

Standard Terms and Conditions of Supply

Unless otherwise expressly agreed in writing or we notify you that these standard terms and conditions of supply have been revised, the standard terms and conditions of supply below will apply to all goods and services purchased from ECCS Limited

The Customer's attention is particularly drawn to the provisions of Clause 15 (Limitation of liability).

I. INTERPRETATION

I.1 The following definitions and rules of interpretation apply in these Conditions.

Affiliate includes any subsidiary or holding company of ECCS and each and any subsidiary of a holding company of ECCS, any business entity from time to time controlling, controlled by, or under common control with ECCS;

Anti-Bribery means any and all legislation and/or guidance relating to the prevention of acts of bribery and corruption,

Authorised Reseller Programme means the programme or agreement under which the manufacturer or Service Provider consents to the Customer purchasing the Goods and/or Services from ECCS;

Business Day means a day other than a Saturday, Sunday or public holiday in the Republic of Mauritius, when banks in Mauritius are opened for business;

Conditions means these terms and conditions as amended from time to time

Contract means the contract between ECCS and the Customer for the supply of Goods and/or Services formed in accordance with, and incorporating, these Conditions;

Customer means the person or firm who purchases the Goods and/or Services from ECCS;

Data Privacy Legislation means the Data Protection Act and the GDPR;

Delivery Location means a location where delivery will be affected from;

Drop Ship means deliveries to End User(s) by ECCS or to the End User or Customer by the Service Provider (in each case, as requested by the Customer);

End User means the ultimate customer of the Customer;

Force Majeure Event: has the meaning given to it in Clause 18.1;

GDPR means the General Data Protection Regulation (and/or any legislation which implements, preserves or replaces it);

Goods means the goods (or any part of them) set out in the Order including any deliverables being produced as part of the Services;

Goods Specification means any specification for the Goods, including any relevant plans or drawings, which is agreed in writing by the Customer and ECCS;

Insolvency Event means (a) taking any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (b) suspending, or threatening to suspend, or ceasing or threatening to cease to carry on all or a substantial part of its business; or (c) its financial position deteriorates to such an extent that in ECCS's opinion its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

Intellectual Property Rights means 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, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, the Customer's written acceptance of ECCS's quotation or the Customer's Order placed on a Website, as the case may be;

Personal Data has the meaning given to it in the Data Privacy Legislation;

Service Provider means a third party who provides the Goods and/or Services to the Customer and the End Users;

Services means the services provided by a Service Provider or ECCS to the Customer or End User, as appropriate, as set out in the Service Specification;

Service Specification means the description or specification, usually a statement of work, provided by ECCS to the Customer for the Services;

ECCS means ECCS Limited (Business Registered Number C17149272) Trading at Baguant Lane, Allee-Brillant, Vacoas, Mauritius and also where the context permits its assigns and any sub-contractors of ECCS (ECCS's VAT number is VAT 27541403);

Third Party Software means all software owned by or licensed to the Customer from a third-party owner (whether or not supplied by ECCS) and which comprises part of the Goods;

Website means any of ECCS's or it's Affiliate's websites and ECCS's e-commerce websites for Customers, Resellers and End-users;

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its successors and permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 A reference to writing or written includes fax and email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 Any element of an Order shall only be deemed to be accepted at the earliest of despatch of those particular Goods or performance of those particular Services or when acceptance is communicated in writing by an authorised representative of ECCS at which point and on which date the Contract shall come into existence. On receipt of an Order ECCS will send the Customer an order acknowledgement email detailing the Order. This email is not an acceptance of the Order by ECCS and ECCS may refuse to accept any Order.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by ECCS and any descriptions of the Goods or illustrations or descriptions of the Services contained on Websites or in ECCS's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods. They shall not form part of the Contract or have any contractual force.

- 2.4 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.
- 2.5 Any quotation given by ECCS shall not constitute an offer and is only valid for a period of 30 days from its date of issue unless otherwise specified by ECCS. ECCS reserves the right to change its quoted prices.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 Any Orders for Goods can be cancelled only at the time of delivery. ECCS will not accept a cancellation or return once a delivery has been accepted.

Non-standard specifications cannot be cancelled. Unless otherwise agreed in writing, any request by the Customer for cancellation of any Order or for the rescheduling of any deliveries will only be considered by ECCS if made at least 24 hours before despatch of the Goods and shall be subject to acceptance by ECCS at ECCS's sole discretion, and subject to a reasonable administration charge. The Customer hereby agrees to indemnify ECCS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, (including the cost of labour and materials used and overheads incurred, loss of reputation and all interest, penalties and legal and other professional costs and expenses)) suffered or incurred by ECCS arising out of or in connection with the Order and its cancellation or rescheduling.

3. GOODS

- 3.1 The Goods are described in any applicable Goods Specification. Unless otherwise agreed, the Goods are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified. ECCS will use its reasonable endeavours to advise the Customer of any variation for whatsoever reason in the Goods Specification, manufacturer's specifications or technical data of the Goods as soon as it receives any such notice thereof from the manufacturer. ECCS will not be liable in respect of any loss or damage caused by or resulting from such variation including for curtailment or cessation of supply of Goods following any such variation.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify ECCS 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ECCS arising out of or in connection with any claim made against ECCS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with ECCS's use of the Goods Specification. This Clause 3.2 shall survive termination of the Contract of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ECCS arising out of or in connection with any claim made against ECCS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with ECCS's use of the Goods Specification. This Clause 3.2 shall survive termination of the Contract.

4. DELIVERY OF GOODS

- 4.1. ECCS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (the "Delivery Location") at any time after ECCS notifies the Customer that the Goods are ready.
- 4.2. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. However, risk in the Goods shall pass to the Customer in accordance with Clause 6.1
- 4.3. At the time of delivery, the Customer must check that the quantity of Goods matches the quantity set out on the proof of delivery ("POD") and that the exterior of the Goods are in good condition. The Customer must then indicate this on the POD and sign the POD accordingly.
- 4.4. A signed POD by or on behalf of the Customer, or signing the POD "unchecked" or "unexamined" or any such similar wording, shall be conclusive evidence of delivery and (except to the extent that any damage or discrepancy is noted on the POD) that it was received in good order and condition and accordingly no claims shall be bought in respect of the delivery claiming the contrary.

The Customer must inspect the Goods immediately after delivery is complete. If any Goods are damaged, incorrect or not delivered, the Customer must notify ECCS immediately.

- 4.5. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ECCS 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 ECCS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6. If the Customer fails to accept delivery of the Goods within three Business Days of ECCS notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a **Force Majeure Event** or by ECCS's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which ECCS notified the Customer that the Goods were ready; and
 - (b) ECCS shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If ten Business Days after ECCS notified the Customer that the Goods which are non-standard specification were ready for delivery the Customer has not taken delivery of them, ECCS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8. ECCS may deliver the Goods by 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.

5. QUALITY OF GOODS

- 5.1. ECCS warrants that on delivery the Goods shall:
 - (a) conform in all material respects with any applicable Goods Specification; and
 - (b) be free from material defects in design, material and workmanship.
- 5.2. Subject to any Authorised Reseller, ECCS warrants that it has good title to or licence to supply all Goods to the Customer.
- 5.3. All Goods supplied which are software are only supplied "as is". The sole obligation of ECCS in connection with the supply of Goods which are software is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that such software should fail to conform to the Goods Specification provided always that the Customer notifies ECCS of any such non-conformity within 90 days of the date of delivery of the applicable software Goods ECCS at its option, replace defective Goods, subject to ex-stock.
- 5.4. Subject to Clause 5.5, ECCS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if the Customer returns the Goods in accordance with Clause 9.1. ECCS will not consider any claim for compensation, indemnity or refund under liability unless it has been established or agreed with the manufacturer and, where applicable, the insurance company.
- 5.5. ECCS shall not be liable for the Goods' failure to comply with warranty in clause 5.1 if:
 - (a) the Customer makes any further use of such Goods after giving a notice
 - (b) the defect arises because the Customer failed to follow ECCS's or the manufacturer of the Goods' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of ECCS following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of ECCS;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

- (f) the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Where ECCS and/or the manufacturer has expressed in writing that the Goods qualify for an advance replacement under the terms of any manufacturer warranty, such advance replacements shall be provided subject to:
- (a) compliance with any warranty terms as provided by the manufacturer of the Goods; and
 - (b) defective Goods must still be covered by warranty in accordance with this Clause 5; and
 - (c) the defective Goods must have been purchased from ECCS; and
 - (d) compliance with Clause 9.1.
- 5.7 Except as provided in this Clause 5, ECCS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clauses 5.1 and 5.2 and shall not be liable for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.
- 5.8 Except as specifically set out in this Clause 5, ECCS disclaims and excludes all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, satisfactory quality and fitness for a particular purpose, or arising from any previous course of dealing, usage or trade practice.

6 QUALITY OF GOODS

- 6.1 The risk in the Goods shall pass to the Customer at the time the Goods are handed over to the transportation company at ECCS's premises,
- 6.2 Title to the Goods (other than Third Party Software) shall not pass to the Customer until the earlier of:
- (a) ECCS receives payment in full (in cash or cleared funds) for the Goods and any other goods that ECCS 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; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Clause 6.4.
- 6.3 Until title to the Goods (other than Third Party Software) has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as ECCS's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ECCS's behalf from the date of delivery;
 - (d) not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods;
 - (e) notify ECCS immediately if it becomes subject to an Insolvency Event; and
 - (f) give ECCS such information relating to the Goods as ECCS may require from time to time.
- 6.4 Subject to Clause 6.5 and 8.1(c), the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ECCS receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as ECCS's agent; and
 - (b) title to the Goods shall pass from ECCS to the Customer immediately before the time at which resale by the Customer occurs; and
 - (c) the Customer shall hold on trust and shall account to ECCS for the proceeds of sale or otherwise of the Goods including insurance proceeds and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.5 Subject to Clause 6.5 and 8.1(c), the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ECCS receives payment for the Goods. However, if the Customer resells the Goods before that time:
the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

- (a) ECCS may at any time:
- (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored, using reasonable force if necessary, in order to recover them.
- 6.6 Despite ECCS's retention of title to the Goods, ECCS reserves the right to take legal proceedings to recover the price of Goods supplied should the Customer not make full payment by the invoice due date.

7 SUPPLY OF SERVICES

- 7.1 ECCS shall supply or procure a Service Provider to supply, the Services to the Customer or End User (as applicable).
- 7.2 ECCS reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ECCS shall notify the Customer in any such event.
- 7.3 ECCS may assist the Customer to specify or choose Services but the assessment and selection of the Customer's chosen Services for the Customer's and End User's purposes remains the Customer's ultimate responsibility. ECCS does not warrant or represent that the performance of the Services will be adequate for the Customer or End User and shall not be liable for any inaccuracies in any element of the Service Specification supplied by the Customer or End User. ECCS undertakes only that in giving assistance it has acted in good faith and has not been wilfully misleading.
- 7.4 The Customer acknowledges that the Service Provider is a third party, which ECCS does not control. ECCS makes no representation, guarantee or warranty about the Service Provider's delivery of the Services or their reliability, credit rating or solvency. ECCS shall not be responsible for the security of a Customer or End User's network after the Services have been performed.
- 7.5 If the Services are for the installation of equipment and/or software and the End User's hardware, network, operating system, utilities (including power and connectivity) or premises fail to satisfy requirements necessary for the installation as notified by ECCS or the Service Provider to the Customer or End User (as applicable) prior to the commencement of such Services, then ECCS reserves the right to refuse or curtail such Services and charge the Customer the full fee for the Services.
- 7.6 If the Services are for the provision of training then ECCS:
- (a) will only take bookings where the Customer has provided a valid purchase order number to ECCS;
 - (b) reserves the right to provide training personnel of its own choosing and host the training at a non-ECCS venue or venues; and
 - (c) reserves the right to refuse or curtail training if a delegate or substitute delegate attending on behalf of the Customer fails to meet qualifying requirements for the training notified by ECCS to the Customer prior to the commencement of the training.
- 7.7 The Customer agrees to pay for any loss or extra cost incurred by ECCS due to the Customer's or End User's lack of instructions or requirements not included in the Services Specification or through failure or delay in taking delivery or through any act or default on the part of the Customer its servants or employees or the End User.
- 7.8 The Customer shall use, and shall procure that the End User uses the Services in compliance with applicable laws and any fair usage policy notified to them by the Service Provider as amended from time to time.
- 7.9 The Customer shall ensure that if the End User accesses the Services, or the Services are provided through, the internet or otherwise, then the End User shall acknowledge and accept all risks associated with usage of such communication networks and ECCS shall not accept any liability for malicious or accidental breaches of security or confidentiality when using such communication networks.

8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification are complete and accurate;
- (b) co-operate with ECCS and the Service Provider in all matters relating to the Services;
- (c) not use the Goods or Services for its own purposes;
- (d) ensure that ECCS or the Service Provider (as applicable) will be provided with any access to premises, office accommodation and other facilities as reasonably required for the performance of the Services;
- (e) provide ECCS and the Service Provider with such information and materials as they may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) if applicable, the Customer warrants that it will pass through any and all of the manufacturer's or Service Provider's applicable terms and conditions (in an agreed form) to the End User prior to the commencement of the Services or delivery of the Goods;
- (g) ensure the End User obtains and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) comply with all applicable laws, including Anti-Bribery and health and safety laws;
- (i) comply with ECCS's anti-bribery policy as provided by ECCS to the Customer from time to time and promptly report to ECCS any request or demand for any undue financial or other advantage of any kind given or received by the Customer, End User or any of their sub-contractors in connection with the performance of a Contract;
- (j) comply with any additional obligations as set out in the Service Specification and the Goods Specification; and
- (k) notify ECCS if its VAT registration is amended in any way.

8.2 The Customer acknowledges and agrees that the Goods and Services are subject to the laws and regulation of the Republic of Mauritius.

8.3 If ECCS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or End User or failure by the Customer or End User to perform any relevant obligation ("Customer Default"):

- (a) without limiting or affecting any other right or remedy available to it, ECCS shall have the right to suspend performance of the Services or delivery of the Goods 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 in each case to the extent the Customer Default prevents or delays ECCS's performance of any of its obligations;
- (b) ECCS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ECCS's failure or delay to perform any of its obligations as set out in this Clause 8.3; and
- (c) the Customer shall reimburse ECCS on written demand for any costs or losses sustained or incurred by ECCS arising directly or indirectly from the Customer Default.

8.4 ECCS may grant special prices and/or special conditions for the execution of particular projects subject to the permission of the respective manufacturer and the delivery to the qualifying End User named in the offer. In such circumstances, the Customer undertakes to:

- (a) comply with any terms and conditions advised by ECCS; and
- (b) comply with the respective manufacturer terms and conditions, and
- (c) to hold ready all End User proofs of delivery such as delivery notes and invoices (blackening of irrelevant data is permitted for data protection compliance purposes) for the previous twelve months and to provide them on request to ECCS and/or the manufacturer; and
- (d) sell the Goods and Services only to the qualifying End User.

8.5 In the event of refusal of the permission by the manufacturer or non-compliance with any or all of the terms of Clause 8.4, ECCS reserves the right to invoice the Customer for the difference between the special price and the usual price of the Goods and Services. Such an invoice will become payable immediately.

- 8.6 Customer hereby confirms that they understand and accept that telephone calls to and from ECCS may be recorded for training and monitoring purposes.
- 8.7 Where Customer requests a credit account Customer accepts and acknowledges that the granting of interest free credit by ECCS is of commercial value to the Customer and that this credit is subject to compliance with these Conditions.

9 RETURNS

- 9.1 All returns of Goods can only be made, and will only be accepted by ECCS if they comply with the following:
- (a) prior authorisation must be obtained from ECCS. Such prior authorisation shall be given at ECCS's sole discretion;
 - (b) the request for the return must be made 24 hours before the delivery schedule date;
- 9.2 ECCS reserves the right to reject any Goods which do not comply with the conditions set out in Clause 9.1. If ECCS agrees to accept any Goods returned which are not in a saleable condition, ECCS reserves the right to charge the cost to the Customer of bringing the Goods into a saleable condition.
- 9.3 ECCS reserves the right to test all Goods returned as faulty and to return to the Customer (at the Customer's expense) any Goods found not to be faulty. ECCS also reserves the right to levy an additional reasonable charge to cover the cost of such testing.
- 9.4 ECCS reserves the right to levy an administration charge in respect of the rotation of Goods and returns.

10 CHARGES AND PAYMENT

- 10.1 Catalogues, price lists and other advertising literature or material as used by ECCS as an indication as to the price and range of the Goods and Services offered and no prices, descriptions or other particulars contained therein shall be binding on ECCS. All other listed prices on Websites are shown on the understanding that they are a guideline only. The price for Goods:
- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in ECCS's published price list as at the date of the Order; and
 - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 10.2 The charges for Services shall be calculated in accordance with fee rates set out in the Order or Service Specification.
- 10.3 Whilst ECCS tries to ensure that all prices are accurate, errors may occur. If, prior to delivery of the Goods or performance of the Services, ECCS discovers an error in the price of the Goods or Services or there is an increase in the cost to ECCS of the Goods or Services due to reasons outside ECCS's control, ECCS reserves the right to correct or increase the price of the Goods or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to ECCS.
- 10.4 All amounts payable by the Customer under the Contract are stated in Mauritian Rupees or Euros and are exclusive of amounts in respect of value added tax (VAT). Where any taxable supply for VAT purposes is made under the Contract by ECCS to the Customer, the Customer shall, on receipt of a valid VAT invoice from ECCS, pay to ECCS 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.
- 10.5 In respect of Goods, ECCS shall invoice the Customer on or at any time after completion of despatch. In respect of Services, ECCS shall invoice the Customer after receipt of the Order or at such other time as ECCS deem appropriate at its sole discretion. If Goods or Services are delivered in instalments ECCS shall be entitled to invoice each instalment upon delivery thereof. The Customer must notify ECCS in writing within 7 days of the date of invoice of any errors within the invoice. Failure to do so will result in ECCS assuming acceptance of the invoice in full.

- 10.6 Unless otherwise expressly agreed in writing, the Customer shall pay each invoice submitted by ECCS:
- (a) within 30 days of the date of the invoice (subject the customer has agreed credit arrangement); otherwise payment should be made
 - (b) in full and in cleared funds to a bank account nominated in writing by ECCS, and
 - (c) time for payment shall be of the essence of the Contract.
- 10.7 ECCS reserves the right to charge a surcharge on credit card transactions (which may exceed the amount charged to ECCS by the credit card companies) by way of a handling or processing charge.
- 10.8 If the Customer fails to make a payment due to ECCS under the Contract by the due date, then, without limiting ECCS's remedies under Clause 16, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 10.8 will accrue each day at the rate equivalent to that set for the purposes of section 6 of the Late Payment. Such interest will be compounded on the first day of each calendar month and payable both before and after any judgment (unless the court orders otherwise).
- 10.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.10 Should credit facilities be provided, the Customer undertakes to notify ECCS without delay of any material change in its finances, structure, share ownership and/or value of assets which may affect the Customer's credit status. In addition to any remedy available at law, failure to report any such changes may result in credit being withdrawn without prior notice. The Customer's credit-limit may be withdrawn or amended without prior notice by the Company. If credit facilities are withdrawn all invoices shall become immediately payable by the Customer.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Customer hereby acknowledges that any Intellectual Property Rights used on or in relation to the Goods, Services, Websites or any Third-Party Software supplied hereunder, including, but not limited to, any title or ownership rights, shall at all times and for all purposes vest and remain vested in ECCS, the Service Provider or the Third-Party Software owner (as applicable).
- 11.2 The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to Third Party Software supplied and delivered by ECCS (including if so, required the execution and return of a Third-Party Software licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify ECCS in respect of any costs, charges or expenses incurred by ECCS as the result of any breach by the Customer of such terms and conditions.
- 11.3 Unless otherwise expressly agreed in writing, no title or ownership of software Goods or any Third-Party Software licensed to the Customer or an End User under this Contract is transferred to the Customer or End User under any circumstances.

12 DATA PROTECTION AND DATA PROCESSING

- 12.1 Both parties will comply with all applicable requirements of the Data Privacy Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Privacy Legislation. The Customer acknowledges that it has read and understood ECCS's Privacy Policy and agrees at all times to comply with it.
- 12.2 The parties acknowledge that for the purposes of the Data Privacy Legislation, the Customer is likely to be the Controller of End User Personal Data and ECCS is the Processor (where Controller and Processor have the meanings as defined in the Data Privacy Legislation). The rights and obligations of the Controller shall be as set out in this Clause 12.

- 12.3 Without prejudice to the generality of Clause 12.1, the Customer warrants that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Privacy Legislation) to ECCS for the duration and purposes of the Contract.
- 12.4 Where ECCS acts as a Processor (as defined in the Data Privacy Legislation) for the Customer, and for the duration of this Contract, the following clauses shall apply:
- (a) ECCS will process Personal Data relating to the End Users (and related parties) on the written instructions of the Customer, in accordance with these Conditions, for the performance of the Contract and for any other agreed purposes, unless required otherwise by the laws of any member of the European Union or by the laws of the European Union (and United Kingdom, if not within the European Union) applicable to ECCS;
 - (b)
 - (c) ECCS will ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services);
 - (d) ECCS will ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (e) ECCS will not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
 - (i) ECCS or the Customer has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Privacy Legislation) has enforceable rights and effective legal remedies;
 - (iii) ECCS complies with its obligations under the Data Privacy Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) ECCS complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
 - (f) ECCS will assist the Customer, at the Customer's cost, in responding to any request from a data subject (as defined in the Data Privacy Legislation) and in ensuring compliance with its obligations under the Data Privacy Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (g) ECCS will notify the Customer without undue delay on becoming aware of a personal data breach (as defined in the Data Privacy Legislation), threatened breach and/or any requests to undertake any actions that would constitute a breach or any request from a supervisory authority or regulator for information or any form of investigation in relation to processing carried out under this Conditions;
 - (h) ECCS will at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of these Conditions unless required by applicable law or by regulation to store the Personal Data;
 - (i) ECCS will maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.4, which shall be promptly provided to the Customer on request, and to the extent audit obligations mandated by Data Privacy Legislation may not be otherwise satisfied, audits and inspections will be conducted during regular business hours, without interfering with ECCS's operations and upon reasonable prior written notice. ECCS may determine that such audits and inspections are subject to the execution of a confidentiality undertaking. ECCS shall be entitled to reject auditors which are competitors of ECCS. The Customer shall inform ECCS without undue delay and comprehensively about any errors or irregularities detected during an audit; and

- (j) Where ECCS appoints any third-party processor of Personal Data under these Conditions, prior to such appointment ECCS will enter into a written agreement with the third-party processor, incorporating terms which are no less stringent than those set out in these Conditions. Where there is a change to any such third-party processors, ECCS will notify the Customer either through the website techdata.co.uk or directly.

- 12.5 ECCS may, at any time on not less than 30 days' notice, revise Clause 12.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 12.6 In order to accept an Order from the Customer it may be necessary for ECCS to verify the Customer's financial standing and ECCS reserves the right to obtain information on the Customer's creditworthiness from credit agencies or credit insurers (which will keep a record of any search made) and may disclose the results of those enquiries, searches and references and any information given by the Customer to any credit reference agency or to any other company in any corporate group of which it is a member.

13 CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14. USE OF WEBSITES

- 14.1 The Customer:
- (a) shall not and shall ensure that its administrator and users do not pass any login user details for any of the Websites to third parties or unauthorised personnel under any circumstances as the use of the login details on a Website which have been issued to the Customer by ECCS (including an administrator or user through the Website) will be deemed to be evidence that the Customer authorises the Orders and information placed on Websites;
 - (b) shall ensure that all information held on Websites about the Customer, including the details of the administrator, the users, the postal and delivery addresses, are up to date at all times as ECCS is not liable for any inaccuracies in the information provided by the Customer on the Websites; and
 - (c) acknowledges and agrees that ECCS may, at any time, take steps to validate users added to any Websites.
- 14.2 ECCS will not be liable for any losses or damages resulting from Websites being unavailable. Whilst ECCS endeavours to provide 24 hours a day access to Websites, ECCS reserves the right to suspend any Website operation, temporarily or permanently and without prior notice. ECCS shall not be liable for any losses which result due to technical incompatibilities or system errors of Websites.
- 14.3 All Orders must be placed on InTouch before 17:15 UK time to qualify for a next working day delivery of the Goods.
- 14.4 ECCS reserves the right to monitor the usage of its Websites to ensure compliance with these Conditions. If ECCS determines, at its sole discretion, that the Customer is in breach of these Conditions, or, is misusing a Website, ECCS may withdraw and/or amend access immediately and without prior notice.

15. LIMITATION OF LIABILITY

- 15.1 This clause sets out the entire financial liability of ECCS's and includes liability in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract.
- 15.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
- 15.5 The Customer shall indemnify ECCS 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 professional costs and expenses) suffered or incurred by ECCS arising out of or in connection with any:
- (a) breach of warranty contained in these Conditions;
 - (b) breach or negligent performance or non-performance of the Contract by the Customer;
 - (c) claim made against ECCS by a third party arising out of or in connection with the provision of the Services or the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this contract by the Customer, its employees, agents or subcontractors;
 - (d) claim made against ECCS by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors;
 - (e) claims made against ECCS by third parties which arises from any ECCS performance or non-performance pursuant to the instructions of the Customer or its authorised representative;
 - (f) claim arising out of or in connection with any breach of Clause 4.6;
 - (g) any breach of Clause 14.1(a).
- 15.7 This Clause 15 shall survive termination of the Contract.

16. TERMINATION

- 16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so; or
 - (b) the other party becomes subject to an Insolvency Event.
- 16.2 Without affecting any other right or remedy available to it, ECCS may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) the Customer breaches Clauses 8.1 (h) or 8.1(i); or
 - (c) in accordance with Clause 18.2.
- 16.3 Without affecting any other right or remedy available to it, ECCS may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and ECCS if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to an Insolvency Event, or ECCS reasonably believes that the Customer is about to become subject to an Insolvency Event.
- 16.4 If any applicable Service Provider:
- (a) terminates any Authorised Reseller Programme with the Customer;
 - or
 - (b) becomes subject to an Insolvency Event, ECCS may terminate or temporarily suspend the provision of affected Goods or Services and ECCS will have no further obligation or liability (including liability for any loss, additional payments, damage or inconvenience) to the Customer or the End User in respect of those Goods or Services or

the Contract. ECCS shall use reasonable endeavours to engage a new service provider on materially similar terms in a reasonable period. If the Customer agrees, the Customer will pay an additional charge to ECCS in respect of the new service provider's provision of the Goods and Services. Any delay by ECCS in suspending or terminating the provision of the Goods or Services shall not constitute a waiver under this provision.

- 16.5 Furthermore, the Customer recognises that ECCS will be an ordinary creditor of the Service Provider if an Insolvency Event occurs. ECCS will use reasonable endeavours to obtain repayment of any fees paid by the Customer in respect of Services not yet performed by the Service Providers, but ECCS shall not be liable to pay those fees to the Customer or End User if they are not repaid by the Service Provider or its appointed insolvency practitioner.

17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract:

- (a) the Customer shall immediately pay to ECCS all of ECCS's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, ECCS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all Goods which have not been fully paid for or any free samples or evaluation Goods. If the Customer fails to do so, then ECCS 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.

17.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

18. FORCE MAJEURE

18.1 ECCS shall not be in breach of these Conditions nor liable for delay in performing or failure to perform, any of its obligations under these Conditions (and, subject to Clause 18.2, the time for performance of the obligations shall be extended accordingly) if such delay or failure result from events, circumstances or causes beyond its reasonable control including non-performance by suppliers, Service Providers or Service Providers undergoing an Insolvency Event (a "Force Majeure Event").

18.2 If a Force Majeure Event prevails for a continuous period of more than one month, ECCS may terminate the Contract by giving 14 days' written notice to the Customer. On the expiry of this notice period, this Contract shall terminate. Following termination, ECCS will have no further obligation or liability to the Customer or the End User in respect of the Contract.

19. GENERAL

19.1 ECCS may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of ECCS.

19.3 Any notice given to a party under or in connection with these Conditions shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

19.4 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.5 **Severance.** 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.

19.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.7 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

19.8 Entire agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

19.9 Third parties' rights

- (a) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

19.10 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by an authorised representative of the parties. ECCS may vary these Conditions by issuing a new version on the website ECCS and its operated websites or as communicated to the Customer from time to time. Any Order placed after any variation to these Conditions have been so communicated will be deemed to incorporate the variation.

19.11 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws applicable in Mauritius.

19.12 **Jurisdiction.** Each party irrevocably agrees that the courts of Mauritius shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.