



Terms & Conditions for the Supply of Goods and/or Services

The Customer's attention is particularly drawn to the provisions of clause 13.

1. INTERPRETATION

1.1. Definitions. In these Conditions, the following definitions apply:

AVB Software Terms	the General Terms and Conditions for the Supply of Software Products of the Supplier, as updated from time to time and a copy of which is available at www.sick.com .
AVB SaaS Terms	the General Terms and Conditions for Software as a Service of the Supplier, as updated from time to time and a copy of which is available at www.sick.com .
Business Day	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 set out in clause 3.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 20.7.
Contract	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Customer	the person or firm who purchases the Goods and/or Services from the Supplier.
Deliverables	the deliverables set out in the Order.
Firmware	software embedded in any Deliverable which is necessary for its elementary functions.
Goods	the goods (or any part of them) set out in the Order.
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation.
Services	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.
Service Specification	the description or specification for the Services provided in writing by the Supplier to the Customer.
Supplier	Sick (UK) Ltd registered in England and Wales with company number 01147832.
Supplier's Group	means the Supplier and its ultimate holding company and any direct or indirect subsidiary of such holding company and "holding company" and "subsidiary" shall have the meanings ascribed to them in the Companies Act 2006.
Supplier Materials	all information, data, materials, documentation, software and specifications in any form of the Supplier made available to the Customer in connection with the supply of the Goods or Services.

1.2. Construction. In these Conditions, the following rules apply:

- 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 or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;
- 1.2.4. any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5. a reference to **writing** or **written** includes faxes and e-mails.

2. APPLICATION

2.1. These Conditions shall:

- 2.1.1. apply to and be incorporated in the Contract; and
 - 2.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, the Order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless it is in writing and signed by a duly authorised representative of the Supplier.

3. CONTRACT

- 3.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 3.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, or the Supplier's commencement or execution of work pursuant to the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 3.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 3.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.5. 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 trade, custom, practice or course of dealing.
- 3.6. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 3.7. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4. SPECIFICATIONS

- 4.1. The Goods are described in either the Supplier's Goods Specification, the quotation supplied to the Customer, or (where relevant) any Goods Specification supplied by the Customer and agreed by the Supplier in writing.
- 4.2. To the extent that the Goods are to be manufactured or supplied in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3. The Supplier reserves the right to amend the Goods Specification if required:
 - 4.3.1. by any applicable statutory or regulatory requirements; or
 - 4.3.2. in the reasonable opinion of the Supplier.

5. DELIVERY

- 5.1. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.2. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.3. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier 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 Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4. If the Supplier fails to deliver the Goods, its liability shall be limited to a credit of the price due or a refund of sums paid by the Customer for those Goods not delivered. In no circumstances shall the Supplier have any further liability to the Customer in damages or otherwise for non-delivery or late delivery of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.5. If the Customer fails to accept or take delivery of the Goods within 2 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods the Supplier's courier will automatically return the consignment to the Supplier. As stipulated in the Order, where the Goods are returned to the Supplier it shall:
 - 5.5.1. be entitled to treat the Contract as terminated and resell or otherwise dispose of part or all of the Goods as it sees fit, on the understanding that the Customer shall not be charged for the Goods. This clause shall predominantly apply in relation to standard products within the Suppliers catalogue; or
 - 5.5.2. arrange for the re-delivery of the Goods to the Customer at a mutually convenient and agreed date and shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including any insurance, if relevant). This clause shall predominantly apply in relation to project equipment manufactured by or procured by the Supplier for and on behalf of the Customer.
- 5.6. Subject to clause 5.7, upon completion of the delivery of the Goods (in accordance with clause 5.2) the Customer is deemed to have inspected the Goods and accepted that the Goods have been provided in accordance with the Contract.
- 5.7. The Customer may notify the Supplier that the Goods do not conform with any applicable Goods Specification, provided that such notice:
 - 5.7.1. is given to the Supplier within 10 days of the delivery of the Goods in accordance with clause 5.2 (time being of the essence); and
 - 5.7.2. particularises (in reasonable detail) the fault/defect with the Goods.
- 5.8. Where the Customer provides a notice in accordance with clause 5.7, the provisions of clauses 6.2 to 6.5 shall apply.

6. WARRANTY

- 6.1. The Supplier Group warrants that on delivery, and for a period of 24 calendar months from the date of delivery (**warranty period**), the Goods shall:
 - 6.1.1. conform in all material respects with their description and any applicable Goods Specification; and
 - 6.1.2. be free from material defects in design, material and workmanship; and
 - 6.1.3. be fit for any purpose expressly held out by the Supplier in writing.
- 6.2. Subject to clause 6.3, if:
 - 6.2.1. the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;



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- 6.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost; then the Supplier shall, at its option, repair or replace the defective Goods (or part of the Goods), or, if it is not possible to repair or replace the defective Goods, refund the price of the defective Goods in full.
- 6.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:
- 6.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- 6.3.2. the defect arises because the Customer failed to follow the Supplier'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;
- 6.3.3. the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- 6.3.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
- 6.3.5. the defect arises as a result of:
- (a) wear and tear, wilful damage, negligence, or abnormal working conditions;
- (b) abnormal, corrosive or abrasive conditions;
- (c) incorrect fitment;
- (d) faulty or irregular supply of electricity; or
- 6.3.6. the Goods differ from the Goods Specification as a result of changes made in accordance with clause 4.2.
- 6.4. Except as provided in this clause 6 the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5. Goods stated as being 'Sale or Return' are supplied entirely at the Customer's own risk and shall remain so until returned to the Supplier in satisfactory condition. Following the Customer's return of the Goods the Supplier reserves the right to charge the Customer for any work that may be necessary to restore the Goods to their former condition.
- 6.6. Unless otherwise agreed in writing Goods supplied on a Sale or Return basis shall be returned to the Supplier within 1 calendar month from the date of delivery. If Goods are not returned within this period they will be invoiced and become due for payment by the Customer in accordance with these Conditions.
- 6.7. The Supplier shall be under no liability under the warranty under clause 6.1 or any other warranty, condition or guarantee while any sum is overdue from the Customer to the Supplier.
- 6.8. The warranties and rights in clause 6.1 and 6.2 do not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the manufacturer's warranty.
- 6.9. For the purposes of any repaired or replacement Goods supplied by the Supplier under clause 6.2, the terms of the warranty set out in clause 6.1 shall apply for a period of 12 calendar months from the date of such repair or replacement of Goods.
- 7. PASSING OF RISK AND TITLE**
- 7.1. The risk in the Goods shall pass to the Customer on completion of delivery. If, due to any act or omission of the Customer, delivery is delayed or does not take place, risk in the Goods shall pass to the Customer at the time delivery would have occurred in the absence of such act or omission of the Customer.
- 7.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier 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.
- 7.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.2. where the Goods are used as a component in the production of other goods or as part of a mixture of other goods, store such other goods so as to be readily identifiable and, for the avoidance of doubt, the Supplier shall be entitled to the proceeds of any sale or other disposal of such goods;
- 7.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4. maintain the Goods in satisfactory condition;
- 7.3.5. keep the Goods insured against all risks for their full price on the Supplier's behalf from the date of delivery with an insurer that is reasonably acceptable to the Supplier and the Customer shall:
- (a) obtain an endorsement of the Supplier's interest in the Goods on its insurance policy and, on request, the Customer shall allow the Supplier to inspect such Goods and the insurance policy;
- (b) assign (and direct any insurer to pay) to the Supplier the proceeds of any payments made under such insurance policy;
- (c) endorse in the name of the Supplier any instrument for the payment of such insurance payments and any premium refund and to apply such payments and refunds to any unpaid balance of the Customer's obligations to the Supplier, whether or not due, or to restoration of the Goods, or both, returning any excess to the Customer;
- (d) authorise the Supplier, whether in the name of the Customer or otherwise, to make, adjust or settle claims under, or to cancel any insurance required by this clause 7.3 and the Supplier shall incur no liability whatsoever on account of its exercise of such rights;
- (e) not cancel any insurance required by this clause 7.3 without the prior written consent of the Supplier;
- 7.3.6. not permit the Goods to become part of other goods, products or property except as expressly permitted under the Contract or by written notice from the Supplier;
- 7.3.7. notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.13;
- 7.3.8. not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Goods;
- 7.3.9. give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
- 7.3.10. permit the Supplier at any time, on request and during working hours, to examine and inspect the Goods.
- 7.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.13, then, without limiting any other right or remedy the Supplier may have:
- 7.4.1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 7.4.2. the Supplier may at any time:
- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product at the Customer's cost; and
- (b) 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.
- 7.5. Notwithstanding the foregoing, the Customer may sell the Goods to a third party prior to title passing to the Customer in accordance with clause 7.2 where:
- 7.5.1. the Customer is not subject to nor is likely to become subject to any of the events listed in clause 14.1.2 to clause 14.1.13;
- 7.5.2. the Customer provides prior notice of such sale to the Supplier; and
- 7.5.3. the proceeds of such sale, being less than total sum due and owing to the Supplier by the Customer under the Contract, are placed forthwith in an interest bearing deposit account and held on trust for the Supplier.
- 8. SERVICES**
- 8.1. The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order and/or the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 9. CUSTOMER OBLIGATIONS**
- 9.1. The Customer shall:
- 9.1.1. ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and/or Service Specification are complete and accurate;
- 9.1.2. co-operate with the Supplier in all matters relating to the Goods and/or Services;
- 9.1.3. provide in a timely manner the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
- 9.1.4. provide in a timely manner the Supplier with such information, samples and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
- 9.1.5. prepare (at its own cost) the relevant premises for the supply of the Goods and/or Services;
- 9.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Services are to start or the Goods are to be delivered;
- 9.2. If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 9.2.1. the Supplier shall without limiting its other rights or remedies 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 Supplier's performance of any of its obligations;
- 9.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- 9.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9.2.4. The Customer shall indemnify the Supplier at all times against all claims, demands, costs (including legal costs on a full indemnity basis), expenses, losses and liabilities incurred by the Supplier as a result of any claim that any drawings, designs, specifications or other information provided by the Customer infringes any rights of any third parties, including any Intellectual Property Rights.
- 10. PRICE**
- 10.1. Subject to clause 10.3, the price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 10.2. The charges for Services shall be on a time and materials basis:
- 10.2.1. the charges shall be calculated in accordance with the Supplier's standard daily fee rates as detailed within the Order and published from time to time (such rates are available on request);
- 10.2.2. the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.30 am to 5.00 pm worked on Business Days;
- 10.2.3. the Supplier shall be entitled to charge an overtime rate (published from time to time) on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside of the hours referred to in clause 10.2.2, (such rates are available on request); and
- 10.2.4. the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.3. The Supplier reserves the right to:



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- 10.3.1. increase its standard daily fee rates and the charges for the Services giving notice to the Customer at any time before delivery of the Services, to reflect any increase in the cost of providing those Services to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in any subcontractor fees);
 - (b) any increase in the labour and/or salary costs associated with the delivery of the Services (provided that such increase under this part may only apply once per calendar year);
 - (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (d) any delay caused by any instructions of the Customer in respect of the Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Services.
- 10.3.2. 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 Supplier that is due to:
- (e) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (f) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (g) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 10.4. In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 10.5. Except where otherwise expressly agreed, prices are ex works, exclusive of carriage, packing, and any other duties or taxes and shall be calculated and paid in Sterling.
- 10.6. Prior to the Commencement Date the Supplier may, in its sole discretion, require the Customer to:
- 10.6.1. make full or partial payment of the Goods and/or Services; or
 - 10.6.2. provide the Supplier with security for payment of the Goods and/or Services in a form acceptable to the Supplier.
- 10.7. The Customer shall pay each invoice submitted by the Supplier:
- 10.7.1. within 30 days of the date of the invoice; and
 - 10.7.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 10.8. 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.
- 10.8.1. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then:
 - 10.8.2. the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc' base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
 - 10.8.3. the Supplier, at its sole discretion, may cancel the Contract, suspend any further deliveries of Goods or suspend the provisions of the Services to the Customer;
 - 10.8.4. the Supplier may apply any payments made by the Customer to such of the Goods and/or Services (or goods and services supplied under any other Contract between the Supplier and the Customer) as the Supplier determines in its sole discretion.
- 10.9. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 11. INTELLECTUAL PROPERTY**
- 11.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
 - 11.2. The Customer acknowledges that, in respect of any third-party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
 - 11.3. All Supplier Materials are the exclusive property of the Supplier.
- 12. CONFIDENTIAL INFORMATION**
- 12.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Supplier's business, its products and services which the receiving party may obtain. The Customer shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Customer may also disclose such of the Supplier's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction
 - 12.2. This clause 12 shall survive termination of the Contract.
- 13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 13.1. The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 13.1.1. any breach of the Contract howsoever arising;
 - 13.1.2. any use made by the Customer of the Services, the Deliverables, the Goods or any part of them; and
 - 13.1.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
 - 13.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
 - 13.3. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 13.3.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 13.3.2. fraud or fraudulent misrepresentation.
 - 13.4. Subject to clause 13.2 and clause 13.3:
 - 13.4.1. the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of goods; or
 - (f) loss of contract; or
 - (g) loss of use; or
 - (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
 - (i) any claim for defects filed with the courts more than two years after the date of delivery of the Goods or performance of the Services.
 - 13.4.2. the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the greater of:
 - (a) £[●], and
 - (b) the price paid for the Goods and/or Services.
 - 13.5. This clause 13 shall survive termination of the Contract.
- 14. TERMINATION**
- 14.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 14.1.1. the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within seven days after receipt of notice in writing to do so;
 - 14.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 14.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 14.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company);
 - 14.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 14.1.6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 14.1.8. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
 - 14.1.11. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 14.1.12. the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 14.1.13. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
 - 14.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
 - 14.3. Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
 - 14.4. On termination of the Contract for any reason:



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- 14.4.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.4.2. the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier 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;
- 14.4.3. the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- 14.4.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15. FORCE MAJEURE**
- 15.1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, terrorist attacks, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, governmental acts such as import and export restrictions, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors or serious health hazards such as pandemics, epidemics, widespread disease or nuclear radiation.
- 15.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/ or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 15.4. If there is a Force Majeure Event which in the opinion of the Supplier adversely affects or could reasonably be expected to adversely affect, the business or operations of the Supplier, the Supplier shall be entitled to amend the Contract in good faith.
- 15.5. If any amendments proposed by the Supplier pursuant to clause 15.4 are not reasonably acceptable to the Customer, the Supplier shall be entitled to terminate the Contract immediately by giving written notice to the Customer.
- 16. EMPLOYEES**
- 16.1. The Customer and the Supplier agree that, unless otherwise stated in the Contract, the entry into the Contract, its performance or its extension shall not for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the **Regulations**) constitute a "relevant transfer" of any employees of the Customer (or any contractor engaged by the Customer in providing goods and/or services similar to the Goods/Services). If, however, a contract of employment between the Customer (or any contractor of the Customer) and any person has effect, pursuant to the Regulations, as if originally made between the Supplier and such person, or if a claim is made to such effect, the Supplier may terminate such contract. The Customer shall indemnify and keep the Supplier indemnified at all times from and against all claims, costs (including legal costs on a full indemnity basis) expenses, losses and liabilities incurred by the Supplier in respect of the employment, and the termination of the employment, of any such employees and in respect of any claim arising out of the actual or alleged application of the Regulations to the Contract, its performance or its extension.]
- 17. SOFTWARE AND DIGITAL SOLUTIONS**
- 17.1. To the extent that the Deliverables use or require any Firmware to be used by the Customer, the Supplier grants to the Customer a non-transferable, non-exclusive licence to use the Firmware (and associated documentation) in accordance with the Contract.
- 17.2. The Customer shall:
- 17.2.1. immediately install any update of the Firmware made available by the Supplier free of charge within the warranty period;
- 17.2.2. take reasonable precautions in case the Firmware does not work properly in whole or in part including, without limitation, by making daily data-backups, carrying out fault diagnosis and regular reviews of the data processing results; and
- 17.2.3. indemnify the Supplier against all claims, demands, damages, costs and expenses made against or suffered by the Supplier as a result of the Customer failing to comply with this clause 17.2.
- 17.3. In the event that the Supplier provides software which is installed and operated on the systems of the Customer or at the Customer's premises and which is not Firmware, the AVB Software Terms shall apply to the supply and use of such software.
- 17.4. In the event that the Supplier provides software which is provided for online use which is not Firmware, the AVB SaaS Terms shall apply to the supply and use of such software.
- 17.5. In the event of any ambiguity or conflict between these Conditions and the AVB Software Terms or the AVB SaaS Terms, the AVB Software Terms or the AVB SaaS Terms shall prevail (as applicable to the software provided under the Contract).
- 18. EXPORT LAW COMPLIANCE**
- 18.1. The Customer undertakes to use, distribute or in any other way make available items (goods, software and technology) provided by the Supplier only in compliance with all applicable export control regulations, foreign trade laws and any sanctions including those of the United Kingdom, the European Union and the United States of America (Export and Sanctions Law).
- 18.2. All Contracts are made with the reservation that each Contract, in terms of its content and the natural persons and entities directly involved in it must be permitted according to all of the Export and Sanctions Law.
- 18.3. If a Contract requires a licence, the Supplier is entitled to delay the performance until an export licence has been obtained or to withdraw in whole or in part from the Contract. In such cases, the Supplier shall not be held liable for delayed performance or non-performance.
- 18.4. The Customer warrants and represents that the Supplier's supply and delivery of the Products to the Customer shall not expose the Supplier to any sanctions, prohibitions or restrictions under Export and Sanctions Law.
- 18.5. Upon any request of the Supplier, the Customer shall provide the Supplier without undue delay with any and all documentation that the Supplier may deem to be useful or necessary for obtaining licences or for carrying out export control checks, including documentation and information describing the end-user, the final destination and any intended end-use.
- 18.6. The Customer shall indemnify and hold harmless the Supplier and the Supplier's Group at all times against all claims, demands, costs (including legal costs on a full indemnity basis) expenses, losses and liabilities incurred by the Supplier and the Supplier's Group due to the Customer's non-compliance with any Export and Sanctions Law.
- 18.7. The Customer undertakes to comply with the Supplier's internal export compliance regulations. In particular, the Customer shall not use, distribute or in any other way make available any items (goods, software and technology) provided by the Supplier for use in weapons and/or weapons systems.
- 18.8. If the Customer is in breach of any provision of this clause 18 or any Contract is partially or entirely prohibited under Export and Sanctions Law, the Supplier may immediately terminate or suspend in whole or in part any Contract.
- 19. EXPORT TERMS**
- 19.1. In these terms, Incoterms means the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of the Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and the Contract, the latter shall prevail.
- 19.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 19 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision.
- 19.3. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon. If the Customer breaches any such legislation, the Supplier shall be entitled to terminate the Contract immediately by giving written notice to the Customer.
- 19.4. Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered EXW.
- 19.5. If a delivery comprises an export which is subject to official approval, the Contract shall not be deemed to have been made prior to such approval being granted. The Customer shall be responsible for providing and submitting any documents required for such approval.
- 19.6. The Customer agrees to provide proof of the use or end use of the Goods upon request.
- 19.7. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which ought reasonably to have been apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 19.8. The Supplier shall not be liable for:
- 19.8.1. any delay arising out of or in connection with any legislation or regulations governing the export of the Goods from the United Kingdom or the importation of the Goods into the country of destination;
- 19.8.2. death or personal injury arising from the use of the Goods delivered in the territory of another State (within the meaning of section 26(3)(b) Unfair Contract Terms Act 1977).
- 20. GENERAL**
- 20.1. Assignment and other dealings.**
- 20.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 20.1.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2. Notices.**
- 20.2.1. Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered by leaving it at or by sending by pre-paid first-class post or other next working day delivery service, or by commercial courier, or fax to the intended recipient's address.
- 20.2.2. A notice or other communication shall be deemed to have been received: if left at the intended recipient's address, at the time it is left; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 20.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 20.3. Severance.**
- 20.3.1. 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 enforceable. 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 shall not affect the validity and enforceability of the rest of the Contract.
- 20.3.2. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.4. Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.



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- 20.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.6. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 20.7. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 20.8. **Entire Agreement.** This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in this Contract. Each of the Supplier and the Customer acknowledges and agrees that:
- 20.8.1. in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to this Contract or not) which is not expressly set out in this Contract; and
- 20.8.2. the only remedy available to it for breach of any statement, representation or other term that is expressly set out in this Contract shall be for breach of contract under the terms of this Contract.
- 20.9. **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.10. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).