions and other terms, express or implied, by law, custom, trade usage, course of dealings or otherwise are excluded from the Contract to the fullest extent permitted by law.

9.5 Buyer acknowledges that the above provisions of this clause 9 are reasonable and reflected in the price which would be higher without those provisions, and Buyer will accept such risk and/or insure accordingly.

**10. Law**

The formation, existence, construction, performance and validity of the Contract and any dispute or claim arising out of or in connection with it, including any non-contractual obligations, will be governed by the laws of Denmark (without giving effect to its principles of conflicts of laws). The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**11. Disputes**

11.1 The intent of the Parties is to identify and resolve any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this clause, a Dispute) promptly. Each Party agrees to perform as follows:

11.1.1 to notify the other Party of any Dispute in reasonable detail as soon as possible after any Dispute arises;

11.1.2 to negotiate in good faith to seek to resolve the Dispute; and

11.1.3 if a Dispute is not resolved within thirty days of it arising, either Party shall be entitled to refer to and finally resolve such Dispute by arbitration in Copenhagen conducted in the English language by three arbitrators pursuant to the Rules of Procedure of the DIA (Copenhagen Arbitration) which are deemed to be incorporated by reference into this clause 11, except that unless the Parties agree otherwise, each Party will nominate an arbitrator, and the third arbitrator, who will act as chair of the tribunal, will be chosen by the two arbitrators appointed on behalf of the Parties. If the chair is not chosen and nominated to the DIA for appointment within 30 days of the date of appointment by the DIA of the later of the two Party-nominated arbitrators to be confirmed, the chair will be appointed by the DIA. In no event shall the Tribunal have the right or power to award punitive or exemplary damages.

11.2 Service of any Request for Arbitration made pursuant to this clause shall be by written notice in accordance with Notices in clause 3. This clause 11.2 does not affect any other method of service allowed by law.

11.3 This clause 11 will not prevent a Party from seeking injunctive relief in case of breach of confidentiality obligations or infringement of either Party's Intellectual Property Rights.

**12. Export/Import**

12.1 The Works (including, without limitation, any Software) may be subject Export/Import Laws. Buyer agrees to comply strictly with all Export/Import Laws applicable to the Works. Buyer shall promptly notify Supplier of any authorization requirements under Export/Import Laws that may apply to delivery of the Works to Buyer site(s). Buyer acknowledges and agrees that the Works shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States and/or

the European Union maintains an embargo (collectively, "**Embargoed Countries**"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "**Denied or Restricted Parties**"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of their customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. (or EU as applicable) Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16).

12.2 In accordance with 22 C.F.R. Part 122, any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the U.S. State Department's Directorate of Defense Trade controls. Engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing defense services. Manufacturers who do not engage in exporting must nevertheless register.

12.3 Acceptance of these terms and conditions certifies to the Supplier that the Buyer is in compliance with 22 C.F.R. Part 120 as required and the Buyer's registration will remain valid during the terms of this agreement.

12.4 Further to acceptance, the Buyer further certifies it:  
12.4.1 Understands its obligation to protect EAR or ITAR controlled Goods and Services as data as necessary from unauthorized disclosure or access to foreign person employees or visitors.

12.4.2 In the performance of the Contract, understands its obligation to determine whether it will require the use of third party subcontractors to access any technical data, Goods and Services. If required, the Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

12.5 Buyer will promptly notify Supplier of end-user country and the identity of its client in that country (and if different, the end-user) using the form provided by Supplier within 14 calendar days of submitting its purchase order to Supplier and will provide any required export/import documentation promptly after Supplier's request for the same. Buyer acknowledges that any delay in providing any such information and/or documentation will entitle Supplier to make an equitable adjustment to the charges for the Works and, notwithstanding any payment which may have been received by Supplier for the same, delay production and/or delivery of such Works or cancel the order in the event that such information is not provided within a reasonable time.

12.6 The Parties agree that if a government authorisation is required in respect of the export of any Works, all delivery obligations of the Supplier shall be suspended until such authorisation is obtained. If such authorisation is denied by the relevant authority, or if the export of any Works may breach any applicable Trade Controls,

the delivery and payment obligations of the Parties in respect of the relevant Works shall be cancelled.

### 13. Data Protection and Information Security

13.1 Each Party undertakes to comply with all applicable Data Protection Laws in connection with the performance of its obligations under the Contract.

### 14. Indemnities

14.1 Buyer indemnifies and agrees to keep indemnified and hold harmless Supplier from and against any claims, loss or expense (unless due solely to the negligence or wilful misconduct of the Supplier):

14.1.1 by third parties which are caused by or arise out of or in connection with any act or omission of Supplier carried out pursuant to instructions of Buyer or any breach by Buyer of any terms of the Contract;

14.1.2 by third parties which are not Buyer's customers or users of the Works;

14.1.3 arising from use of the Works other than as specified in Part D of these Conditions (where use is so specified) or other than for the purpose for which those Works were designed;

14.1.4 arising as a result of any breach by Buyer of clause 12 or clause 17 (including by any subcontractor of any equivalent provisions contained in the relevant subcontract); and

14.1.5 as a consequence of the direct or indirect breach of the contract or negligent performance or delay or failure in performance or wilful misconduct by the Buyer, its employees agents or contractors.

### 15. Survival

15.1 The provisions of clauses 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 20~~Error! Reference source not found.~~, 21, 22, 23, 27 and 28 of these Conditions and any Conditions in Part D will survive and remain in force if the Contract is terminated for any reason.

### 16. Anti-Slavery

16.1 Each of the Parties shall at all times:

16.1.1 comply with all applicable Anti-Slavery Laws;

16.1.2 have and maintain its own policies and procedures to ensure compliance with Anti-Slavery Laws, will comply with its Anti-Slavery policies and procedures and will procure that its officers, employees, subcontractors, agents and any other persons who perform services for or on behalf of it in connection with the Works will comply with the same; and

16.1.3 not engage in any activity, practice or conduct that would constitute an offence under section 262a of the Danish Criminal Code if such activity, practice or conduct were carried out in Denmark.

### 17. Bribery and Corruption

17.1 Each Party shall at all times comply with all relevant Anti-Bribery and Corruption Laws and shall not and shall ensure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of that Party in connection with the Contract shall not, engage in any activity, practice or conduct which causes or could cause it or any member of its Group or the other Party or any member of the other party's Group to breach or commit an offence under any relevant Anti-Bribery and Corruption Laws.

17.2 Buyer shall at all times comply, and shall ensure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of

it in connection with the Contract comply, with the Supplier's anti-bribery policy in force from time to time.

17.3 Buyer shall ensure that its subcontractors involved in the performance of the Contract does so only on the basis of a written contract which imposes on that subcontractor terms equivalent to those imposed on the Buyer under this clause 17. Buyer is responsible for the observance of its subcontractors of the terms of the written contract.

17.4 Each Party shall promptly report to the other any request or demand for any improper financial or other advantage of any kind received by a Party, or which a Party gives or intends to give, in each case whether directly or indirectly, in connection with the performance of this Contract.

17.5 Each Party will promptly give the other written notice of any breach of this clause 17.

17.6 Breach of this clause 17 shall be deemed a material breach of the Contract which is not capable of remedy and each Party may exercise its rights to terminate the Contract under clause 8.1.

## PART B – GOODS AND SERVICES

### 18. Quantity and Description of the Goods and Services

18.1 The quantity and description of the Goods and/or Services will be as set out in Supplier's written acceptance of order.

18.2 All samples, drawings, data sheets, descriptive matter, specifications and advertising issued by Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

18.3 Supplier may make any changes to the specification of the Goods and/or Services and the design, materials or finishes of the Goods which:

18.3.1 are required to conform with any applicable

18.3.2 safety or other statutory or regulatory requirements; or

18.3.3 do not materially affect their quality or performance.

### 19. Price of the Goods and Services

19.1 The price for the Goods and/or Services will be the price specified in Supplier's written acceptance of order and except where expressly stated otherwise in such written acceptance of order or Part D of these Conditions, is exclusive of any:

19.1.1 costs of packaging and carriage of the Goods;

19.1.2 cost of any pallets and returnable packaging or containers; and

19.1.3 VAT, which will be added to the sum in question; and

which will be paid for by Buyer in addition to the price for the Goods and/or Services.

19.2 Supplier will be entitled to increase the price of the Goods and/or Services following any changes in the Goods and/or Services made at the request of Buyer and agreed by Supplier or to cover any extra expense as a result of Buyer's instructions or lack of instructions, or to comply with the requirements referred to in clause 18.3.1.

19.3 Supplier reserves the right to increase the price of the Goods and/or Services as a result of the imposition or increase of any tariffs, duties and taxes from time to time.

**20. Delivery of the Goods**

- 20.1 Unless otherwise expressly specified in the Supplier's written acceptance of order,
  - 20.1.1 delivery of the Goods will be made ex-works (EXW) as defined in INCOTERMS 2020; and
  - 20.1.2 Buyer will provide at its expense at the place where delivery of the Goods is to take place adequate and appropriate equipment and manual labour for loading the Goods.
- 20.2 Delivery of the Goods will be made during Supplier's usual business hours.
- 20.3 Supplier will use reasonable endeavours to deliver and perform each of Buyer's orders for the Goods within the time specified in Supplier's written acceptance of order and, if no time is specified, then within a reasonable time, but the time of delivery will not be of the essence and Supplier shall not be deemed to be in breach of contract nor will Supplier have any Liability to Buyer for any delay or failure in delivery for any failure to deliver on a specified date.
- 20.4 If Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of Supplier's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) Supplier may:
  - 20.4.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with this clause and charge Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
  - 20.4.2 following written notice to Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge Buyer for any shortfall below the price under the Contract; and/or
  - 20.4.3 in the event that it is unable to sell the Goods, terminate the Contract and recover any sums payable to the Supplier from the Buyer.

**21. Risk/Ownership**

- 21.1 Risk of damage to or loss of the Goods will pass to Buyer on Delivery.
- 21.2 Ownership of the Goods (excluding Software) will not pass to Buyer until Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 21.2.1 the Goods; and
  - 21.2.2 all other sums which are or which become due to Supplier from Buyer on any account.
- 21.3 Until ownership of the Goods (excluding Software) has passed to Buyer, Buyer must:
  - 21.3.1 hold the Goods on a fiduciary basis as Supplier's bailee;
  - 21.3.2 store the Goods (at no cost to Supplier) separately from all other Goods of Buyer or any third party in such a way that they remain readily identifiable as Supplier's property;
  - 21.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 21.3.4 maintain the Goods in satisfactory condition insured on Supplier's behalf for their full price against all risks to the reasonable satisfaction of Supplier, and will whenever requested by Supplier produce a copy of the policy of insurance.
- 21.4 Buyer may resell the Goods (or, in the case of the Software, sublicense the Software) before ownership has passed to it solely on the following conditions:

- 21.4.1 any sale will be effected in the ordinary course of Buyer's business at full market value and Buyer will account to Supplier accordingly; and
- 21.4.2 any such sale will be a sale of Supplier's property on Buyer's own behalf and Buyer will deal as principal when making such a sale.
- 21.5 Buyer's right to hold the Goods will terminate immediately if any of the circumstances set out in clauses 8.1 or 8.2 occur.
- 21.6 Supplier will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Supplier.
- 21.7 Buyer grants Supplier, its agents and employees for the duration of the Contract and for a period of one year following the duration of the Contract, an irrevocable licence and provision at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 21.8 On termination of the Contract, howsoever caused, Supplier's (but not Buyer's) rights contained in this clause 21 will remain in effect.
- 21.9 Buyer is solely responsible and liable for the proper legal disposal of all materials purchased from Supplier at the end-of-life cycle of such materials.

**22. Resale**

- 22.1 Subject to clause 22.2, Buyer represents and warrants that:
  - 22.1.1 it is an end-user of the Goods or one of its affiliates is an end-user of the Goods or it will re-sell the Goods as part of a significantly more substantial Buyer solution into which the Goods are being integrated ("**Buyer Solution**") or it will re-sell the Goods as spares pursuant to such a Buyer Solution or is a party to a separate written re-seller agreement with Supplier; and
  - 22.1.2 such purchase of Goods by Buyer is not pursuant to any joint endeavours or efforts of any kind (formal or informal) by the Parties; and
  - 22.1.3 such purchase of Goods is subsequent to an unsolicited offer by Buyer and not pursuant to any other form or relationship agreement of any kind (formal or informal, pricing, discount or territory) between the Parties (other than the appointment by Supplier of Buyer as an approved reseller of the Goods.
- 22.2 In the event that Buyer is unable to comply with clause 22.1 then it shall not, without the express prior written approval of Supplier, resell the Goods.

**23. Delays**

- 23.1 Any delay in performance of the Services and/or delivery of the Goods will not entitle Buyer to cancel the Contract unless and until Buyer has given 180 days' written notice (or such longer period specified in the written acceptance of order) to Supplier requiring the performance to be made and Supplier has not fulfilled the performance or delivered within that period. If Buyer cancels the Contract in accordance with this clause then:
  - 23.1.1 Supplier will refund to Buyer any sums which Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and
  - 23.1.2 Buyer will be under no liability to make any further payments under clause 4.2 in respect of that Contract or part of the Contract which has been cancelled.

## 24. Warranty - Goods

- 24.1 Supplier warrants to Buyer that the Goods will, during the Warranty Period, be of satisfactory quality or, where there is a description of the Goods in Part D of these Conditions, will comply with their description in Part D of these Conditions.
- 24.2 Supplier shall, free of charge, and at its option, repair, replace, or refund the purchase price (if paid) or cancel the invoice (if not paid) for Goods which are proved, to the reasonable satisfaction of the Supplier, to not comply with the warranty in clause 24.1 due to defects in material, workmanship or design (other than a design made, furnished or specified by Buyer). Subject to clause 9.1, the provisions of this clause 24.2 are Supplier's sole Liability if the Goods do not comply with the warranty in clause 24.1 and Buyer's sole remedy for breach of this clause 24.2 shall be in damages, and Supplier's Liability for breach of this clause 24.2 shall be limited to the purchase price of the Goods.
- 24.3 Buyer shall notify Supplier of any defect or suspected defect in Goods within 14 days of Delivery where the defect should be apparent on reasonable inspection, or within 14 days of the defect coming to the knowledge of Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event within the Warranty Period.
- 24.4 Supplier will not be in breach of the warranty in clause 24.1 or obliged to comply with clause 24.2 if:
- 24.4.1 Buyer does not comply with its obligations under clause 24.3; or
  - 24.4.2 the defect is attributable to any fair wear and tear relating to the Goods; or
  - 24.4.3 the Goods have been improperly altered in any way or have been subject to misuse or unauthorised repair; or
  - 24.4.4 the Goods have been improperly installed or connected; or
  - 24.4.5 any maintenance requirements relating to the Goods have not been complied with; or
  - 24.4.6 any instructions as to storage of the Goods have not been complied with in all respects.
- 24.5 Supplier's obligation in clause 24.2 is subject to the Goods being returned by Buyer to Supplier carriage paid. Supplier will deliver any repaired or replacement Goods to Buyer at Supplier's own expense.
- 24.6 Any Goods that have been returned to Supplier and for which replacement Goods have been supplied to Buyer, shall belong to the Supplier. The warranty under clause 24.1 will apply to any repaired or replacement Goods supplied by Supplier under clause 24.2 for the remainder of the original Warranty Period.

## 25. Buyer's obligations – Goods and Services

- 25.1 Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfil its obligations under the Contract.
- 25.2 If Buyer fails to provide any instructions, documents, licences or authorisations or to attend at qualification tests, in each case required to enable the Contract to be performed on time (except solely on account of Supplier's default), Supplier will not be in breach of the Contract.

## 26. Performance of the Services

- 26.1 The Services will be performed at the place as set out in Supplier's written acknowledgment of Order or Part D of these Conditions during Supplier's usual business hours.
- 26.2 Supplier will use reasonable endeavours to deliver and perform each of Buyer's orders for the Services within

the time specified in Supplier's written acceptance of order and, if no time is specified, then within a reasonable time, but the time of performance will not be of the essence

## 27. Warranty for the Services

- 27.1 Supplier warrants that the Services will be performed with reasonable care and skill.
- 27.2 If during the Warranty Period the Services are proved, to the reasonable satisfaction of Supplier, to not comply with the warranty in clause 27.1 due to defects in workmanship Supplier shall, free of charge, re-perform such Services. The provisions of this clause 27.2 are Supplier's sole Liability if the Services do not comply with the warranty in clause 27.1 and Buyer's sole remedy for breach of this clause 27.2 shall be in damages and Supplier's Liability for breach of this clause 27.2 shall be limited to the purchase price of the Services.
- 27.3 This obligation will not apply where Buyer has failed to notify Supplier of any defect or suspected defect within 14 days of the completion of the Services where the defect should be apparent on reasonable inspection, or within 14 days of Buyer becoming aware of the defect where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 12 months from the date of completion of performance of the Services.

## PART C - DEFINITIONS AND INTERPRETATION

### 28. Definitions and Interpretation

- 28.1 In these Conditions the following expressions will have the following meanings unless inconsistent with the context:
- "Anti-Bribery and Corruption Laws"** means any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, any judgment order or decision of any court, regulator or tribunal which relate to anti-bribery and/or anti-corruption.
- "Anti-Slavery Laws"** means any anti-slavery and human trafficking laws, statutes and regulations from time to time in force.
- "Buyer"** means the corporate body issuing a purchase order for the Goods and/or the Services.
- "Conditions"** means the standard terms and conditions of sale set out in this document together with any special conditions agreed in writing between the Parties included in Part D of these Conditions.
- "Confidential Information"** shall mean any information or data relating to products, software, network management information and services and information relating to a Party's business or affairs including that of its parent, associated, affiliated and subsidiary companies or which is otherwise related to the Purpose, which is disclosed whether in writing, orally or by any other means to one Party (the **"Receiving Party"**) by the other Party (the **"Disclosing Party"**), or by a third party on behalf of the Disclosing Party, or to a third party on behalf of the Receiving Party or which is otherwise obtained by the Receiving Party from the Disclosing Party, whether before or after the date of the Contract. This shall exclude any part of such disclosed information or data which: (i) is in or comes into the public domain in any way without breach of the Contract by the Receiving Party; or (ii) the Receiving Party can show: (a) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (b) to have been independently developed by or for the Receiving Party at any time without use of

Confidential Information disclosed to it by the Disclosing Party; or (c) to have been obtained by it or made available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the Disclosing Party; or (d) is hereafter furnished by the Disclosing Party to a third party without restriction on disclosure or use; or (e) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party.

**"Contract"** means any contract between Supplier and Buyer for the sale and purchase of the Goods and/or supply of the Services formed in accordance with clause 1.

**"Data Protection Laws"** means any applicable laws in force from time to time that relate to data protection, the processing of personal data and privacy.

**"Delivery"** means delivery in accordance with clause 20.1 or deemed delivery in accordance with clause 20.4.

**"DIA"** means the Danish Institute of Arbitration.

**"Dispute"** means any dispute, claim, difference or controversy arising out of or in connection with the Contract, including any dispute as to its existence, validity, interpretation, performance, breach or termination and any dispute relating to any non-contractual obligations arising out of or in connection with it.

**"Export/Import Law"** means the export or import laws and regulations of the US, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control, the European Union or any of its Member States, including without limitation Council Regulation (EC) No. 1334/2000 and any other countries or territories.

**"Force Majeure"** means any cause preventing Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the control of Supplier including strikes, lockouts or other industrial disputes (whether involving the workforce of Supplier or otherwise), protest, act of God, war, or national emergency, an act or threat of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, earthquake, epidemic or default, delay or failure to supply of suppliers or subcontractors.

**"Goods"** means any goods which Supplier supplies to Buyer (including any of them or any part of them) under a Contract including the Software.

**"Group"** means a Party, any subsidiary of a Party, any holding company of a Party and any other subsidiary of a Party's holding company.

**"Insolvent"** means a Party is unable to pay its debts as they fall due, makes a proposal for or convenes a meeting of its creditors to consider or becomes subject to any voluntary arrangement or compromise with its creditors, passes a resolution for its winding-up (other than for a solvent liquidation to effect a reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up, has a receiver or administrative receiver appointed over all or any of its assets, has an administrator appointed in respect of it or is the subject of a notice to strike off the register of companies maintained by the relevant authority in the country where that Party is incorporated; or is the subject of anything analogous to any of the foregoing under the laws of any jurisdiction.

**"Intellectual Property Rights"** means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights

to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in all countries in the world and together with all renewals and extensions.

**"Liability"** means any liability whether in contract (including negligent breach of contract), tort (including negligence), breach of statutory duty, restitution, under any indemnity or otherwise in respect of any loss or damage howsoever caused.

**"NDA"** means any non-disclosure agreement entered into by Supplier in favour of Buyer prior to the date of the Contract.

**"Parties"** means the Supplier and the Buyer.

**"Services"** means any support services (including installation, maintenance and repair) which Supplier provides to Buyer (including any part of them) as set out in Supplier's written acknowledgment of order or in Part D of these Conditions.

**"Software"** means the Supplier's Software and the Third Party Software.

**"Supplier"** means the company which is the supplier of the Goods and/or Services to Buyer.

**"Supplier's Software"** means the Supplier's software either specified in a Contract or supplied with the Goods.

**"Third Party Software"** means software (other than the Supplier's Software) which is specified in a Contract or supplied with the Goods.

**"Trade Controls"** means applicable export, import and sanctions laws and regulations of the following governments and their relevant departments and agencies:

- (a) the U.S.;
- (b) the European Union and its Member States;
- (c) the UK; and

any other country in which Buyer operates or into or from which it imports or exports.

**"Warranty Period"** means for the supply of Goods the period of 24 months commencing on the date of Delivery of such Goods, for Services the period of 24 months from completion of the Services, and for contracts agreed for the repair of Buyer owned goods originally supplied by the Buyer, 90 days, unless stated as otherwise in Supplier's written acceptance of the order.

**"VAT"** means value added tax and/or any other tax, duty or levy chargeable on the supply of goods or services.

**"Works"** means Goods or Services or both as the context may require.

28.2 The headings in these Conditions are for convenience only and will not affect their construction or interpretation.

28.3 The words "includes" or "including" do not limit the meaning of the words which they follow.

28.4 References to clauses are to clauses in Part A, Part B or Part D of these Conditions.

**PART D – SPECIAL CONDITIONS**

[insert any country specific requirements plus any additional requirements including those from list of possible amendments, plus also consider whether to include here:

1. terms of payment [Clause 4.3]
2. use of Goods and/or Services, if use is restricted [Clause 14.1.3].
3. whether the price of the Goods/Services is inclusive of any of the items in clause 19.1
4. any description of Services to be provided [Definition of Services in Part C]