

# SPECIAL TERMS — HARDWARE

These Special Terms — Hardware apply to the MSA between the Customer and the Company where Hardware are purchased. These Special Terms — Hardware apply in addition to the MSA in relation to the Hardware only.

## 1. Definitions

- 1.1 All terms in capitals used herein shall have the meaning given to them below unless defined otherwise in the General Terms and Conditions.

**“Delivery Location”** means the locations to which Hardware shall be delivered as set out in the Order Form, or such other location as the parties may agree at any time after the Company notifies the Customer that the Hardware is ready;

**“Hardware”** means Hardware included in an Order Form together with Manufacturer’s support and maintenance services;

**“Initial Term”** means the initial term set out in each Order Form for a service included in the Hardware;

**“Renewal Term”** means any renewal term set out in an Order Form for a service included in the Hardware;

**“Manufacturer”** means the Manufacturer of each Hardware.

**“Manufacturer Terms”** means the terms of each Manufacturer applicable to use of each Hardware, included in an Order Form as part of the Hardware, purchased by the Customer from the Company

## 2 Hardware

- 2.1 The Customer shall purchase the Hardware set out in each Order Form from the Company.
- 2.2 The Company reserves the right to amend the specification of the Hardware during the Term of the MSA if required by any applicable law or regulatory requirements.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Hardware or illustrations on the Company’s website or descriptions of the Hardware contained in the Company’s catalogues or brochures or on the Company’s website are issued or published for the sole purpose of giving an approximate idea of the Hardware described in them. They shall not form part of the MSA or have any contractual force and the Customer agrees that it does not rely in any way on them when entering into the MSA.
- 2.4 The Company aims to ensure that all information on its websites concerning the Hardware is complete, correct and current. If the Company unintentionally publishes information on its website about the Hardware that is incomplete or incorrect, it will try to correct this, but the Company cannot and will not be held responsible for any Consequential Loss caused by the use of the website or the information made available on the website.
- 2.5 The Hardware are described in the Manufacturer Terms.

## 3 Delivery of the Hardware

- 3.1 Delivery of the Hardware is completed on the date the Hardware arrives at the Delivery Location.

- 3.2 Any dates quoted for delivery of the Hardware are approximate only, and time of delivery is not of the essence.
- 3.3 If the Company fails to deliver the Hardware, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Hardware.
- 3.4 The Company shall have no liability for any failure to deliver the Hardware to the extent that such failure is caused by Force Majeure, the Customer's failure to provide the Company with adequate delivery instructions for the Hardware or any relevant instruction related to the supply of the Hardware.
- 3.5 If the Customer fails to accept or take delivery of the Hardware within 2 Business Days of the Company notifying the Customer that the Hardware are ready, then except where such failure or delay is caused by Force Majeure or by the Company's failure to comply with its obligations under the MSA in respect of the Hardware:
- 3.5.1 Delivery of the Hardware shall be deemed to have been completed at 9.00 am on the 3rd Business Day following the day on which the Company notified the Customer that the Hardware is ready; and
- 3.5.2 The Company shall store the Hardware until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 3.6 The Customer shall not be entitled to reject the Hardware if the Company delivers up to and including 5 per cent more or less than the quantity of Hardware ordered, but a pro-rata adjustment shall be made to the applicable invoice on receipt of notice from the Customer that the wrong quantity of Hardware was delivered.
- 3.7 The Company may deliver the Hardware in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

#### **4 Title and Risk**

- 4.1 The risk in the Hardware shall pass to the Customer on completion of delivery.
- 4.2 Title to the Hardware shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Hardware and any other goods that the Company has supplied to the Customer, in which case title to the Hardware shall pass at the time of payment of all such sums.
- 4.3 Until title to the Hardware has passed to the Customer where applicable, the Customer shall:
- 4.3.1 Store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 4.3.2 Not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
- 4.3.3 Not sell, charge, pledge or otherwise encumber the Hardware;
- 4.3.4 Maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- 4.3.5 Notify the Company immediately if it becomes subject to any of the events listed in the MSA relating to termination; and
- 4.3.6 Give the Company such information relating to the Hardware as the Company may require from time to time.
- 4.4 If before title to any Hardware passes to the Customer the MSA is terminated by the Company or the Customer becomes subject to any of the events listed in the MSA relating to termination, then, without limiting any other right or remedy the Company may have, the Company may at any time:
- 4.4.1 Require the Customer to deliver up all Hardware in its possession; and
- 4.4.2 If the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware are stored in order to recover them.

#### **5 Fees and Invoicing**

- 5.1 The Company shall invoice the Customer the Fees set out in each Order Form for the provision of the Hardware.
- 5.2 All Fees shall be invoiced as set out in an Order Form.

5.3 Travel fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise on a Time and Materials Basis.

## 6 Payment Terms

6.1 The Customer shall pay the Company the Fees for the provision of the Hardware immediately, in full upon issue of each invoice.

## 7 Representations and Warranties

7.1 The Manufacturer's warranties apply to the Hardware.

7.2 Notwithstanding any statutory warranty right that a Customer may have, if the Customer notifies the Company in writing within a reasonable time of discovery that some or all of the Hardware does not comply with the warranty set out in clause 7.1. above, the Company shall, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full provided that:

7.2.1 The Company is given a reasonable opportunity of examining the Hardware; and

7.2.2 The Customer (if asked to do so by the Company) returns the Hardware to the Company's place of business at the Customer's own cost; and

7.2.3 The Customer's right to any statutory warranty has not expired.

7.3 The Company shall not be liable for the Hardware's failure to comply with the warranty in clause 7.1 if:

7.3.1 The Customer makes any further use of such Hardware after giving a notice in accordance with clause 7.1;

7.3.2 The defect arises because the Customer failed to follow the Company's or manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;

7.3.3 The Customer alters or repairs the Hardware without the written consent of the Company;

7.3.4 The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

7.3.5 The Hardware differ from the description of the Hardware in the Functional Description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

7.4 Except as provided in this clause 7, the Company shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 7.1.

7.5 Subject to any statutory rights to the contrary, the warranty given in clause 7.1 shall not apply to any repaired or replacement Hardware supplied by the Company under clause 7.2.

7.6 The Company shall have no obligation to repair or replace any defective Hardware:

7.6.1 Where the defect is due to failure of components that are not original to the delivered Hardware or caused by abuse, misuse or any external cause, in which case the Company reserves the right to refuse to repair or replace the Hardware and stop providing maintenance and support services and shall hold the Customer liable for any diagnostic fee;

7.6.2 For any damage to the Hardware resulting from any unauthorized modifications or repairs or replacements not performed by the Company;

7.6.3 Where any statutory warranty right has expired.

If damage to the Hardware results as set out above in this clause 7.6, the Company shall obtain the Customer's prior authorisation before incurring any additional costs for providing support and maintenance of the Hardware, even if the Goods are covered by the warranty in clause 7.1 or the Manufacturer Terms. If the Customer declines authorisation, the Company may leave the Hardware unrepaired in the damaged condition without any liability whatsoever.

7.7 The Customer warrants and represents that:

7.7.1 It rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under the MSA;

7.7.2 Its data does not contain any illegal files or data.

## 8 Miscellaneous

In the event of any inconsistency between the content of these Special Terms — Hardware and the remainder of the terms of the MSA, the terms of the Order Form shall prevail followed by these Special Terms — Hardware in relation to the Hardware Services, followed by the main terms of the MSA and then the appendices.