

STANDARD TERMS AND CONDITIONS OF SUPPLY - UK

1. DEFINITIONS

- 1.1 **Affiliate:** in respect of a body corporate, a body corporate which is its subsidiary, holding company or ultimate holding company, or a body corporate which is a subsidiary of that holding company or ultimate holding company and each such body corporate.
- 1.2 **Contract:** the Customer's order and the Supplier's acceptance of it in accordance with condition 2.5.
- 1.3 **Customer:** the person, firm or company (or Affiliate(s) of that company) who purchases Products from the Supplier as specified in the Contract.
- 1.4 **Equipment:** the hardware products specified in the Contract to be purchased by the Customer from the Supplier (including any part or parts of it).
- 1.5 **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.6 **Licence Terms:** has the meaning ascribed to it in condition 7.
- 1.7 **Products:** the Equipment, Software and Services.
- 1.8 **Services:** the delivery, installation and other services to be provided by the Supplier (or a third party, such as the manufacturer of the Equipment or Software) to the Customer as specified in the Contract.
- 1.9 **Software:** any software (including, without limitation, any databases and authorisation keys) installed on the Equipment or otherwise supplied by the Supplier pursuant to a Contract.
- 1.10 **Supplier:** OnX UK Limited or such of its Affiliates as may be specified in the Contract.
- 1.11 **United Kingdom:** Great Britain and Northern Ireland.
- 1.12 **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

2. ORDERS

- 2.1 These conditions shall:
- (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase 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 in writing and signed by a duly authorised representative of the Supplier.
- 2.3 Any quotation is valid for a period of thirty (30) days only (or such other period of time specified in the quotation), and the Supplier may withdraw it at any time by written notice to the Customer.
- 2.4 Each order or acceptance of a quotation for Products by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.
- 2.5 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues a written order acknowledgement to the Customer, or the Supplier delivers the Products to the Customer (whichever occurs earlier).
- 2.6 The quantity and description of the Equipment, Software and Services shall be as set out in the Supplier's quotation or, if applicable, in Supplier's acknowledgement of order.
- 2.7 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's (or manufacturer's) website or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.

3. RESCHEDULING AND CANCELLATION OF ORDERS

- 3.1 A Contract may be cancelled or rescheduled by the Customer only with the prior agreement in writing of the Supplier.
- 3.2 If Supplier consents to the rescheduling or cancellation pursuant to condition 3.1 above, Customer shall pay to the Supplier any re-stocking or cancellation fee charged to the Supplier by Supplier's manufacturer or third party supplier.

4. PRICES AND PAYMENT

- 4.1 All prices shall be as stated in the Supplier's quotation, or if applicable, on Supplier's acknowledgement of order. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

- 4.2 Subject to any special terms agreed in writing between parties, the Customer shall pay the Supplier's invoice in full within thirty (30) days of the date of the Supplier's invoice, whether or not delivery of the Products has taken place or title in the Equipment has passed to the Customer. Time for payment of the price shall be of the essence of the Contract.
- 4.3 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Products then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- (a) terminate the Contract or suspend any further performance of the Contract and/or any deliveries of the Equipment, Software and/or performance of the Services whether ordered under the same contract or not to the Customer;
 - (b) appropriate any payment made by the Customer under the Contract as it thinks fit (despite any purported appropriation by the Customer); and/or
 - (c) charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of four (4) % above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 The Supplier shall sell the Products to the Customer subject to the Supplier's approval of the Customer's credit limit. The Customer will provide the Supplier with such financial information as the Supplier may reasonably require to establish (and maintain) such credit approval. The Supplier reserves the right at any time to change the Customer's credit limit, impose different credit terms, require payment in advance or otherwise limit the amount and/or duration of the credit extended to the Customer in general or in respect of any specific Contract.
- 4.5 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 4.5 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 4.6 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

5. DELIVERY AND ACCEPTANCE OF EQUIPMENT AND SOFTWARE

- 5.1 The Supplier shall use its reasonable endeavours to deliver the Equipment and the Software and perform the Services on the date or dates specified in the Supplier's quotation, or, if applicable, Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery/performance shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment, the Software and/or the performance of the Services and the Supplier shall not be liable for any delay in such delivery or performance, however caused.
- 5.2 The Products may be provided by the Supplier in advance of the date specified by the Supplier
- 5.3 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Products and for the provision of all necessary access and facilities reasonably required by the Supplier to perform any Services. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- 5.4 The Customer shall be deemed to have accepted the Products when the Customer has had ten (10) days to inspect the same after delivery of the Equipment and Software and performance of the Services (as the case may be) and has not exercised in writing its right of rejection in accordance with condition 10.

6. RISK AND PROPERTY

- 6.1 If the Equipment and/or the Software are shipped pursuant to Incoterms (2010), the risk in such Equipment and/or Software shall pass to the Customer in accordance with the Incoterm specified in the Supplier's quotation, or, if applicable, in the Supplier's acknowledgement of order. Where the Equipment and the Software are not shipped pursuant to Incoterms (2010), the Equipment and the Software shall be at the risk of the Supplier until the same leaves either the Supplier's or the manufacturer/licensor's facilities at which point the risk in such Equipment and Software shall be transferred to the Customer.
- 6.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery or when the Supplier has received in full in cleared funds all sums due to it in respect of the Products.
- 6.3 Until ownership of the Equipment has passed to the Customer under condition 6.2, the Customer shall:
- (a) hold the Equipment on a fiduciary basis as the Supplier's bailee;
 - (b) store the Equipment (at no cost to the Supplier) in satisfactory conditions and in a manner that such Equipment remains readily identifiable as the Supplier's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
 - (d) keep the Equipment insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Equipment is noted on the policy,

and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

- 6.4 The Customer's right to possession of the Equipment before ownership has passed to it (or the Customer's right to use the Software) shall terminate immediately if any of the circumstances set out in condition 14 arise or if the Customer encumbers or in any way charges the Equipment and/or Software, or if the Customer fails to make any payment to the Supplier on the due date.
- 6.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment or Software is or may be stored or installed in order to inspect it, or where the Customer's right to possession or use has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment and/or Software shall be borne by the Customer.
- 6.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 6 shall remain in effect.

7. SOFTWARE LICENCE

The Customer acknowledges and agrees that all Software provided by the Supplier under the Contract is third party software which shall be licensed directly to the Customer by the third party software owner in accordance with that third party's terms and conditions of licensing (the "**Licence Terms**"). The Customer shall sign and return the Licence Terms to the Supplier within seven (7) days of installation of the Software, unless the Licence Terms have been supplied with the Software on a "shrink-wrap" or "click-wrap" basis.

8. EXPORT TERMS

- 8.1 Where the Equipment and/or the Software is supplied for export from the United Kingdom, the provisions of this condition 8 shall (subject to any contrary terms agreed in writing between the Customer and the Supplier) override any other provision of these conditions.
- 8.2 The Customer shall be responsible for complying with any legislation governing:
- (a) the importation of the Equipment and/or the Software into the country of destination; and
 - (b) the export and re-export of the Equipment and/or the Software,
- and shall be responsible for the payment of any duties on it.
- 8.3 Unless otherwise agreed in writing between the Customer and the Supplier, the Equipment and/or the Software to be delivered pursuant to this condition 8 shall be delivered in accordance with Incoterms (2010) *Ex Works* (with the named place of delivery as set out in the Supplier's quotation, of, if applicable, Supplier's written order acknowledgement).

9. WARRANTY

- 9.1 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Products. The Customer acknowledges and agrees that the Supplier is not the manufacturer of the Equipment or the Software and that the Supplier shall transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier and that the Supplier shall have no liability whatsoever in respect of any defect in workmanship or materials in relation to such Equipment or the Software.
- 9.2 Each party warrants that:
- (a) it has full capacity and authority and all necessary consents to enter into and to perform this agreement and to grant the rights and licences referred to in this agreement and that this agreement is executed by its duly authorised representative and represents a binding commitment on it; and
 - (b) it shall comply with all applicable legislation in the performance of its obligations under this agreement.

10. REMEDIES

- 10.1 The Supplier shall not be liable for any non-delivery of the Equipment and/or Software and/or any non-performance of the Services (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver or perform (as the case may be) within seven (7) days after the scheduled delivery date.
- 10.2 Any liability of the Supplier for non-delivery of the Equipment and/or Software and/or any non-performance of the Services shall, at the Supplier's discretion, be limited to replacing the Equipment and/or Software or re-performing the Services (as the case may be) within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such affected Equipment, Software and/or Services (as the case may be).
- 10.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under condition 15), the Customer shall be liable to pay to the Supplier all reasonable costs, charges or losses sustained by it as a result, subject to the Supplier notifying the Customer in writing of any such claim it might have against the Customer in this respect.

11. LIMITATION OF LIABILITY

- 11.1 The following provisions set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 11.2 Except as expressly stated herein, all warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 11.3 Nothing in these conditions excludes or limits the liability of the Supplier for:
- (a) death or personal injury caused by the Supplier's negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.2 and condition 11.3:
- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business or anticipated savings; or
 - (iii) loss of goodwill; or
 - (iv) loss of goods; or
 - (v) loss of use; or
 - (vi) loss or corruption of data or information; or
 - (vii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Products under condition 4.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment and the Software are and shall remain the sole property of the third party rights owner.
- 12.2 The Supplier shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of the Supplier.
- 12.3 In relation to the Software the Customer shall be subject to the rights and restrictions imposed on it by the third party software owner under the Licence Terms and any user manuals and the Customer shall comply in full and at all times with all Licence Terms, user manuals and registration requirements relating to such Software.

13. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

- 13.1 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 or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 13.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 13.3 This condition 13 shall survive termination of the Contract, however arising.

14. TERMINATION

- 14.1 Without prejudice to any other right or remedy available to the Supplier, the Supplier may upon notice in writing terminate the Contract or suspend any further performance under the Contract without liability to the Customer and, if the Products have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if the Customer:
- (a) commits any breach of the Contract and if remediable, the Customer has failed to remedy the same within fourteen (14) days of being given notice to do so;
 - (b) becomes bankrupt, insolvent or has a receiving order made against him or, being a corporation, enters into liquidation whether compulsory or voluntary (except for the purposes of solvent amalgamation or reconstruction)

or has a receiver appointed over its assets (or a substantial part of its assets) or the Supplier reasonably believes that the Customer will be unable, or is unlikely, to render proper performance under the Contract;

(c) ceases, or threatens to cease, to trade; or

(d) takes or suffers any similar or analogous action to any of the above in any jurisdiction in consequence of debt.

14.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

15. FORCE MAJEURE

The Supplier reserves the right to defer the performance of its obligations under the Contract, or to terminate the Contract or reduce the amount of Products ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("Force Majeure Event").

16. ENTIRE AGREEMENT

16.1 Each party acknowledges that, in entering into the Contract, it does not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a party to this agreement or not) other than as expressly set out in the Contract.

16.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

16.3 Nothing in this condition shall limit or exclude any liability for fraud.

17. NOTICES

Any notice required to be given pursuant to the Contract shall be in writing and shall be delivered by hand or sent by recorded delivery post to the address of the party as set out in the Supplier's acknowledgement of order, or such other address as may be notified by one party to the other in writing. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day in the United Kingdom following delivery). A correctly addressed notice sent by recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of such post.

18. GENERAL

18.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18.2 Save as expressly provided in this agreement, no amendment or variation of this agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties.

18.3 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.4 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.5 A person who is not a party to the Contract shall not be entitled to enforce any term of it.

18.6 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts in relation to such disputes or claims.