

## GENEXIS' GENERAL TERMS AND CONDITIONS OF SALE

### Article 1. Definitions

In these Terms and Conditions, the terms set out below have the following meanings:

- a. **Seller:** Genexis Broadband UK Ltd and/or any subsidiaries and/or group company of one of the before mentioned entity acting in the United States, Canada, England, Wales, Ireland, India, and Australia, as well as their successors in law.
- b. **Agreement:** any documented agreement between the Seller and the Customer concerning the delivery of a Performance to the Customer by the Seller, and any change or amendment thereto.
- c. **Performance:** any Products delivered and/or to be delivered, Services performed and/or to be performed and/or any work completed and/or to be completed, or a combination thereof, and however described, by the Seller to the Customer.
- d. **Product:** any products, including, but not limited to, components, materials and/or other items delivered or to be delivered by the Seller to the Customer, irrespective of whether the Agreement solely pertains to the delivery of Products, or includes Services or Work.
- e. **Customer:** any person or legal entity that placed an order with the Seller for Products, Services or Work, to whom the Seller has sent an offer or proposal, that has entered into an Agreement with the Seller and/or with whom the Seller is in the process of discussing or negotiating the possible conclusion of an Agreement.
- f. **Services:** any services performed and/or to be performed by the Seller to the Customer, however described and irrespective of whether the Agreement also includes the delivery of Products and/or the completion of Work or not.
- g. **Work:** work of a tangible and intangible nature completed and/or to be completed by the Seller, however described and irrespective of whether the Agreement also includes the delivery of Products and/or Services or not.
- h. **Terms and Conditions:** these general terms and conditions of sale.
- i. **Affiliates:** any corporation, company or other legal entity that a party Controls, is Controlled by or is under common Control with; where "Control" means: (i) ownership, directly or indirectly, of the shares and/or ownership interest(s) of a legal entity representing more than fifty percent (50%) of the voting rights in this legal entity; and/or; (ii) the power to, directly or indirectly, appoint a majority of the members of the board of directors of a legal entity; and/or, (iii) the power to, directly or indirectly, direct or cause to direct the management of a legal entity.

### Article 2. General

1. These Terms and Conditions apply to every offer or proposal of the Seller and any Agreement between the Seller and the Customer governing the legal relationship concerning the delivery of a Performance by the Seller to the Customer, unless the parties have explicitly agreed something else in writing.

2. The Seller is entitled to engage third parties in the performance of the Agreement. The Terms and Conditions also apply to Agreements for which the Seller makes use of the services of third parties for the execution of the Agreement, or a part thereof. If the Seller makes use of the assistance of a third party in the Performance of any of the Seller's obligations towards the Customer, the Seller will be responsible for the action of the third party in the same way as the Seller would be under these Terms and Conditions and the Agreement as if the Seller would have performed the action itself, unless the Customer has required the (use of the) third party.
3. The applicability of any purchase conditions or any other conditions of the Customer are explicitly excluded and rejected unless these are accepted in writing by the Seller in respect of any specific Agreement.
4. If, at any time, one or more provisions in these Terms and Conditions are fully or partially void or voidable, the remaining provisions of these Terms and Conditions will remain in full force and effect. In such an event, the Seller and the Customer will consult each other in order to agree on new provisions which are not void and voidable to replace the void or voidable provisions. These new provisions shall as closely as possible correspond with the void and voidable provision(s), whereby the intent, meaning and effect of the original provisions shall be taken into consideration as far as possible.
5. Additions to or deviations from these Terms and Conditions shall only apply where agreed in writing between the parties and duly signed by authorized signatories. In the event that a stipulation from these Terms and Conditions is in contradiction with a stipulation in the Agreement, the stipulation in these Terms and Conditions shall prevail unless the stipulation in the Agreement explicitly acknowledges the conflict between the stipulations and states unequivocally that the Agreement shall prevail.
6. A failure by the Seller to exercise a right under these Terms and Conditions and/or an Agreement, or a delay thereof shall not operate as a waiver of such right. No single or partial exercise of a right under the Terms and Conditions and/or Agreement by the Seller shall preclude any other or further exercise of such right or other rights.
7. The headings of articles have no independent meaning with respect to the content.

### **Article 3. Proposals and offers**

1. All proposals and offers made by the Seller to the Customer are subject to a duly signed Agreement by both parties.
2. The Seller cannot be bound to its proposals or offers if the proposals or offers, or a part of a proposal or an offer, contain a mistake printing error, if the proposal or offer has a different content than what was the purpose, where the Customer realized or should have realized the mistake.
3. If the reply to an offer by the Customer differs or contains additions, limitations or other modifications from the offer of the Seller (whether or not the difference/addition/limitation/modification pertains to points of minor significance), the Seller shall not be bound by the difference, additions, limitations or other

modifications, unless the Seller states explicitly that the Seller is bound in writing to the Customer.

4. If the Seller provides a quotation for a Performance consisting of multiple phases/stages/parts, the quotation shall only apply if the Customer accepts the offer in full and takes delivery of all phases/stages/parts. If the Customer only wants a part of the phases/stages/parts performed, the price per phase/stage/part shall be the actual price of the phase/stage/part, not a corresponding proportion of the quoted price, unless Seller stated explicitly otherwise in writing in its quotation.

5. Offers and proposals, and/or any agreed upon deviations, do not automatically apply to future Agreements. The Customer cannot derive any rights from any offers, proposals and/or any agreed upon deviation, for other and/or future transactions.

6. An Agreement, as well as modifications and additions thereto, is concluded at that moment when duly accepted or confirmed in writing by authorized signatories of both parties.

7. If the Customer provides or must provide any data, information and/or specifications, the Customer will be fully responsible for the data, information and/or specifications, including but not limited the accuracy, and the timely supply thereof. The Seller has no liability with regard to such data, information and/or specifications.

8. All information concerning weight, dimensions, capacity, price, technical or other data in catalogues, brochures, datasheets, circulars, advertisements, illustrations, and price lists are only approximate. Such information is only binding when expressly referenced to in the Agreement.

#### **Article 4. Terms of delivery, execution of Agreements**

1. All (delivery/completion/performance) periods, terms and/or dates, including dates for the Performance, agreed upon or specified by the Seller shall in all cases be target dates, shall not have a binding effect on the Seller, shall never be considered a final deadline and shall in all cases be merely indicative, unless specifically agreed upon in each case.

2. The Seller shall not be bound by a (delivery) period, term or date, final or otherwise, (i) that can no longer be achieved as a result of circumstances outside of the Seller's control that occurred after the date on which the Agreement was concluded, or (ii) if the parties have agreed on a change to the content or scope of the Agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the Agreement, or (iii) in the event of Force Majeure.

3. The term for execution shall not commence before, and if applicable, the time of delivery shall be calculated, from the latest of the following dates: (i) the date the Agreement was concluded; (b) the date the Seller was informed of any necessary licences or other permits; (c) the date the Seller received payments contractually required to be made before commencement of production; (d) the date the Seller received all correct (technical) data, information, auxiliaries and instructions etc. necessary or useful for the delivery or otherwise for the execution of the Agreement.

4. Delivery of the Products shall be Ex Works (EXW) warehouse of the Seller, in accordance with the most recent Incoterms in force at the time when the Agreement is concluded unless the parties agreed on something else in writing. Delivery shall be deemed in accordance with EXW to have taken place at the time where the Products are made available to the Customer at the Seller's place or as separately agreed elsewhere.
5. If the Customer fails to take delivery of the Products in full or in time or fails to provide information or instructions necessary for the delivery, the Seller is entitled to store the Products at the expense and risk of the Customer. The Customer will nevertheless be liable to pay the purchase price plus interest and costs by way of damages, increased by storage and handling costs.
6. If the Customer finds that the Customer cannot accept delivery of the Products on the agreed date, the Customer should promptly inform the Seller in writing, stating the reason for the delay and, if possible, when the Customer expects to be able to accept delivery. If the Customer fails to accept delivery on the agreed date shall nevertheless be liable for payment as if the Products had been duly delivered, without prejudice to the other rights of the Seller.
7. The Seller shall provide all Services and Work on the basis of a "reasonable efforts" obligation, unless and in so far as the Seller has explicitly undertaken in the written Agreement to achieve a specific result and the result in question is sufficiently determined.
8. The Seller shall at all times be entitled to execute the Agreement and/or deliver the Performance in stages/parts. The Seller shall be entitled to invoice each complete stage/part/partial delivery separately.
9. If the Agreement is executed in stages/parts, the Seller may suspend the execution of those parts that belong to a following stage/part until the Customer has given written approval of the results of the previous stage/part. The non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage(s) and/or other part(s), where such is found applicable.
10. If the Customer fails in the proper performance of Customer's obligations to the Seller, the Customer shall be liable for all damage (including costs) incurred by the Seller arising from that failure, either directly or indirectly.
11. It is possible that the Services and/or Work needs to be performed on any site of the Customer. In such event the Customer shall ensure that the Seller can carry out its activities without interruption and at the agreed time and that the requisite facilities are made available to the Seller when carrying out its activities, such as (i) water and electricity, (ii) the correct hardware and software and/or (iii) the internet.

#### **Article 5. Changes and additional Performance**

1. If the Seller has delivered any performance that falls outside of the content or scope of the agreed Performance, at the request or with the prior consent of the Customer, such Performance shall be paid for by the Customer in accordance with the agreed rates. If no rates have been agreed, the Seller's standard rates shall apply.

2. In so far as a fixed price has been agreed in respect of the Performance, the Seller shall, upon request by the Customer, notify the Customer in writing regarding the financial implications of any additional Performance as referred to in this Article 5.
3. Article 6. Term of the agreement, suspension, dissolution, and early termination of the agreement
4. The Seller shall be entitled to terminate the Agreement, in part or in full, with immediate effect without notice of default being required, if: (i) the Customer is granted a suspension of payments, provisionally or otherwise, or if the Customer applies for a suspension of payments, (ii) the Customer is terminated for reasons other than the merger of companies, (iii) the Customer becomes bankrupt or is liquidated, or an equivalent of the previous concepts occurs, (iv) a composition of creditors is offered by the Customer, , (v) the Customer fails to comply with an obligation arising from the Agreement, or does not fulfil it on time or not properly.
5. If the Agreement is terminated, any claim previous executed by the Seller against the Customer becomes immediately due and payable.

#### **Article 7. Force Majeure**

1. In these Terms and Conditions, Force Majeure shall mean any circumstances beyond the reasonable control of either of the parties including but not limited to: (a) war, acts of warfare, hostilities (whether war be declared or not) invasion, incursion by armed force, act of hostile army, nation or enemy; (b) riot, uprising against constituted authority, civil commotion, disorder, rebellion, organised armed resistance to the government, insurrection, revolt, military or usurped power, civil war; (c) acts which hinder the course of or stop, thwart, prevent, interrupt or breach the supply and/or provision of any material and/or power which is instrumental to the continuance of this Agreement; (d) any hazardous, dangerous, perilous, unsafe chemical, substance, material or property, which renders liable or endangers the health and safety of either party or the general public; (e) flood, fire, arson, storm, lightning tempest, accident, or other Acts of God; (f) epidemic, pandemic (as announced by local government or by the WHO) explosion, disease, earthquake, hijacking, sabotage, crime; (g) cracking or fracturing of equipment plant or property, landslide; (h) nuclear radiation, and/or accident; (i) death, injury or illness of key personnel.
2. Neither party shall be liable to the other party for any failure to perform its obligations, insofar as that failure is caused or relates to Force Majeure. In case of Force Majeure, the delivery and other obligations of a party are suspended for the duration of the Force Majeure event. If this period lasts more than three (3) months, the party not invoking the Force Majeure event is entitled to terminate the Agreement without obligation to compensate the other party for any damages.

#### **Article 8. Prices, payment and collection costs**

1. All prices for the Performance are in USD, net cash, without reduction and exclusive of VAT and any other taxes, duties, levies, costs and charges owed at the time of delivery and inclusive of standard packaging, unless stated otherwise in writing.

2. Only if the parties have agreed this explicitly in writing, the Seller shall install, configure and/or connect the Products, or arrange for this to be carried out. Where the Seller is obliged to install and/or configure hardware, this shall not include carrying out data conversion or the installation of software, unless parties explicitly agreed otherwise in writing.
3. If an Agreement is entered into and no definite price has been agreed upon, the Agreement will be executed at the prices of the Seller for the Performance which are valid at the time of the conclusion of the Agreement.
4. If the Seller has delivered any Performance that falls outside of the content or scope of the agreed Performance, at the request or with the consent of the Customer, such Performance shall be paid for by the Customer in accordance with the agreed rates. If no rates have been agreed, the Seller's standard rates shall apply.
5. All cost estimates and budgets issued by the Seller shall be merely indicative, except where specified otherwise in writing by the Seller. The Customer may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Seller. An available budget made known by the Customer to the Seller shall under no circumstances apply as a price agreed between the parties for the Performance to be provided by the Seller. The Seller shall only be obliged to notify the Customer that there is a risk that a cost estimate or budget will be exceeded if this has been agreed between the parties in writing.
6. Any changes in factors affecting the price for the Performance or the Seller's additional costs, including, but not limited to purchase prices, exchange rates, labour costs, import and export duties and other levies due upon import or export, insurance rates, freight rates and other cost, levies or taxes after the conclusion of the Agreement will be charged by the Seller to the Customer.
7. The Customer shall pay all invoices of the Seller without deduction, suspension, set-off or discount within (30) thirty days of the date on the invoice to the bank account designated by the Seller, in the invoiced currency, unless the parties agreed upon otherwise in writing. The Seller is entitled to send invoices periodically.
8. The payment term mentioned in Article 8.7 or the otherwise agreed-upon dates/terms of payment, is/are final and concern the last due dates. If the Customer fails to pay the invoiced amounts in time, the Customer will be legally in default by operation of law. As from the due date to the date on which the principal sum is paid in full the Customer shall owe - besides the costs mentioned in Article 8.9 - statutory commercial interest on the outstanding amount without a demand or notice of default being required.
9. Payments made by Customer will, notwithstanding the description or instruction of the Customer, first be applied to the costs, then the interest that is due and finally towards the principal sum – more specific with the invoices in the order of their age, also if not yet matured - and the accrued interest.
10. The Seller is entitled to set off receivables owed by the Seller and/or (any of) its Affiliates to the Customer against receivables owed by the Customer to the Seller (and/or (any of) its Affiliates).



11. The Seller shall at all times be entitled to require the Customer to give proper security for the performance of all its obligations under the Agreement in a manner as will be deemed sufficient by the Seller or to demand that the Customer pays the purchase price for the Performance in advance. Failing immediate provision of such security or advance payment, the Seller will be entitled to suspend further execution of the Agreement until such time as the Customer will have provided the required security or payment in advance.

12. Unless otherwise agreed, the Seller shall be entitled to compensation for cost increases resulting from taxes, official levies, exchange rate fluctuations or raw material prices after the quotation date. The Seller shall further be entitled to adjust the price based on the imposed increase or changes in the ordered goods.

#### **Article 9. Retention of title and rights**

1. Notwithstanding the actual delivery, all Products supplied by the Seller shall remain the property of the Seller until such time the Customer has fully paid any amounts due to the Seller in connection with the Products under the Agreement. The subject to retention of title delivered Products will be for the account and risk of the Customer.

2. The property law consequences of retention of title in respect to any Product that is destined for export is governed by the law of the state of destination if the relevant laws contain provisions that are more favourable to the Seller.

3. As long as the title to the Products has not passed to Customer, the Customer shall not be entitled to lease, rent out or sell and deliver the Products to third parties or have third parties use them, to pledge them or otherwise encumber them in any way or position them out of control. However, a Customer that acts as a reseller shall be entitled to sell, resell, rent out and lease the Products that are subject to the Seller's retention of title in so far as this is customary within the context of the normal course of its business.

4. Rights, including rights of use, shall be granted to the Customer or transferred, where appropriate, subject to the condition that the Customer has paid all of the amounts due pursuant to the Agreement concluded between the parties in full. If the parties have agreed that the Customer shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Customer shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.

5. The Customer should do all that may reasonably be expected of the Customer to protect the Seller's rights. The Customer shall preserve the Products delivered to it subject to retention of title carefully and as the Seller's recognizable and identifiable property. If and as long as the Seller is the owner of the Products, Customer shall notify the Seller without delay in the event that any part of the Products should be lost or damaged, or in the event that a third party sequesters (any part of the) Products covered by retention of title or wish to attach rights to them or assert their rights to them. Furthermore, the Customer shall inform the Seller upon its first request where the Products in respect of which the Seller has retained its title, are located.

6. The Customer undertakes to ensure the supplied products covered by retention of title, to keep them insured against normal business risks, including but not limited against fire, damage caused by explosion and water and against theft, and to provide to the Seller a copy of the insurance policy immediately upon first request. The Seller is entitled to the money from any payment from the insurance. Insofar as necessary, the Customer undertakes in advance to cooperate with the Seller in all that is or might prove necessary or desirable in that context. Upon the Seller's first request to that effect, the Customer shall assign any and all rights towards the insurers involved to the Seller.

7. The Seller shall at all times be entitled to reclaim the Products delivered to the Customer subject to retention of title in case the Customer has not fulfilled its obligations, or the Seller expects that the Customer will not fulfil its obligations. The Customer hereby unconditionally and irrevocably gives its permission and shall lend every co-operation to the Seller or to a third party designated by it, to enter all locations where the Seller's property will be located and to collect said property if and when the Seller wishes to exercise its rights of ownership. The costs of and relating to such reclaim will be for the account of the Customer.

#### **Article 10. Acceptance test**

1. Unless otherwise agreed, any contractual acceptance testing provided for in the Agreement shall be carried out in the Seller's facility during normal working hours. If the Agreement does not include test specifications, the testing shall be performed in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

2. The Seller shall inform the Customer of acceptance testing to allow the Customer's representative to attend. If the Customer is not represented at the testing, the test report shall be sent to the Customer and shall be accepted as accurate.

3. If the acceptance tests show the Product not to be in accordance with the Agreement, the Seller shall remedy any deficiencies in order to ensure that the Product complies with the Agreement. New tests shall then be carried out at the Customer's request, unless the deficiency was insignificant. If only minor deficiencies, which have little or no effect on the anticipated use of the Product, are revealed during the acceptance test, the acceptance test shall be deemed to be passed. The Seller shall nevertheless remedy such minor deficiencies.

4. All costs relating to acceptance testing provided for in the Agreement performed in the Seller's facility are for the Sellers' account. The Customer however shall bear all own expenses, such as travel costs and living expenses for his representatives in connection with such test. If at the request of the Customer, any other or additional test activities are performed by the Seller than initially mentioned in the Agreement, all the costs thereof shall be for Customer's account.



#### **Article 11. Research and complaints, time limit**

1. The Customer is required to inspect, or to have inspected, the Performance as soon as the Products are placed at the Customer's disposal and/or as the Services are performed and/or if the Work in question or a part thereof has been completed. In addition, the Customer should examine whether the quality and/or quantity of the delivered Performance matches the Agreement and complies with the requirements agreed by the Parties. The Seller should be notified in writing of any visible defects in the Performance within the time limit of fourteen days after delivery of Performance. The Seller should be notified in writing of all other complaints and defects immediately, or in any case within the time limit of fourteen days at the latest, after the date on which the shortcomings/defects become known or might reasonably have been expected to become known to the Customer. The notification of a shortcoming/defect/complaint should contain a description of the concerning Performance and the nature of the shortcoming/defect/complaint that is as detailed as possible so that the Seller can respond adequately. The Customer should allow the Seller the opportunity to examine the complaint or to have the complaint examined.
2. If the Customer submits a complaint or notification of default, even within the time limit, this will not suspend any obligation of the Customer with respect to the payment that due to the Seller as a result of the Agreement.
3. If the Customer becomes aware of an issue, the Customer must report the issue to the Seller within thirty (30) days of becoming aware of the issue. If the Customer does not report the issue within thirty (30) days of when the Customer became aware or should have become aware, the Customer forfeits any claim with regards to this issue. For the avoidance of doubt, any issue discovered later than twelve (12) months after the Customer receives the product shall always be considered to have been discovered after the Customer should have become aware of the issue.
4. If it is established that a complaint cannot be substantiated by the Customer or if the complaint falls outside the scope of the guarantee, the costs arising from the complaint and related thereto, including the costs for examination on the part of the Seller, shall be fully borne by the Customer, including administration costs, shipping costs and call-out charges. The Seller is allowed in such event, to charge an additional minimum of USD (\$) 15 per product or component as a non-refundable administrative diagnostic fee in addition to all other costs. If it is established that a complaint cannot be substantiated or if the complaint falls outside the scope of the guarantee, the Seller shall invoice the costs of Performance and the rectification of defects, that fall outside the scope of the guarantee in accordance with its standard rates. If requested by Customer, in such event, the out-of-warranty product – which is each product of which the complaint cannot be substantiated by the Customer or if the complaint falls outside the scope of the guarantee - may be repaired or replaced with new or refurbished parts at the expense of the Customer. In case of an out-of-warranty repair or refurbished product, the Seller only warrants that during 90 days after the delivery of the repaired, or refurbished product, that in case of repair, the repair by the Seller was carried out with good workmanship and with good materials used and in case of delivery of a

refurbished product, that the refurbished product meets the specifications of the refurbished product the Parties agreed upon in writing. This warranty is subjected to the conditions mentioned in Article 12 paragraph 2 up to and including paragraph 9. All shipping costs for out-of-warranty repaired or refurbished products are also payable by the Customer.

5. Notwithstanding statutory time limits, in any event, all claims of the Customer will become time-barred unless legal proceedings will have been instituted before the Court of competent jurisdiction within twelve months after the date of delivery/performance/execution, or the date that delivery/performance should have been made.

#### **Article 12. Guarantee and liability for defects**

1. Unless it has been expressly agreed otherwise in the Agreement, the Seller guarantees towards the Customer regarding the Products with the exception of refurbished products, that, subject to the conditions set out below, on delivery and for a period of (24) twenty four months from the date of delivery of the Products, the Products are suitable for normal use and are of the quantity and meet the specifications the Parties agreed upon in writing, if the Products are used, installed and maintained in accordance with the instructions. The Seller does not guarantee that the Products will be suitable for the use envisaged by the Customer or that the Products are fit for any particular purpose and/or possess any particular qualities, unless the written Agreement between the Parties specifies that specific purpose of use or specific quality clearly and without reservation.

2. If the Seller delivers Products to the Customer which the Seller has obtained from its supplier(s), the Seller shall never be bound by any warranty or liability towards the Customer that extends beyond the warranty or liability that the Seller can claim of its supplier(s), unless parties explicitly agreed otherwise in their written Agreement.

3. The Seller shall have no guarantee obligations whatsoever towards the Customer if the Customer has not fulfilled its obligations towards the Seller (both financially and otherwise).

4. The guarantee does not cover and the Seller shall have no (guarantee or liability) obligations whatsoever towards the Customer, in/with regards to the following events and/or if the defects are, partly or entirely, caused by or the result of: (i) normal wear and tear, (ii) minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice, (iii) incorrect, improper, negligence, injudicious or incompetent use, maintenance, storage, installation, measurement or transportation, set-up and/or connection etc. of the Products by the Customer or a third party, (iv) the use of the Products by the Customer or a third party for a purpose other than that for which they are normally or specifically intended, (v) the maintenance or repair by the Customer or a third party without the Seller's prior written consent, (vi) the modification by the Customer or a third party or the attachment of other items to the Products by the Customer or a third party, (vii) materials, instructions or a design provided or stipulated by the Customer, (viii) the act

of the Customer or a third party that is contrary to the Seller's instructions, indications and advice or any manuals, (ix) any government regulation with regard to the Products or the manufacturing or use etc. thereof or the Services, (x) the Product has been opened in manners other than required for normal operational use and/or (xi) circumstances over which the Seller does not have any control, including weather conditions (such as, but not limited to, extreme rainfall or temperatures, lightning, extreme humidity), earthquakes, fire, surges in electric currents and/or other deviations in the electricity grid and/or defects and damage cause by equipment connected to the Product.

5. The installation instructions for the Products are available from the Seller on request. The Customer is responsible for distributing these installation instructions among its installation staff/party and/or customers and for giving correct instructions to its installation staff/party and/or customers.

6. The Seller's guarantee obligations with respect to the Products are strictly limited to the terms of warranty as set forth in this Article 12. The Customer explicitly relinquishes all other rights and claims it may have under the applicable law. The Seller will determine, in its sole and absolute discretion, whether any guarantee claim is covered under the Seller's guarantee. In the event that the Seller deems a guarantee claim justified, it shall at its sole discretion, deliver a replacement, similar but not necessarily identical, new or factory refurbished Product or components (after which the replaced Products or components shall become the property of the Seller) or make every effort to repair the Products free of charge within a reasonable period upon receipt of the claim or give a price reduction or send a credit invoice.

7. Replacement Products or components under warranty will be delivered "Delivered Duty Paid (DDP)" in accordance with the most recent Incoterms in force at the time when the Agreement is concluded, warehouse of the Customer. Troubleshooting on site will be for the account and risk of the Customer, including, but not limited to disassembly, assembly, mounting, installation, set-up and/or connection of the Products. If the Seller carries out repairs as referenced in Article 12 paragraph 6 of these Terms and Conditions at the Customer's location, the latter shall pay travel costs and per-diems relating to travel and working hours expended by the Seller's personnel. Any data conversion required as a result of the rectification of defects or replacement falls outside the scope of the guarantee.

8. The Products must be made available to the Seller for examination upon first request, freight pre-paid by the Customer. The Customer shall not be entitled to return any Products without the prior written consent of the Seller. The costs of any returns shall be for the Customer and the Products will remain at its risk. When returning products to the Seller, the Customer should clearly mark the RMA number on outside packaging of returned goods. To reduce risk for shipment damage, the Customer shall use the original packaging if available and still suitable. The Customer bears the risk of transporting the defective Product to the Seller. If the Product is damaged during this transport, the guarantee will no longer apply and in such event the Seller shall have no guarantee or liability obligations whatsoever towards the Customer.

9. Repair or replacement of a Product or its components under a guarantee shall not result in an extension of the guarantee period.

### **Article 13. Liability**

1. The total liability of the Seller due to an attributable failure to comply with any of its obligations under an Agreement or these Terms and Conditions, based on a tort or due to any other reason or any other ground or legal basis, is limited to the compensation of direct damages not exceeding 15 percent of the price for the Performance concerned. In no event does the Seller's total liability for any direct damage, exceed the amount that the Seller receives from its insurer under its liability insurance in relation to the damage for which the Customer has held the Seller liable. The Customer explicitly waives all other claims it may have.
2. In no circumstances will the Seller be liable for indirect, special, consequential, criminal or incidental damage or loss, including but not limited to losses caused by delays, loss of profit, lost savings, damage due to business interruption, increased operational costs, loss as a result of claims from the Customer's customers, loss of customers, reduced goodwill, loss in connection with the use of items, materials or software provided by third parties that the Seller is instructed to obtain by the Customer and loss in connection with the engagement of suppliers by the Seller on the Customer's instructions etc., howsoever caused, regardless of the basis of liability, and regardless of whether it was advised in advance of the possibility of such damages arising in any way from the Agreement or otherwise. The liability of the Seller due to the scrambling, destruction or loss of data or documents shall also be excluded.
3. The exclusions and limitations referred to in Articles 13.1 and 13.2 are without prejudice whatsoever to the other exclusions and limitations of the Seller's liability described in these Terms and Conditions.
4. The limitations to the liability included in Articles 13.1, 13.2 and 13.3 shall cease to apply if and insofar as the damage in question is caused by an intentional act or gross negligence on the part of the Seller's management.
5. The Seller shall not be liable for damage or loss of any nature due to the fact that the Seller relied on incorrect and/or incomplete data, information or specifications provided by or on behalf of the Customer.
6. Except where performance by the Seller is permanently impossible, the Seller shall only be liable as a result of an attributable failure to perform any obligation if the Customer gives the Seller immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and the Seller still attributable fails to meet its obligations after the aforesaid period. The notice of default must contain as comprehensive and detailed a description of the breach as possible and as completely as possible, in order to ensure that the Seller has the opportunity to respond adequately.
7. A condition for the existence of any right to compensation shall in all cases be that the Customer notifies the Seller in writing of the loss or damage immediately after it

occurs. Any claims for damages against Seller shall expire automatically by the mere passage of twelve months from the date on which the claim arose.

8. The provisions of this Article 13 and all other restrictions and exclusions of liability referred to in the Terms and Conditions are third party clauses which also apply in favour of all natural and legal persons that the Seller and the Seller's suppliers engage to execute the Agreement or part of the Agreement and all employees and the board of directors of the Seller. The previously mentioned individuals and/or legal persons can therefore rely on the provisions of this Article 13 as well as all other restrictions and exclusions of liability referred to in these Terms and Conditions and/or in the Agreement.

9. The Customer shall indemnify the Seller against any and all claims by third parties against the Seller, the costs (including reasonable legal fees) of defence against such claims, and any obligations the Seller has to third parties, if such claims are based on, arise from or are in connection with any act or omission of the Customer and/or any of its employees that can be attributed to the Customer.

10. The Customer shall indemnify the Seller against any and all claims by third parties, including the Seller's employees, the costs (including reasonable legal fees) of defence against such claims, and any obligations the Seller has to these third parties including the Seller's employees, if such claims concern any injury suffered and/or any damage suffered, whether or not in connection with the execution of the Agreement, as a result of an act or omission on the part of the Customer and/or any of its employees and/or any other failure that can be attributed to the Customer and/or of unsafe situations within the Customer's organisation.

11. The Customer is bound to support the Seller without delay both out of court and in court and to do all that may be expected of the Customer and requested by the Seller in connection with the handling of any claim of a third party. If the Customer fails to take adequate measures the Seller, without notice of default, is entitled to take those measures itself. The risk and expense of all costs and damage arising on the part of the Seller and third parties shall be borne by the Customer.

#### **Article 14. Intellectual property**

1. All intellectual property rights developed during the Performance and all intellectual property rights whether existing as of the date of the Agreement or not, in or relating to the Products, Services and/or Work, designs, analyses, documentation, reports, quotations and all (other) material developed or made available to the Customer during or in the context of the Agreement, all trademarks, copyrights, patents, trade secrets, know-how, technology, data, drawings, technical documentation, specifications, materials, processes, hardware, computer software and related documentation and source code and other intellectual property rights, are and shall remain the exclusive property of the Seller, its licensors or its suppliers ('the Seller's intellectual property'). Nothing in the Agreement or the Terms and Conditions or the sale or delivery of any Performance shall be deemed to transfer or grant to the Customer a license or other right to use the Seller's intellectual property or any other intellectual property rights used by the Seller, except as expressly provided in the



written Agreement. A right of use granted to a Customer shall be non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

2. The Customer is not permitted to remove or change any indication with respect to the copyrights, brands, trade names or any other intellectual property right pertaining to the Products, Services, Work or any of the materials etc., or have any such indication removed or changed.

3. The Customer undertakes not to infringe or to attack the Seller's intellectual property rights in any way, directly or indirectly, by use or otherwise and acknowledges that the Seller is the beneficiary with regard to these rights. The Customer shall procure that its Affiliates shall also not do or omit to do anything which may damage or endanger any of the Seller's intellectual property.

#### **Article 15 Confidential Information**

1. Confidential Information means any and all data and information that is disclosed by or on behalf of the Seller, directly or indirectly, whether in writing or any other form, to Customer, which (i) a reasonable person would recognize as confidential or proprietary considering the nature of the information and the circumstances of disclosure or (ii) is marked as "confidential" or "proprietary" or words of similar import when disclosed. The Customer shall not disclose any Confidential Information to any third party, unless that third party is obligated to protect such Confidential Information pursuant to terms and conditions not less restrictive than those contained in this Article 14. The Customer shall not use any Confidential Information for any purpose other than the exercise of its rights or obligations under the Agreement. The Customer shall require its directors and employees to comply with its obligations under this Article and shall be liable for their compliance with this Article. The Customer shall protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Customer uses to protect its own confidential information of an equivalent nature. All Confidential Information shall be returned to the Seller or destroyed at the Seller's request.

#### **Article 16 Applicable law and disputes**

1. All offers and proposals issued by the Seller, these Terms and Conditions and any Agreements and/or any agreement resulting therefrom or related thereto, shall be exclusively governed by the laws of the Seller's country of incorporation.

2. Any and all disputes that may arise between the Seller and the Customer, ensuing from or relating to any offer or proposal of the Seller, the Terms and Conditions, the Agreement and/or any agreement resulting therefrom or related thereto, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ('ICC') in accordance with the following: (i) the arbitral tribunal shall be composed of three (3) arbitrators; (ii) the place of arbitration shall be in one of the countries where the Seller is domiciled; (iii) the arbitral procedure shall be conducted in the English language and (iv) the arbitral tribunal shall decide in accordance with the rules of law.

3. Before starting a proceeding as referred to in Article 15.2 or Article 15.3, the parties shall do their utmost to resolve the dispute in mutual consultation. If the parties do not reach an amicable settlement regarding the dispute within sixty (60) days (or another period agreed upon by the parties in writing) after the written request of one of the parties to negotiate about a settlement regarding the dispute, each party shall be entitled to submit the dispute to the competent court as mentioned in Article 15.2 or the ICC as mentioned in Article 15.3.

4. The provision of Article 15.3 shall not prevent either party from requesting preliminary relief in summary proceedings or from taking precautionary measures if the party deems doing so necessary.

#### **Article 17. Amendments to Terms and Conditions**

1. The Seller shall be entitled to alter these Terms and Conditions or make any additions thereto unilaterally. The Seller shall notify the Customer thereof in writing. The Customer accepts such modifications and additions in advance. Unless the Customer informs the Seller in writing, that it does not accept the changes and/or additions within 14 days after the date of the notification of the Seller, the Customer shall have accepted such modifications and additions.

2. The latest version of the Terms and Conditions filed or, as the case may be, the version applicable at the time of the effectuation of the Agreement in questions, shall apply.