

**INTEGRATED MANAGEMENT SOLUTIONS (GLOBAL) LIMITED  
GENERAL CONDITIONS**

**1. Interpretation**

1.1 In these terms the following words and phrases have the following meanings:

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

"**Commencement Date**" has the meaning given in clause 2.2.

"**Conditions**" means these General Conditions as amended from time to time in accordance with clause 21.

"**Contract**" means the contract between IMS and the Customer for the supply of Hardware and/or Services in accordance with the Order Confirmation, the Service Specification (if applicable) and these Conditions.

"**Customer**" means the person or firm who purchases the Hardware and/or Services from IMS.

"**Data Protection Legislation**" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

"**Delivery Location**" has the meaning given in clause 4.3.

"**Force Majeure Event**" has the meaning given to it in clause 15.

"**Hardware**" means the Hardware (or any part of them) set out in the Order.

"**Hardware Specification**" means any specification for the Hardware given by the Customer to IMS which has not been specifically recommended by IMS as suitable for the particular application required by the Customer.

"**IMS**" means Integrated Management Solutions (Global) Limited registered in England and Wales with company number 06588529.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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 which subsist or will subsist now or in the future in any part of the world.

**"Order"** means the Customer's order for the supply of Hardware and/or Services, as set out in Order Confirmation.

**"Order Confirmation"** means confirmation of the Order identified as such from IMS to the Customer in any written form setting out particulars of the Order.

**"Services"** means the services supplied by IMS to the Customer as set out in the Service Specification.

**"Service Specification"** means the description or specification for the Services provided in writing by IMS to the Customer.

**"Supplier Materials"** has the meaning given in clause 7.1.10.

**"UK Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- 1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 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 those terms.

- 1.6 A reference to "**writing**" or "**written**" includes fax and email.
- 1.7 Unless the context requires otherwise the terms "**controller**", "**processor**", "**data subject**", "**personal data**", "**personal data breach**", "**processing**" and "**appropriate technical measures**" have the meanings given to them in the Data Protection Legislation.
- 2. Basis of contract**
- 2.1 The Contract between the Customer and IMS comprises:
- 2.1.1 the Order Confirmation;
  - 2.1.2 the Service Specification; and
  - 2.1.3 these Conditions.
- 2.2 Unless otherwise stated in the Order Confirmation, the commencement date (the "**Commencement Date**") shall be the later of:
- 2.2.1 the date the Contract becomes binding on the parties; and
  - 2.2.2 where the Order includes Hardware, the date of delivery of the Hardware or, where delivery of the Hardware is in instalments, the delivery of the first such instalment.
- 2.3 Where there is any conflict or discrepancy between the Order Confirmation and these Conditions and/or the Service Specification, the terms of the Order Confirmation shall prevail.
- 2.4 No correspondence between the parties other than an Order Confirmation, whether in respect of a prospective Order or otherwise, shall constitute a contract between the parties.
- 2.5 Any promotional materials or advertising issued by IMS and any descriptions of the Hardware or illustrations or descriptions of the Services contained in IMS's promotional materials are issued or published for the sole purpose of giving an approximate idea of the Services and/or Hardware described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 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 trade, custom, practice or course of dealing.
- 2.7 Any quotation given by IMS shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.8 All of these Conditions shall apply to the supply of both Hardware and Services except where application to one or the other is specified.

### **3. Services**

3.1 IMS shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

3.2 IMS shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation or the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3 IMS 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 IMS shall notify the Customer in any such event.

3.4 IMS warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. Hardware**

4.1 The Hardware is described in the Order Confirmation.

4.2 IMS reserves the right to amend the Order Confirmation in respect of the Hardware if required by any applicable statutory or regulatory requirement, and IMS shall notify the Customer in any such event.

4.3 IMS shall deliver the Hardware to the location set out in the Order Confirmation or such other location as the parties may agree (the "**Delivery Location**") at any time after IMS notifies the Customer that the Hardware is ready.

4.4 Any dates quoted for delivery of the Hardware are approximate only, and the time of delivery is not of the essence. IMS shall not be liable for any delay in delivery of the Hardware that is caused by a Force Majeure Event or the Customer's failure to provide IMS with adequate access to its property and facilities or any other instructions that are relevant to the supply of the Hardware.

4.5 If IMS fails to deliver the Hardware, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Hardware of similar description and quality in the cheapest market available, less the price of the Hardware. IMS shall have no liability for any failure to deliver the Hardware to the extent that such failure is caused by a Force Majeure Event

or the Customer's failure to provide IMS with adequate access to its property and facilities or any relevant instruction related to the supply of the Hardware.

4.6 If the Customer fails to take delivery of the Hardware within ten Business Days of IMS notifying the Customer that the Hardware is ready, then except where such failure or delay is caused by a Force Majeure Event or by IMS's failure to comply with its obligations under the Contract in respect of the Hardware:

4.6.1 delivery of the Hardware shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which IMS notified the Customer that the Hardware were ready; and

4.6.2 IMS shall store the Hardware until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If 25 Business Days after the day on which IMS notified the Customer that the Hardware were ready for delivery the Customer has not taken delivery of them, IMS may resell or otherwise dispose of part or all of the Hardware and charge the Customer for any shortfall below the price of the Hardware.

4.8 IMS may deliver the Hardware by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. **Quality of Hardware**

5.1 IMS warrants that on delivery, and for a period of 12 months from the date of delivery (the "**warranty period**"), the Hardware shall:

5.1.1 conform in all material respects with its description and any specification set out in the Order Confirmation;

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

5.1.3 be fit for any purpose held out by IMS.

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

- 5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Hardware do not comply with the warranty set out in clause 5.1;
  - 5.2.2 IMS is given a reasonable opportunity of examining such Hardware; and
  - 5.2.3 the Customer (if asked to do so by IMS) returns such Hardware to IMS's place of business.
- 5.3 IMS shall not be liable for the Hardware's failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Hardware after giving a notice in accordance with clause 5.2;
  - 5.3.2 the defect arises because the Customer failed to follow the manufacturer's or IMS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;
  - 5.3.3 the defect arises as a result of IMS following the Hardware Specification;
  - 5.3.4 the Customer alters or repairs such Hardware without the written consent of IMS; or
  - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4 Except as provided in this clause 5, IMS shall have no liability to the Customer in respect of the Hardware's 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 Hardware supplied by IMS.

## **6. Title and risk**

- 6.1 The risk in the Hardware shall pass to the Customer on delivery or deemed delivery.
- 6.2 Title to the Hardware shall not pass to the Customer until IMS receives payment in full (in cash or cleared funds) for the Hardware and any other Hardware that IMS has supplied to the Customer, in which case title to the Hardware shall pass at the time of payment of all such sums.
- 6.3 Until title to the Hardware has passed to the Customer, the Customer shall:
  - 6.3.1 store the Hardware separately from all other Hardware held by the Customer so that they remain readily identifiable as IMS's property;

- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
  - 6.3.3 maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on IMS's behalf from the date of delivery;
  - 6.3.4 notify IMS immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4; and
  - 6.3.5 give IMS such information relating to the Hardware as IMS may require from time to time.
- 6.4 If before title to the Hardware passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, then, without limiting any other right or remedy IMS may have:
- 6.4.1 the Customer's right to resell Hardware or use them in the ordinary course of its business ceases immediately; and
  - 6.4.2 IMS may at any time:
    - (a) require the Customer to deliver up all Hardware in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover them.

## **7. Customer's obligations**

- 7.1 The Customer shall:
- 7.1.1 ensure that the Order Confirmation is correct, complete and accurate;
  - 7.1.2 co-operate with IMS in all matters relating to the delivery of the Hardware, its installation and delivery of the Services;
  - 7.1.3 provide IMS, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by IMS to provide the Services;

- 7.1.4 provide IMS with such information and materials as IMS may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 7.1.5 give notice of those individuals or class of individuals who are authorised to use or make requests for Services on behalf of the Customer. In the absence of such notice, the Customer agrees that any worker, officer or agent of the Customer is so authorised;
  - 7.1.6 prepare the Customer's premises as reasonably required by IMS for the installation of the Hardware and the supply of the Services;
  - 7.1.7 where necessary to deliver the Services, provide remote web access together with all usernames, passwords and access credentials required to gain access to the Customer's systems to deliver the Services;
  - 7.1.8 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;
  - 7.1.9 comply with all applicable laws, including health and safety laws; and
  - 7.1.10 keep all materials, equipment, documents and other property of IMS ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain Supplier Materials in good condition until returned to IMS, and not dispose of or use Supplier Materials other than in accordance with IMS's written instructions or authorisation.
- 7.2 If IMS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "**Customer Default**"):
- 7.2.1 without limiting or affecting any other right or remedy available to it, IMS 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 in each case to the extent the Customer Default prevents or delays IMS's performance of any of its obligations;
  - 7.2.2 IMS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from IMS's failure or delay to perform any of its obligations as set out in this clause 7.2; and

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

## **8. Charges and payment**

8.1 The price for Hardware shall be the price set out in the Order Confirmation or, if no price is quoted, the price most recently quoted to the Customer.

8.2 The charges for Services shall be the price set out in the Order Confirmation and the Service Specification.

8.3 IMS reserves the right to:

8.3.1 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 period since the Commencement Date or last increase;

8.3.2 increase the price of the Hardware, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Hardware to IMS that is due to:

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

(b) any delay caused by any instructions of the Customer in respect of the Hardware or failure of the Customer to give IMS adequate or accurate information or instructions in respect of the Hardware.

8.4 In respect of Hardware, IMS shall invoice the Customer on or at any time after completion of delivery. In respect of Services, IMS shall invoice the Customer monthly in arrears.

8.5 The Customer shall pay each invoice submitted by IMS:

8.5.1 within 30 days of the date of the invoice; and

8.5.2 in full and in cleared funds to a bank account nominated in writing by IMS, and

time for payment shall be of the essence of the Contract.

8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by IMS to the Customer, the Customer shall, on receipt of a

valid VAT invoice from IMS, pay to IMS such additional amounts in respect of VAT as are chargeable on the supply of the Services or Hardware at the same time as payment is due for the supply of the Services or Hardware.

- 8.7 If the Customer fails to make a payment due to IMS under the Contract by the due date, then, without limiting IMS's remedies under clause 13 (Termination), 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 8.7 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%.
- 8.8 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).

## **9. Intellectual property rights**

- 9.1 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 IMS.
- 9.2 IMS 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 copy and modify any software or other materials in which copyright subsists which have been prepared as part of delivery of the Services.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants IMS a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to IMS for the term of the Contract for the purpose of providing the Services to the Customer.

## **10. Data protection**

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 10, "**Applicable Laws**" means (for so long as and to the extent that they apply to IMS) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "**Domestic UK Law**" means any Data Protection Legislation and any other law that applies in the UK.

- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and IMS is the processor.
- 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to IMS for the duration and purposes of the Contract.
- 10.4 Without prejudice to the generality of clause 10.1, IMS shall, in relation to any personal data processed in connection with the performance by IMS of its obligations under the Contract:
- 10.4.1 process that personal data only on the documented written instructions of the Customer unless IMS is required by Applicable Laws to otherwise process that personal data. Where IMS is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, IMS shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit IMS from so notifying the Customer;
  - 10.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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 from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 10.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - 10.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or IMS has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (c) IMS complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (d) IMS complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 10.4.5 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;
- 10.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 10.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 10.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of IMS, an instruction infringes the Data Protection Legislation.
- 10.5 The Customer consents to IMS appointing any of its subcontractors and third party data hosts as a third-party processor of Personal Data under the Contract. IMS confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and in either case which IMS confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and IMS, IMS shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.

## **11. Confidentiality**

- 11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information

concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

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

11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11;

11.2.2 to a purchaser or prospective purchaser of its shares or undertaking provided that any such purchaser or prospective purchaser to whom it discloses the other party's confidential information complies with this clause 11; and

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

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

12.1 IMS has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2m per claim. The limits and exclusions in this clause reflect the insurance cover IMS has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation; and

12.2.3 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).

12.3 Subject to clause 12.2, IMS's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

12.4 In clause 12.3:

"**cap**" is the greater of £5,000 and fifty per cent (50%) of the total charges in the contract year in which the breaches occurred;

"**contract year**" means a 12-month period commencing with the Commencement Date or any anniversary of it;

"**total charges**" means all sums paid by the Customer and all sums payable under the Contract in respect of Hardware and services actually supplied by IMS, whether or not invoiced to the Customer; and

"**total liability**" means IMS's total liability which includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

12.5 Subject to clause 12.2, the types of loss listed in clause 12.6 are wholly excluded by the parties, but the types of loss and specific losses listed in clause 12.7 are not excluded.

12.6 The following types of loss are wholly excluded:

12.6.1 Loss of profits.

12.6.2 Loss of sales or business.

12.6.3 Loss of agreements or contracts.

12.6.4 Loss of anticipated savings.

12.6.5 Loss of use or corruption of software, data or information.

12.6.6 Loss of or damage to goodwill.

12.6.7 Indirect or consequential loss.

12.7 The following types of loss and specific loss are not excluded:

12.7.1 Sums paid by the Customer to IMS pursuant to the Contract, in respect of any Hardware or Services not provided in accordance with the Contract.

12.7.2 Wasted expenditure.

12.7.3 Additional costs of procuring and implementing replacements for, or alternatives to, Hardware or Services not provided in accordance with the Contract. These include

consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

12.7.4 Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of IMS.

12.8 IMS has given commitments as to compliance of the Hardware and Services with relevant specifications in clause 3 and clause 5. 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 this agreement.

12.9 Unless the Customer notifies IMS that it intends to make a claim in respect of an event within the notice period, IMS 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 and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.10 This clause 12 shall survive termination of the Contract.

### **13. Termination**

13.1 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:

13.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;

13.1.2 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;

13.1.3 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

- 13.1.4 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.
- 13.2 Without affecting any other right or remedy available to it, IMS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3 Without affecting any other right or remedy available to it, IMS may suspend the supply of Services and/or all further deliveries of Hardware under the Contract or any other contract between the Customer and IMS 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 clause 13.1.2 to clause 13.1.4, or IMS reasonably believes that the Customer is about to become subject to any of them.

#### **14. Consequences of termination**

- 14.1 On termination of the Contract:
  - 14.1.1 the Customer shall immediately pay to IMS all of IMS's outstanding unpaid invoices and interest and, in respect of Services and Hardware supplied but for which no invoice has been submitted, IMS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 14.1.2 the Customer shall return all of Supplier Materials and any Hardware which has not been fully paid for. If the Customer fails to do so, then IMS 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 this Contract.
- 14.2 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, 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.
- 14.3 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.

**15. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**16. Assignment and other dealings**

16.1 IMS 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.

16.2 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 prior written consent of IMS.

**17. Notices**

17.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

17.1.1 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

17.1.2 sent by fax to its main fax number or sent by email to the address specified in the Order Confirmation as an email address for notices.

17.2 Any notice shall be deemed to have been received:

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

17.2.2 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

17.2.3 if sent by fax or 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 17.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

17.3 This clause 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. Waiver**

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.

**19. Entire agreement.**

19.1 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.

19.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

19.3 Nothing in this clause shall limit or exclude any liability for fraud.

**20. Third parties rights.**

20.1 Unless it 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.

20.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**21. Variation.**

21.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**22. Governing law and jurisdiction**

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

22.2 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 or its subject matter or formation.