

1. INTRODUCTION

1.1 These terms and conditions tell you information about us and the legal terms and conditions (**Terms**) on which we supply goods (**Goods**) or services (**Services**) or Goods and Services to you including, without limitation, Goods and Services listed on the various websites we operate including, without limitation, our customer portal (**collectively our website**). These Terms do not apply to the provision of training services by us and references in these Terms to **Services** does not include training.

1.2 Due to the nature of the Goods and Services we provide, we do not supply Goods or Services to consumers. You are a consumer if: –

- a. you are an individual (i.e. not a limited company or a limited liability partnership); and
- b. you are acting for purposes (i.e. buying goods and/or services) which are wholly or mainly for your personal use (i.e. outside your trade, business, craft or profession).

1.3 By submitting an Order with us you agree and confirm that you are not a consumer. If you are a consumer or consider you may be a consumer then please do not attempt to Order from us but contact us to see how we can help.

1.4 Your particular attention is drawn to clause 16 in relation to our liability to you.

2. ABOUT US

2.1 We are Controls & Drives Ltd (referred to in these Terms as us and we), a company registered in England and Wales under company number 02418021. Our registered office and main trading address is at Unit 1, Victoria Mills, Fowke St, Rothley, Leicester LE7 7PJ. Our VAT number is 565 7364 09.

2.2 We also operate the websites: www.cdruk.com.

2.3 You can Order Goods and/or Services from us through our website, by emailing us, by calling us or at any one of our branches.

2.4 To contact us for any reason, please see the Contact Us page on our website.

3. OUR CONTRACT WITH YOU

3.1 Your order for Goods and/or Services (**Order**) constitutes an offer by you to purchase Goods and/or Services from us in accordance with these Terms.

3.2 These Terms apply to your Order and the supply of Goods and/or Services by us to you (**Contract**). These Terms apply to the exclusion of any other terms you may seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. Notwithstanding any provision in these Terms, these Terms do not apply to the provision of training services by us.

3.3 Notwithstanding any provision in these Terms, these Terms do not apply to the provision of training services by us. The provision of training services by us is governed by our separate terms and conditions for Training Courses applicable from time to time which are available on our website (**Training Terms**). If you submit a single order to us containing an offer to purchase (1) training services and (2) Goods and/or Services from us: –

a. the part of your order relating to the provision of training services shall be deemed to be a separate order submitted by you to us governed by the Training Terms; and

b. the part of the order relating to the provision of Goods and/or Services shall be deemed to be a separate order submitted by you to us governed by these Terms.

3.4 Please read these Terms carefully and make sure that you understand them before you submit your Order to us.

3.5 Please note that before placing an Order on our website you will be asked to agree to these Terms. If you refuse to accept these Terms, you will not be able to Order any Goods or Services from our website.

3.6 These Terms, any credit application document and any document expressly referred to in them constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

3.7 You acknowledge that in entering into the Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them.

3.8 Any samples, drawings, descriptive matter or advertising issued or released by us and any descriptions of the Goods or illustrations or descriptions of the Services contained on our websites, in our catalogues or in our brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.

3.9 It is agreed that neither you nor us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

3.10 Where you Order from our website you should print a copy of these Terms or save them to your computer for future reference.

3.11 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3.12 You waive any rights you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that is inconsistent with these Terms.

3.13 We may amend these Terms from time to time. Every time you Order Goods and/or Services from us, the Terms in force at the time of your Order will apply to the Contract between you and us.

3.14 These Terms, and the Contract between us, are only in the English language.

4. PLACING AN ORDER AND ITS ACCEPTANCE

4.1 You are responsible for ensuring that your Order and any information forming part of the Order is complete and accurate. Please ensure that you read these Terms carefully and check that the details of the Order are complete and accurate before you submit your Order.

4.2 Where you Order from our website, please follow the onscreen prompts to place your Order. The Order process on our website allows you to check and amend any errors before submitting your Order to us.

4.3 If you have placed an Order with us through our website, you will receive an e-mail from us confirming receipt of your Order. However, please note that this does not mean that your Order has been accepted. Our acceptance of your Order will take place as described in clause 4.4.

4.4 Your Order shall only be deemed to be accepted on the earlier of: –

- a. us sending you an Order acknowledgement (or other written notice) confirming that we have accepted your Order (**Order Acknowledgement**); and
- b. us commencing the provision of the Services; and
- c. completion of delivery of the Goods,

at which point the Contract between you and us will be formed.

4.5 For the avoidance of doubt, we shall not be required to accept Orders.

4.6 Save where you pay for Goods and/or Services when you submit your Order in accordance with clause 15.1, any acceptance of an Order is subject to you having sufficient credit terms with us and your credit terms not having been withdrawn or withheld by us in line with our credit control procedures as are in force from time to time.

4.7 If we are unable to supply you with the Goods and/or Services for any reason, we will inform you of this and we will not process your Order. If you have already paid for the Goods and/or Services, we will refund you the full amount including any applicable delivery costs charged as soon as reasonably possible.

4.8 Any quotation given by us shall not constitute an offer and shall only be valid for 30 days from its issue unless the quotation states otherwise.

5. GOODS

5.1 The images of the Goods on our website are generic and for illustrative purposes only. The Goods you receive may be visually different to those images.

5.2 Although we have used our best efforts to be as accurate as possible, all sizes, weights, capacities, dimensions and measurements indicated on our website have a tolerance and so are approximates only.

5.3 The packaging of the Goods may vary from that shown on images on our website.

5.4 To the extent that Goods are to be manufactured in accordance with any specification or design supplied by you or on your behalf, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the specification or design. This clause 5.4 shall survive termination of the Contract.

5.5 To the extent you resell any Goods you shall maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Goods or batches of Goods from the retail or wholesale markets. In addition, you shall, at our cost, provide us with any assistance we require to recall, as a matter of urgency, Goods from the retail or wholesale market.

5.6 We reserve the rights to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and we shall notify you in any such event.

5.7 Where the Goods are software (whether service packs or otherwise) you acknowledge and agree that: –

- a. we are the reseller of such software and not the licensor;
- b. you shall enter into an end user licence agreement with the software licensor;
- c. you shall comply with the terms of the end user licence agreement with the software licensor; and
- d. we shall have no liability to you whatsoever for any defects in such software or for any breach of the end user licence agreement between you and the software licensor.

6. RETURN OF GOODS

6.1 If there is a problem with the Goods see clause 9 and clause 10 and contact us as soon as possible.

6.2 Please note that save as set out in clause 14.2 clause 14.7(b) and clause 20.4, you are not entitled to cancel the Contract or return Goods but if you have changed your mind about the Goods then please contact us as we may in our sole and absolute discretion allow you to return unwanted Goods.

6.3 Where we in our sole and absolute discretion allow you to return unwanted Goods (**Returned Goods**), you shall be responsible for the cost of returning the Returned Goods to us and any Returned Goods shall remain at your risk until we have taken receipt of such Returned Goods. Furthermore, any credit or refund issued for Returned Goods shall be subject to the Returned Goods being received by us in stock, resalable and satisfactory condition (as determined by us in our absolute and sole discretion). Where we consider that Returned Goods are not in stock, resalable and satisfactory condition then we may not credit or otherwise refund the price or may reduce any such credit or refund accordingly in which case we will notify you and you will have the opportunity to collect or arrange collection of the Returned Goods.

7. DELIVERY OF GOODS AND RISK

7.1 We will use reasonable commercial endeavours to procure that each delivery of the Goods is accompanied by a delivery note that shows the sales Order number, the relevant reference numbers and the quantity of the Goods.

7.2 Where we are to deliver the Goods to you as indicated in the Order or subsequently agreed by you and us in writing: –

a. we shall deliver the Goods to the location set out in the Order or such other location as you and us may agree (**Delivery Location**); and

b. delivery of the Goods is complete once the Goods have been unloaded at the Delivery Location and the Goods will be at your risk from that time.

7.3 Where you are to collect the Goods from us as indicated in the Order or subsequently agreed by you and us in writing: –

a. you (or your nominated carrier) shall collect the Goods from our premises as indicated in the Order or as otherwise agreed between you and us (Collection Location) during our usual working hours (being 8:30am to 5.00pm on Business Days) within 10 Business Days of us notifying you that the Goods are ready for collection; and

b. delivery of the Goods is complete once you (or your nominated carrier) collect the Goods from the Collection Location at which point the Goods will be at your risk.

7.4 Any dates quoted for delivery are approximate only, and the time of delivery is not the essence of the Contract. We shall not be liable for any delay in delivery of the Goods that is caused by an Event Outside Our Control (see clause 20) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.5 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Goods. However, we will not be liable to the extent that any failure to deliver was caused by an Event Outside Our Control, or because you failed to provide adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.6 If you do not collect the Goods from us within 10 Business Days of us notifying you that the Goods are ready to collect or if, after a failed delivery to you, you do not re-arrange delivery or collect them from us we will contact you for further instructions and may charge you for storage costs (including insurance costs) and any further delivery costs. If despite our efforts we are unable to contact you or re-arrange delivery or collection then we may end the Contract and charge you reasonable compensation for our costs and/or losses.

7.7 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

8. INTERNATIONAL DELIVERY OF GOODS

8.1 If you Order Goods from us for delivery to one of the international countries we deliver to, your Order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.

8.2 You will be responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing your Order.

8.3 You must comply with all applicable laws and regulations of the country for which the Goods are destined. We will not be liable or responsible if you break any

such law. Furthermore, you shall be responsible for ensuring that the Goods and their use comply with all applicable local laws.

9. MANUFACTURER GUARANTEE FOR GOODS

Some of the Goods we sell come with a manufacturer's guarantee. For details of the applicable terms and conditions, please refer to the manufacturer's guarantee relating to the Goods.

10. OUR WARRANTY FOR THE GOODS

10.1 We do not warrant that the Goods comply with the laws, regulations or standards applicable outside the UK and EU.

10.2 Unless otherwise confirmed in writing and provided that the total price for the relevant goods has been paid in full and cleared funds on or before the due date for payment, where Goods come with a manufacturer's guarantee we warrant that those Goods shall: –

- a. conform in all material respects with their description and any applicable specification;
- b. be free from defects in design, materials and workmanship; and
- c. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979),

in each case, to the extent only that we can enforce such guarantee or warranty against the manufacturer of the relevant Goods save that if Goods with a manufacturer's guarantee fail to comply with the warranties set out at 10.2 (a) – (c) above solely due to our act or omission then the warranty at clause 10.5 below shall apply to those Goods.

10.3 We shall not be liable for any loss or damage to the Goods during transit unless: –

- a. we have agreed to deliver the Goods to you;
- b. you notify us in writing of the defect within 3 days of delivery and provide us with any evidence we may reasonably request;

c. where relevant, the Goods are preserved in the condition in which they were delivered and we have a reasonable opportunity to inspect the Goods;

d. you comply with our reasonable instructions (including but not limited to the submission of a formal claim); and

e. we reasonably consider that the damage or loss occurred during transit prior to delivery and not thereafter, in which case we shall at our sole option repair or replace the damaged Goods or refund the price of the Goods in full.

10.4 We may also sell extended warranties on terms agreed with you in writing.

10.5 For Goods which do not have a manufacturer's guarantee or do have a manufacturer's guarantee but do not comply with the warranties set out at 10.2 (a) – (c) above solely due to our act or omission, we warrant that on delivery and for a period of 12 months from delivery (**Warranty Period**), those Goods shall: –

a. conform in all material respects with their description and any applicable specification;

b. be free from material defects in design, material and workmanship; and

c. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

10.6 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 10.5 if:

a. you make any further use of such Goods after giving a notice in accordance with 10.7;

b. the defect arises because you or your agents or subcontractors failed to follow our 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 regarding the same;

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

d. you or a third party engaged by you fail to install and/or operate or use the Goods in accordance with the relevant user instructions;

- e. you have the Goods repaired by a person who is not an authorised repairer;
- f. the defect arises as a result of us following any drawing, design or specification supplied by you or on your behalf;
- g. you alter the Goods; or
- h. the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.7 In relation to Goods subject to the warranty at clause 10.5 and subject always to 10.6, if:

- a. you give us notice in writing during the Warranty Period within a reasonable time of discovery that such Goods do not comply with the warranty set out in clause 10.5;
- b. we are given a reasonable opportunity of examining such Goods or (at our request) you provide reasonable photographic evidence of the alleged defect(s); and
- c. you (at our request) return such Goods to our place of business at your cost,

we shall, at our sole option, repair or replace such defective Goods, or refund the price of the defective Goods in full.

10.8 These Terms also apply to any repaired or replacement Goods supplied by us to you pursuant to this clause 10.

11. TITLE TO THE GOODS

11.1 Title to the Goods shall not pass to you until the earlier of: –

- a. delivery where at the time of delivery you have paid for the Goods in full and all other goods that we have supplied to you in respect of which payment has become due;
- b. us receiving payment in full (in cash or cleared funds) for: –

i. the Goods; and

ii. any other goods that we have supplied to you 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,

c. you reselling the Goods, in which case title to the Goods shall pass to you at the time specified in clause 11.3.

11.2 Until title to the Goods has passed to you, you shall: –

a. store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

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

c. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

d. notify us immediately if you become subject to any of the events listed in clause 19.1; and

e. give us such information relating to the Goods as we may require from time to time.

11.3 Subject to clause 11.4, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you agree to resell the Goods before that time: –

a. you do so as principal and not as our agent; and

b. title to the Goods shall pass from us to you immediately before the time at which you fulfil your delivery obligations under the resale save where delivery under the resale is ex works in which case title to the Goods shall pass from us to you immediately before the time at which your customer or a third party acting on its behalf takes physical possession of Goods subject to the resale.

11.4 At any time before title to the Goods passes to you, we may: –

a. you do so as principal and not as our agent; and

b. require you to deliver up all Goods in your possession that have not been resold, delivered pursuant to a resale or irrevocably incorporated into another product and if you fail to do so, enter any of your premises or of any third party where the Goods are stored in Order to recover them.

12. SUPPLY OF SERVICES

12.1 Any descriptions or illustrations on our website relating to services are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Contract or have any contractual force.

12.2 Where applicable, we shall supply the Services to you in accordance with any description or specification provided in writing by us to you or otherwise agreed between you and us in writing which relates to the Services (**Service Specification**) in all material respects.

12.3 We reserve 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 we shall notify you in any such event.

12.4 We shall use our reasonable endeavours to meet any performance dates for the Services specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

12.5 We warrant to you that the Services will be provided using reasonable care and skill.

12.6 We may use subcontractors to fulfil or otherwise provide the Services (or any part of the Services).

12.7 Unfortunately, we are unable to perform the Services at addresses outside the UK. You may place an Order for the Services from an address outside the UK, but the Order must be for performance of the Services to an address in the UK.

13. YOUR OBLIGATIONS

13.1 You shall:

- a. ensure that the terms of the Order and any information you provide in or for the purpose of the Service Specification are complete and accurate;
- b. co-operate with us in all matters relating to the Services;
- c. provide us, our employees, agents, consultants and subcontractors, with free and unfettered access to your premises, office accommodation and other facilities as reasonably required by us to provide the Services;
- d. provide us with such information and materials as we may reasonably require in Order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- e. prepare your premises for the supply of the Services;
- f. 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;
- g. where Services are to be provided at your premises: –
 - i. have all appropriate and necessary insurances in place for us to supply the Services at your premises;
 - ii. prepare your premises for the supply of the Services and carry out a risk assessment prior to the provision of any relevant Services and ensure that such Services can be performed safely;
- h. where applicable, ensure that your machinery and/or equipment is positioned as agreed or otherwise as reasonably requested to enable us to perform the Services;
- i. where applicable, ensure that any machinery and/or equipment in relation to which we are to provide Services is in a sufficiently complete and operational state to enable us to provide the Services;
- j. where the Services include installation, ensure that the designated installation point contains all the necessary wiring and connections for the installed items to operate (we shall not be responsible for external wiring or connections or the running of wiring to the designated installation point unless otherwise agreed with you or otherwise set out in the Services Specification);

- k. ensure that any of your employees, staff, consultants, subcontractors or agents who you engage to assist with the provision of the Services by us are sufficiently competent and qualified to do so;
- l. comply with all applicable laws, including health and safety laws;
- m. keep all our (and our subcontractors) materials, equipment, documents and other property (**CDL Materials**) at your premises in safe custody at your own risk, maintain the CDL Materials in good condition until returned to us, and not dispose of or use the CDL Materials other than in accordance with our written instructions or authorisation; and
- n. comply with any additional obligations as set out in the Service Specification and any specification relating to Goods which may be applicable to the Services.

13.2 If our ability to perform the Services or any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (**Customer Default**):

- a. without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations;
- b. we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 13.2; and
- c. you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

14. CHARGES

14.1 The price of the Goods: –

- a. shall be the price notified to you from time to time and as set out in the corresponding Order Acknowledgement or where you Order Goods through

our website, the price as stated on our website at the time you submit your Order (in either case, subject always to clause 14.2);

b. does not include delivery charges. Wherever possible, we will advise you of our delivery charges before you submit your Order. However, due to the nature of some of the Goods we sell and depending on your delivery requirements it may not be possible for us to provide the delivery charges for the Goods before you place your Order in which case the delivery charges will be invoiced to you after you place your Order.

14.2 The prices for Goods sold by us are typically based on the relevant manufacturer's UK recommended list price and prices can fluctuate regularly. Notwithstanding anything in these Terms, if the relevant manufacturer's UK list price for Goods increases after an Order Acknowledgement but before we have dispatched the relevant Goods to you, we may increase the price of the Goods to reflect the relevant manufacturer's UK list price as at the date of dispatch.

14.3 If (1) the price for Goods confirmed in an Order Acknowledgment is higher than the price we have previously notified to you and/or set out in your Order, and/or (2) we increase the price pursuant to clause 14.2, you may in either case cancel your Order and we will refund you any sums you have paid for the Goods provided that: –

a. you give us notice in writing of your intention to cancel the Order within 3 Business Days of the price increase being notified to you (which for the avoidance of doubt includes the provision of an Order Acknowledgment and an invoice to you with the revised price of the Goods);

b. we will not be liable for any losses you suffer in relation to the relevant Goods; and

c. where the Goods have been, or are subsequently, delivered to you: –

i. you make them available and allow us to collect such Goods from you on notice and in accordance with our instructions;

ii. they are received by us in an unused, stock and resalable condition.

14.4 The charges for the Services shall be as set out in our corresponding quote or as otherwise agreed between you and us.

14.5 We take all reasonable care to ensure that the prices of Goods and Services are correct at the time when the relevant information was entered onto our system.

However please see clause 14.7 for what happens if we discover an error in the price of Goods and/or Services you have Ordered.

14.6 All amounts payable by you 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 us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

14.7 We supply a large range of Goods and Services. It is always possible that, despite our best efforts, some of the Goods and/or Services may be incorrectly priced. We will normally check prices as part of our Order confirmation procedures so that: –

a. where the correct price is less than the price stated on our website, we will charge the lower amount and refund to you any overpayment you may have made; and

b. if the correct price is higher than the price stated on our website, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Goods and/or Services at the correct price or cancelling your Order. We will not process your Order until we have your instructions. If we are unable to contact you using the contact details you provided during the Order process, we will treat the Order as cancelled and notify you in writing. However, if we mistakenly accept and process your Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may cancel supply of the Goods and/or Services and refund you any sums you have paid. If we cancel the supply of Goods in accordance with this clause 14.7(b) which have already been delivered to you (**Cancelled Goods**): –

i. you shall not be entitled to use or resell such Cancelled Goods;

ii. the provisions of clause 16.3 shall apply to such Cancelled Goods; and

iii. you will make available and allow us to collect such Cancelled Goods from you on notice and in accordance with our instructions.

15. PAYMENT

15.1 We accept payment by all major debit and credit cards and bank transfer. Unless we agree credit terms with you in writing, you must pay for the Goods and/or Services when you submit your Order to us.

15.2 In the event we offer you credit terms at our sole discretion and subject to our credit control procedures from time to time in force: –

a. in respect of Goods, we may invoice you on or at any time after completion of delivery;

b. in respect of Services, we may invoice you on or at any time after completion of the Services;

c. you shall pay each invoice submitted by us: –

i. by the last Business Day of the month immediately following the month of the invoice; and

ii. in full and in cleared funds to a bank account nominated in writing by us.

15.3 Time for payment shall be the essence of the Contract.

15.4 If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

15.5 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

15.6 If you pay any amount due to us by cheque then we reserve the right to charge you for our reasonable costs in processing and handling any such cheque.

16. LIMIT OF OUR LIABILITY – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

16.1 The limits and exclusions in this clause 16 reflect the insurance cover we have been able to arrange and you are responsible for making its own arrangements for the insurance of any excess liability.

16.2 Nothing in the Contract limits or excludes our liability which cannot be legally limited or excluded, including without limitation our liability for: –

- a. death or personal injury caused by our negligence;
- b. fraud or fraudulent misrepresentation;
- c. 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); or
- d. defective products under the Consumer Protection Act 1987.

16.3 Subject to clause 16.2, we will under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for: –

- a. any loss of profits, sales, business, or revenue;
- b. loss or corruption of data, information or software;
- c. loss of business opportunity;
- d. loss of agreements or contracts;
- e. loss of anticipated savings;
- f. loss of, or damage to, goodwill; or
- g. any indirect or consequential loss.

16.4 Subject to clause 16.2, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount you have paid for the relevant Goods and/or Services under the Contract.

16.5 We have given various commitments in relation to the Goods and Services in clause 10 and clause 12. 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.

16.6 This clause 16 shall survive termination of the Contract.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 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 you) shall be owned by us, our licensors and/or subcontractors (as applicable).

17.2 Subject to your payment in full of the charges for the Services in accordance with clause 14, we grant to you, or shall use our reasonable commercial efforts to procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any tangible or intangible items directly produced as a result of the Services (**Deliverables**) (excluding materials provided by you) for the purpose of receiving and using the Services and the Deliverables in your business.

17.3 You shall not sub-license, assign or otherwise transfer the rights granted by clause 17.2 save that if the Deliverables are program files for machinery to be resold by you as part of your ordinary business, you may sub-license the rights under clause 17.2 to your customer.

17.4 You grant to us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by you to us for the purpose of providing the Services to you.

18. CONFIDENTIALITY

18.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 18.2.

18.2 Each party may disclose the other party's confidential information: –

a. to its employees, officers, representatives, contractors or subcontracts 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. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 18; and

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

18.3 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.

19. TERMINATION

19.1 Without limiting any of our other rights, we may suspend the provision of any Goods and/or Services to you, or terminate the Contract with immediate effect by giving written notice to you if: –

a. you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 10 days of you being notified in writing to do so;

b. you fail or have failed to pay any amounts due to us under the Contract or any other contract between you and us by the due date for payment or you have otherwise breached or have exceeded any credit terms offered by us;

c. you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your 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 your 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;

d. you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or

e. your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

19.2 Without limiting our other rights or remedies, we may suspend the provision of any Goods and/or Services to you whether under the Contract or under any other contract between you and us if you: –

a. become subject to any of the events listed in clause 19.1(a) to clause 19.1(e), or we reasonably believe that you are about to become subject to any of them;

b. fail to pay any amount due under this Contract or any other contract with us on the due date for payment; and

c. you exceed your credit limit with us or are otherwise in breach of your credit terms with us.

19.3 Without limiting our other rights or remedies, we shall have the right to terminate the Contract on 5 Business Days' written notice to you without any liability to you other than to refund you any amounts you have paid to us under the Contract for Goods and/or Services which have not been provided by us as at the effective date of termination under this clause.

19.4 On termination of the Contract for any reason, you shall immediately pay to us all of our outstanding unpaid invoices and any interest.

19.5 Termination of the Contract shall not affect your or our rights and remedies that have accrued as at termination.

19.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

20. EVENTS OUTSIDE OUR CONTROL

20.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 20.2.

20.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, failure of our third party suppliers, lock-

outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

20.3 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract: –

- a. we will contact you as soon as reasonably possible to notify you; and
- b. our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Goods to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

20.4 You may cancel the Contract if it is affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel, you will have to return (at our cost) any relevant Goods you have already received and we will refund the price you have paid, including any delivery charges.

21. EXPORT CONTROL COMPLIANCE AND PROHIBITED PURPOSES

21.1 You acknowledge and agree that: –

- a. the Goods we supply and the technical data relating thereto may be subject to the export control laws of the USA, EU, UK and/or other applicable jurisdictions (**Export Control Legislation**);
- b. the Goods we supply and any technical data related thereto which are subject to Export Control Legislation (**Restricted Items**) will remain subject to such Export Control Legislation following delivery; and
- c. Restricted Items may not be exported, re-exported, transferred or otherwise dealt except as authorised or permitted by the relevant Export Control Legislation.

21.2 You shall not directly or indirectly resell, export, re-export, transfer or otherwise deal with any Restricted Items supplied to you by us other than as permitted or authorised by the relevant and applicable Export Control Legislation. Furthermore,

you shall not resell or otherwise transfer Restricted Items to a third party, knowingly or being given reasonable grounds to suspect by the third party that the third party intends to resell, export, re-export, transfer or otherwise deal with such Restricted Items (or any part of them) in breach of, or contrary to, any applicable Export Control Legislation and without first obtaining all required licences and consents. You shall impose upon persons purchasing such Goods from you obligations corresponding to those set out in this clause 21.2.

21.3 You hereby certify and confirm that any Goods purchased from us by you will not be used or resold for any military purpose or any purposes connected with chemical, biological or nuclear weapons or missiles capable of delivery of such weapons (Prohibited Purpose). Furthermore, you agree not to resell any Goods supplied by us to a third party if you suspect (or have been given reasonable grounds to suspect) that such Goods will, or are likely to, be used for any Prohibited Purpose.

21.4 You shall indemnify us against all liabilities, costs, expenses, damages and losses (including, without limitation, any direct, indirect or consequential losses, loss of profit, loss of opportunity and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any breach of clause 21.2 and/or clause 21.3. above).

21.5 This clause 21 shall survive termination of the Contract.

22. NOTICES

22.1 Any notice given by you or us to the other under or in connection with the Contract shall be in writing and shall be: –

a. 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

b. sent by email to the following addresses:

i. notices to us: “BPXCorporate@bpx.co.uk” (or such other substitute or additional email address notified by us to you in writing);

ii. notices to you: any email address you have used in placing Orders with us or otherwise communicating with us in connection with any Orders.

22.2 Any notice shall be deemed to have been received: –

- a. if delivered by hand, at the time the notice is left at the proper address;
- b. 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
- c. if sent by e-mail, at 9.00 am on the next Business Day after transmission.

22.3 The provisions of this clause shall 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.

23. USE OF OUR WEBSITE AND HOW WE USE YOUR PERSONAL INFORMATION

23.1 Your use of our website is governed by our Terms of Website Use which is available on our website. Please take the time to read our Terms of Website Use as it includes important terms which apply to you.

23.2 We only use your personal information in accordance with our Privacy Policy. Please take the time to read our Privacy Policy which can be found on our website as it includes important terms which apply to you.

24. GENERAL

24.1 We may transfer our rights and obligations under the Contract to another organisation, but this will not affect your rights or our obligations under these Terms.

24.2 Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

24.3 You may only transfer your rights or your obligations under the Contract to another person if we agree in writing.

24.4 This Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

24.5 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

24.6 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

24.7 In these Terms: –

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

b. A reference to writing or written includes email but excludes fax.

24.8 This Contract is governed by English law and each party irrevocably agrees to submit all disputes arising out of or in connection with this Contract to the exclusive jurisdiction of the English courts.