



TERMS AND CONDITIONS

FOR

ACCESS PLATFORM SALES LIMITED and ACCESS PLATFORM SERVICE &

REPAIR LTD

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

1.1.1 Adverse Impact means any one or more of the following: (a) a substantial adverse impact on the Distributor's ability to perform the Contract in accordance with its terms and applicable Law; (b) a substantial adverse impact on the Distributor's supply chain that results in a substantial adverse impact on the Distributor's ability to perform the Contract in accordance with its terms and applicable Law; (c) an increase of at least 5% in the costs incurred by the Distributor in performing the Contract since the relevant price for the Goods was last agreed; or (d) the price of the Goods under the Contract being at least 5% lower than the market value for similar products or services.

1.1.2 Applicable Laws means, for so long as and to the extent that they apply to the relevant party, the law of England and Wales, the law of the United Kingdom, retained EU law, and any applicable law or regulatory requirement in any relevant jurisdiction.

1.1.3 Brexit means the United Kingdom ceasing to be a member state of the European Union on 31 January 2020 and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement negotiated under Article 50(2) of the Treaty on European Union.

1.1.4 Brexit Notice means a notice served under clause 14.5.

1.1.5 Brexit Trigger Event means any event described in clause 14.3.

1.1.6 Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.1.7 Commencement Date has the meaning given in clause 2.2.

1.1.8 Conditions means these terms and conditions as amended from time to time in accordance with clause 18.7.

1.1.9 Contract means the contract between the Distributor and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

1.1.10 Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

1.1.11 Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures have the meanings given in the Data Protection Legislation.

1.1.12 Customer means the person or firm who purchases Goods and/or Services from the Distributor.

1.1.13 Customer Default has the meaning given in clause 8.2.



1.1.14 Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the United Kingdom, including the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any successor legislation, together with any guidance and codes of practice issued by the Information Commissioner's Office or other relevant supervisory authority.

1.1.15 Deliverables means the deliverables set out in the Order produced by the Distributor for the Customer as part of the Services.

1.1.16 Delivery means delivery of the Goods by the Distributor on an ex works basis (Incoterms 2020) unless otherwise expressly stated in the Order.

1.1.17 Delivery Location has the meaning given in clause 4.2.

1.1.18 Distributor means, as applicable, Access Platform Sales Limited or Access Platform Service & Repair Ltd, as identified in the relevant Order, quotation or Order Acknowledgement, and references to the Distributor shall be construed accordingly.

1.1.19 Distributor Materials means all materials, equipment, documents and other property of the Distributor.

1.1.20 Domestic UK Law means the law of the United Kingdom or a part of the United Kingdom.

1.1.21 Force Majeure Event has the meaning given in clause 17.1.

1.1.22 Goods means the goods, parts or spare parts (or any part of them) set out in the Order.

1.1.23 Goods Specification means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Distributor.

1.1.24 Intellectual Property Rights means patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection subsisting now or in the future in any part of the world.

1.1.25 Law means any legal provision with which a party must comply, including any statute, subordinate legislation, retained EU law, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the United Kingdom or elsewhere.

1.1.26 LOLER means the Lifting Operations and Lifting Equipment Regulations 1998.

1.1.27 Manufacturer means the manufacturer of the relevant Goods, where applicable.

1.1.28 Order means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, accepted quotation or other written instruction.

1.1.29 Order Acknowledgement means the Distributor's written acceptance of the Order.



1.1.30 Platform Services means inspection, maintenance, LOLER examinations, servicing, repairs, call-out support and breakdown services in respect of access platforms carried out in the United Kingdom.

1.1.31 Repairs means corrective, preventative or emergency repair works carried out on access platforms, whether on-site or off-site.

1.1.32 Service Contract means any repair and maintenance package, service package or contract rental package agreed in writing between the parties.

1.1.33 Service Specification means the description or specification for the Services provided in writing by the Distributor to the Customer, including any Service Contract, as amended from time to time.

1.1.34 Services means the services, including the Deliverables, supplied by the Distributor to the Customer as set out in the Service Specification and may include Platform Services and Repairs.

1.1.35 VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Interpretation.

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made under it.

1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding them.

1.2.5 A reference to writing or written includes email.

2. Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Distributor issues an Order Acknowledgement, at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 The Distributor may require the Customer to pay a non-refundable minimum deposit of 10% of the total value of the Order for Goods as security for performance.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Distributor, and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Distributor's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract nor have any contractual force.



2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.6 Any quotation given by the Distributor shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue, unless otherwise indicated in the formal written quotation.

2.7 These Conditions apply to the supply of both Goods and Services except where the context requires otherwise. These Conditions also apply to Platform Services and Repairs.

3. Goods

3.1 The Goods are described in the Distributor's catalogue as modified by any applicable Goods Specification.

3.2 The Distributor reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Distributor shall notify the Customer in any such event.

4. Delivery of Goods

4.1 The Distributor shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Distributor reference numbers, the type and quantity of the Goods (including the code number of the Goods where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Distributor shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (Delivery Location) at any time after the Distributor notifies the Customer that the Goods are ready.

4.3 Any dates quoted for delivery are approximate only, and time of delivery is not of the essence.

4.4 The Distributor shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Distributor with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5. Quality of Goods

5.1 The Distributor warrants that on delivery, and for a period of 12 months from the date of delivery on new machines (excluding batteries), 3 months on used machines unless otherwise stated, and 6 months on parts and services (each a warranty period), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Goods Specification;

5.1.2 be free from material defects in design, material and workmanship;

5.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

5.1.4 be fit for any purpose held out by the Distributor or the relevant Manufacturer.

5.2 Subject to clause 5.3, the Distributor shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, if:



5.2.1 the Customer gives notice in writing during the relevant warranty period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty in clause 5.1;

5.2.2 the Distributor is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Distributor) returns such Goods to the Distributor's place of business at the Customer's cost.

5.2.4 Special-order goods or parts may only be returned if defective.

5.3 The Distributor shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Distributor's or the Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or, if there are none, good trade practice;

5.3.3 the defect arises as a result of the Distributor following any drawing, design or Goods Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of the Distributor;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions;

5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

5.3.7 the Customer cannot provide evidence of maintenance carried out in accordance with the Manufacturer's instructions;

5.3.8 the issue concerns parts software or parts firmware unless explicitly covered by the relevant Order or warranty documentation;

5.3.9 the relevant item is a consumable item, including tyres, tracks, batteries, filters, fluids, fuses, bulbs or grease nipples;

5.3.10 the Customer fails to notify the Distributor of any damage to, or shortage in, the Goods within 48 hours of receipt; or

5.3.11 machine parts or spares were incorrectly ordered by the Customer, in which case any accepted return will be subject to a 20% restocking fee.

5.4 Except as provided in this clause 5, the Distributor shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Distributor.

6. Title and Risk



6.1 Risk in the Goods shall pass to the Customer on completion of Delivery/Collection. The Customer is responsible for ensuring that the Goods are insured from that time.

6.2 Title to the Goods shall not pass to the Customer until the Distributor receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Distributor has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Distributor's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Distributor's behalf from the date of delivery;

6.3.4 notify the Distributor immediately if it becomes subject to any of the events listed in clauses 15.2.1 to 15.2.3; and

6.3.5 give the Distributor such information relating to the Goods as the Distributor may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Distributor receives full payment for the Goods. However, if the Customer resells the Goods before that time:

6.4.1 it does so as principal and not as the Distributor's agent; and

6.4.2 title to the Goods shall pass from the Distributor to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 15.2.1 to 15.2.3, then, without limiting any other right or remedy the Distributor may have:

6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 the Distributor may at any time:

6.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product; and

6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

7.1 The Distributor shall supply the Services to the Customer in accordance with the Service Specification in all material respects. Platform Services and Repairs may be carried out at the Customer's premises or at the Distributor's service facilities. Any estimates for Repairs are indicative only and are subject to inspection, confirmation and parts availability.

7.2 The Distributor shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates are estimates only and time shall not be of the essence for the performance of the Services.



7.3 The Distributor reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Distributor shall notify the Customer in any such event.

7.4 The Distributor warrants to the Customer that the Services will be provided using reasonable care and skill. Repairs are warranted for workmanship only for 90 days from completion. This excludes pre-existing defects, Manufacturer defects, misuse and fair wear and tear.

8. Customer's Obligations

8.1 The Customer acknowledges that Platform Services and Repairs are subject to United Kingdom health and safety legislation, including the Health and Safety at Work etc. Act 1974 and LOLER. The Customer shall:

8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

8.1.2 co-operate with the Distributor in all matters relating to the Services;

8.1.3 provide the Distributor, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Distributor to provide the Services;

8.1.4 provide the Distributor with such information and materials as the Distributor may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

8.1.5 prepare the Customer's premises for the supply of the Services;

8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

8.1.7 comply with all applicable laws, including health and safety laws;

8.1.8 keep all Distributor Materials in safe custody at its own risk, maintain the Distributor Materials in good condition until returned to the Distributor, and not dispose of or use the Distributor Materials other than in accordance with the Manufacturer's or the Distributor's written instructions or authorisation;

8.1.9 comply with any additional obligations set out in the Service Specification or the Goods Specification; and

8.1.10 ensure that any unit due or booked for a service is available to the Distributor in good time.

8.2 If the Distributor's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or by the Customer's failure to perform any relevant obligation (Customer Default):

8.2.1 without limiting or affecting any other right or remedy available to it, the Distributor shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Distributor's performance of any of its obligations;

8.2.2 the Distributor shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Distributor's failure or delay to perform any of its obligations as set out in this clause 8.2; and



8.2.3 the Customer shall reimburse the Distributor on written demand for any costs or losses sustained or incurred by the Distributor arising directly or indirectly from the Customer Default.

9. Charges and Payment

9.1 The price for Goods:

9.1.1 shall be the price set out in the Order or, if no price is quoted, the price set out in the Distributor's published price list as at the date of the Order; and

9.1.2 shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

9.2.1 the charges shall be calculated in accordance with the Distributor's rates as set out in its current price list at the date of the Contract or the Order;

9.2.2 the Distributor's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

9.2.3 the Distributor shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked outside the hours referred to in clause 9.2.2; and

9.2.4 the Distributor shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Distributor engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Distributor for the performance of the Services, and for the cost of any materials. Call-out, diagnostic and abortive visit charges apply where access is unavailable, equipment is unsafe to work on, or insufficient notice of cancellation is given.

9.3 The Distributor reserves the right to:

9.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period. The first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;

9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Distributor that is due to:

9.3.2.1 any factor beyond the control of the Distributor (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.3.2.2 any request by the Customer to change the delivery date, quantities or types of Goods ordered, or the Goods Specification;

9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Distributor adequate or accurate information or instructions in respect of the Goods; and



9.3.2.4 impose storage charges of £55 per day if the asset remains on-site for more than 30 days awaiting authorisation for Repairs from the Customer.

9.4 In respect of Goods, the Distributor shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Distributor shall invoice the Customer monthly in arrears or on completion of the Services, as applicable.

9.5 The Customer shall pay each invoice submitted by the Distributor:

9.5.1 for Goods, prior to delivery of the Goods to the Customer;

9.5.2 for Services, within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Distributor and confirmed in writing to the Customer; and

9.5.3 in full and in cleared funds to a bank account nominated in writing by the Distributor, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Distributor to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Distributor, pay to the Distributor such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the relevant supply.

9.7 If the Customer fails to make any payment due to the Distributor under the Contract by the due date, then, without limiting the Distributor's remedies under clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding, other than any deduction or withholding of tax as required by law.

10. Intellectual Property Rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Distributor.

10.2 The Distributor grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use the Deliverables for the purpose of receiving and using the Services and the Goods in the Customer's business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2 except to a purchaser or transferee of the relevant Goods with the Distributor's prior written consent, such consent not to be unreasonably withheld or delayed.

10.4 The Customer grants the Distributor a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Distributor for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data Protection



11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 The parties acknowledge that, for the purposes of the Data Protection Legislation, the Customer is the controller and the Distributor is the processor unless otherwise agreed in writing in respect of a particular processing activity.

11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Distributor for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of clause 11.1, the Distributor shall, in relation to any personal data processed in connection with the performance by the Distributor of its obligations under the Contract:

11.4.1 process that personal data only on the documented written instructions of the Customer unless the Distributor is required by Applicable Laws to otherwise process that personal data. Where the Distributor is relying on Applicable Laws as the basis for processing personal data, it shall promptly notify the Customer before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit such notification;

11.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result and the nature of the data to be protected;

11.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

11.4.4 not transfer any personal data outside the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

11.4.4.1 the Customer or the Distributor has provided appropriate safeguards in relation to the transfer;

11.4.4.2 the data subject has enforceable rights and effective legal remedies;

11.4.4.3 the Distributor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

11.4.4.4 the Distributor complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

11.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;

11.4.7 at the written direction of the Customer, delete or return personal data and copies of it to the Customer on termination of the Contract unless required by Applicable Laws to store the personal data; and



11.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Customer or the Customer's designated auditor, and immediately inform the Customer if, in the opinion of the Distributor, an instruction infringes the Data Protection Legislation.

11.5 Either party may, on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme, which shall apply when incorporated into the Contract.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination or expiry of the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or manufacturers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract, provided that it ensures such persons comply with this clause 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13. Limitation of Liability

13.1 The Distributor has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Distributor has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. The Distributor shall not be liable for loss of use, loss of revenue, loss of hire income, or any indirect or consequential losses arising from the Goods, Platform Services or Repairs.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

13.3.1 death or personal injury caused by negligence;

13.3.2 fraud or fraudulent misrepresentation; and

13.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.4 Subject to clause 13.3, the Distributor's total liability to the Customer shall not exceed £10,000,000.



13.5 The Distributor has given commitments as to compliance of the Goods and Services with relevant specifications in clauses 5 and 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.6 Unless the Customer notifies the Distributor that it intends to make a claim in respect of an event within the notice period, the Distributor shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred or of its having grounds to make a claim in respect of the event and shall expire one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.7 This clause 13 shall survive termination of the Contract.

14. Right to Renegotiate or Terminate Following Brexit

14.1 If at any time after Brexit a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact on the Distributor, the Distributor may:

14.1.1 require the Customer to negotiate an amendment to the Contract to alleviate the Adverse Impact, in accordance with clause 14.5; and

14.1.2 if renegotiation fails, terminate the Contract in accordance with clause 14.6.

14.2 For the purposes of this clause 14, Brexit has the meaning given in clause 1.1.3.

14.3 A Brexit Trigger Event means any of the following events if directly and/or solely caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the United Kingdom government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

14.3.1 a Change in Law, being a change in the Law or a new requirement to comply with any existing Law or any existing Law ceasing to apply to a party;

14.3.2 in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of any raw materials or components used by the Distributor to manufacture the Goods or any products into which the Goods are to be incorporated or in conjunction with which the Goods are to be commercially exploited;

14.3.3 in any jurisdiction, the loss of, a change to, or the imposition of a new requirement for any licence or consent required by a party to perform the Contract or to commercially exploit the Goods or Services;

14.3.4 a change of more than 5% to the rate of exchange of sterling against the euro since the price for the Goods was last agreed, with the relevant rate of exchange being the daily spot exchange rate published by the Bank of England; or

14.3.5 an unforeseeable change to the business or economic environment in which the Distributor operates which is not caused by clauses 14.3.1 to 14.3.3 above or by any fluctuation in currency exchange rates.

14.4 Adverse Impact has the meaning given in clause 1.1.1.

14.5 The Distributor may initiate a negotiation under clause 14.1.1 by serving a Brexit Notice giving reasonable details of the relevant Brexit Trigger Event and Adverse Impact. The Distributor may serve a new Brexit Notice at any time, but not more than one Brexit Notice for the same impact. On delivery of a Brexit Notice:



14.5.1 the parties shall meet within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to the Contract;

14.5.2 the Distributor shall promptly comply with all reasonable requests made by the Customer for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, provided that information so disclosed shall be confidential information for the purposes of clause 12; and

14.5.3 any amendments to the Contract shall be recorded in writing and signed by the parties.

14.6 If the parties fail to agree a variation in accordance with clause 14.5 within a period of 30 days from the date of the Brexit Notice, the Distributor may, without affecting any other right or remedy available to it, terminate the Contract by giving the Customer not less than 30 days and not more than 60 days' written notice. On termination under this clause, clause 16 shall apply.

14.7 After delivery of a Brexit Notice, until the Contract is varied under clause 14.5 or terminated under clause 14.6, the Customer shall, unless prohibited by law, continue to comply with the terms of the Contract, and the Distributor need only use reasonable endeavours to comply with its obligations insofar as they are affected by the relevant Adverse Impact.

14.8 Save as expressly provided in this clause 14, neither a Brexit Trigger Event nor an Adverse Impact shall terminate or alter (or give the Customer a right to terminate or alter) the Contract, invalidate any of its terms, or discharge or excuse performance under it.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 6 months' written notice, unless a shorter fixed term or minimum term is expressly stated in the relevant Order or Service Contract.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets, or ceasing to carry on business, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.2.3 the other party's financial position deteriorates to such an extent that, in the terminating party's opinion, the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3 Without affecting any other right or remedy available to it, the Distributor may terminate the Contract with immediate effect by giving written notice to the Customer if:

15.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

15.3.2 there is a change of Control of the Customer.



15.4 Without affecting any other right or remedy available to it, the Distributor may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Distributor if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clauses 15.2.1 to 15.2.3, or the Distributor reasonably believes that the Customer is about to become subject to any of them. The Distributor may immediately suspend Platform Services or Repairs where continued work would breach applicable safety or legal requirements.

16. Consequences of Termination

16.1 On termination or expiry of the Contract:

16.1.1 the Customer shall immediately pay to the Distributor all of the Distributor's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied or ordered but for which no invoice has been submitted, the Distributor shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2 where there is a Service Contract in place, the full outstanding amount for the remaining term of the Service Contract shall become payable; and

16.1.3 the Customer shall return all Distributor Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Distributor may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. Force Majeure

17.1 Force Majeure Event means any circumstance not within the Distributor's reasonable control including, without limitation:

17.1.1 acts of God, flood, drought, earthquake or other natural disaster;

17.1.2 epidemic or pandemic;

17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

17.1.4 nuclear, chemical or biological contamination or sonic boom;

17.1.5 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

17.1.6 collapse of buildings, fire, explosion or accident;



17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

17.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

17.1.9 interruption or failure of utility service.

17.2 Provided it has complied with clause 17.3, if the Distributor is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Distributor shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 The Distributor shall:

17.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, and no later than 14 days from its start, notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

17.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.4 If the Force Majeure Event prevents, hinders or delays the Distributor's performance of its obligations for a continuous period of more than 24 months, the Customer may terminate the Contract by giving 3 months' written notice to the Distributor.

18. General

18.1 Assignment and other dealings

18.1.1 The Distributor may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the Distributor's prior written consent.

18.2 Notices

18.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

18.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

18.2.1.2 sent by email to the email address last notified by the recipient for contractual notices.

18.2.2 Any notice or communication shall be deemed to have been received:

18.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;



18.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

18.2.2.3 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 18.2.2.3, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.2.3 This clause 18.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and unenforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.3 shall not affect the validity and enforceability of the rest of the Contract.

18.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Unless the Contract expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.6 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.7 No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

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

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