Interpretation

In these **Terms and Conditions**: -

"Seller" means **Think Software Limited** only, a company registered in England & Wales, company number 09600186.
Registered address:

> **The Oakley**
> **Kidderminster Road**
> **Droitwich**
> **Worcestershire**
> **WR9 9AY**

"Buyer" means the ultimate company/organisation who accepts a **Proposal/Quotation** or offer of the **Seller** for the sale of the **Products** and/or **Services** or whose order for the **Products** and/or **Services** is accepted by the **Seller**.

"Terms" means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in **Writing** between the **Buyer** and the **Seller.** In addition to these Terms additional product specific Terms and Conditions from the **Seller** and/or the end manufacturer of the **Product** and/or **Software** and/or **Firmware** depending upon the items being purchased by the **Buyer** will also apply.

"Business Day" means any day other than a Saturday, Sunday, or bank holidays and public holidays.

"Delivery Date" means the estimated date range on which the **Products** and/or **Services** are to be delivered as stipulated in the **Buyer's** order and accepted by the **Seller.**

"Product" means any physical goods and/or digital software and/or digital firmware (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these **Terms.**

"Service" means any services which the Seller is to supply in accordance with these **Terms**. Including, but not limited to; Project Management, Training, Implementation, Go Live Assistance, Technical Support, Report Writing, Software Development and Hardware Development.

"Month" means a calendar month.

"Writing" includes any communications effected by letter, electronic mail or any comparable means.

"Losses" Throughout the whole of this contract, the **Seller** will not be liable to the **Buyer** in any way for any and all financial losses and/or material losses or consequential financial losses and/or consequential material losses.

and/or special/indirect losses and/or loss of profits and/or liquidated damages however caused from the supply and/or use and/or failure of the **Products** and/or **Services** outlined in this contract whether foreseeable or not.

"Software" Computer code/programmes that runs on computers.

"Hardware" Physical equipment that is included within the solution.

"Firmware" Computer code/programmes that runs inside hardware.

"Manufacturer" Company who actually manufactures the Product and/or **Software** and/or **Firmware**.

"Warranty Period" **The period of time Products** and/or **Software** and/or **Firmware** is under warranty from the date of delivery.

"Site" The **Buyer's** premises where the **Products** are to be delivered and/or installed.

"Call out fee" **The Buyer** agrees to pay a call out fee when the **Seller's** employees visit the **Buyer's** premises to perform service and/or maintenance of P**roducts**, **Software** and/or

Firmware. The **Call out fee** comprises of labour rates per hour based on time of day, category of staff deployed, parts used that are not under warranty, travel time, mileage, reasonable subsistence, and hotel costs. The **Buyer** agrees to pay these costs within 30 days from the invoice date.

"Super User" **Where training has been purchased by the Buyer**, the **Buyer's** category of employee who will be trained on the **Products**, **Software** and/or **Firmware** provided by the **Seller** under this agreement and who will then act to ensure the necessary training is passed to all other of the **Buyer's** employees who will interact with the **Solution**.

"Proposal/Quotation" **The Seller's** pre-sale documentation that constitutes an offer to supply the **Buyer** with **Products** and/or **Services**.

"Contract" **The Proposal/Quotation** combined with these **Terms and Conditions** and any of the linked terms from the **Seller** depending on what **Products** and/or **Services** the **Buyer** is purchasing from the **Seller**.

"Equipment" The combined **Products** that the **Buyer** is purchasing from the **Seller** under this **Contract**.

"Solution" The combined **Products, Software, Firmware, Development** and S**ervices** that the **Buyer** is purchasing from the **Seller** under this **Contract**.

"Cloud Services" **Hosting services provided by an authorised third party to Think Software Ltd.**

"Development" **Software and/or Scripts and/or integrations written specifically on the request of the Buyer** by Think Software Ltd based on the written instructions of the **Buyer**.

Terms and Conditions of Sale

1. These Standard **Terms** and Conditions together with any of the linked **Terms** and Conditions and Product Licences from the **Seller** and/or Product/Software manufacturer depending on what **Products** and/or **Services** the **Buyer** is purchasing from the **Seller** govern all sales by the **Seller** of any **Product** and/or **Service** and/or **Equipment** and/or **Solution** between the **Buyer** and the **Seller**.

2. All sales of **Products** and **Services** are expressly limited to acceptance of these **Terms** and Conditions. Any additional or different terms, whether contained in **the Buyer's** forms or otherwise presented by the **Buyer**, are rejected unless expressly agreed to and accepted by the **Seller** in **Writing**.

3. No variation to these **Terms** and Conditions shall be binding unless agreed in **Writing** between the authorised representatives of the Buyer and the **Seller**.

4. Each party represents that it has validly entered into this **Contract** and that it has the power and authority to do so.

5. The **Seller's** employees and/or agents are not authorised to make any representations concerning the **Products** and/or **Services** unless confirmed by the **Seller** in **Writing**. In entering into the Contract, the **Buyer** acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

6. Sales literature, price lists and other documents issued by the **Seller** in relation to the **Products** and/or **Services** are subject to alteration without notice and do not constitute offers to sell the **Products** and/or **Services** which are capable of acceptance.

7. An order placed by the **Buyer** may not be withdrawn, cancelled, or altered prior to acceptance by the **Seller**.

8. The **Buyer** is to provide a minimum of 6 months' notice to the **Seller** in **Writing** with any intention to terminate the use and access of the **Product**, unless another agreement has been agreed in **Writing**.

9. In the interests of data security, all access to the **Buyer's** data is restricted to that provided by the **Seller** or through products provided by the **Seller**.

10. No contract for the sale of the **Products** and/or **Services** shall be binding on the **Seller** unless the **Seller** has issued a **Proposal/Quotation** which is expressed to be an offer to sell the **Products** and/or **Services** to the **Buyer** or has accepted an order placed by the **Buyer** by whichever is the earlier of:-

i) The **Seller's** written acceptance

ii) Delivery of the **Products** and/or **Services**
iii) The **Seller's** invoice.

11. The **Buyer** accepts that all timeframes mentioned by the **Seller** are estimated timescales that the **Seller** will endeavour to achieve. The **Buyer** accepts that these timescales are in no way guaranteed and the **Seller** will not be liable to the **Buyer** for any **Losses** in not meeting these estimated timescales.

12. All **Products** shall be installed by and at the expense of the **Buyer** unless otherwise expressly agreed to by the **Seller** in **Writing**.

Installation and Service

1. Unless otherwise specified in **Writing** by the **Seller,** Installation and Service times are Monday to Friday 9am to 5pm excluding UK bank holidays and public holidays.

2. The **Buyer** is solely responsible for installation and use of the **Product** in compliance of applicable laws. If the **Buyer** requests the **Seller** to assist with installation and use of the **Product** the **Seller** may, at its option, charge for such services.

3. The **Seller** may use the services of authorised subcontractors in order to deliver part of the proposal as it sees fit.

4. Should the **Seller** allow the **Buyer** to delay the timescales of their project, the **Seller** will reschedule any outstanding **Services** to the **Buyer** and will confirm in writing to the **Buyer** when any outstanding **Services** can be provided to the **Buyer**. The **Buyer** accepts that
by delaying their project the **Seller** will reschedule their **Services** to the **Buyer** when able to provide those **Services** and this may not correspond to the length of delay imposed by the **Buyer**.

5. Should the **Buyer** modify their requirements in any way during implementation of the solution the **Seller** will provide the **Buyer** with an additional **Proposal/Quotation** that outlines any additional cost the **Buyer** will need to pay the **Seller** in order to achieve the desired change.

6. Should the **Buyer** modify their requirements in any way during implementation the estimated timescales shown for the implementation on the **Proposal/Quotation** timescales will no longer be valid. The **Buyer** accepts that deviation from the original solution will have an undetermined impact on the project estimated timescales.

7. Unless otherwise stated, the **Buyer** will provide at no cost to the **Seller** all required network and **dedicated** WiFi installations at the correct ratings in the correct locations for the **Equipment** being provided in the **Proposal/Quotation**.

8. Unless otherwise stated in Writing, the Buyer accepts that the Seller has provided no costs or designed any solution for any works relating to interfacing the Solution with external hardware or software systems including warehouse control software systems
and/or stock management systems the Buyer currently uses or plans to use.

9. The Seller will provide any ordered project coordination, data importation, training, reports, layouts, support and any required development work from the Seller's premises unless otherwise agreed in writing by the Seller.

10. Software will be provided to the Buyer by the Seller at time of training.

11. Any reports and/or layouts and/or KPI dashboards and/or Alerts outlined in any Proposal/Quotation will be provided after the Buyer has attended training as requirements/specifications for such may change during training.

12. Any estimated completion date for additional Development, layouts, reports, Alerts or KPI dashboards detailed on the Proposal/Quotation is in no way guaranteed. The Seller makes no warranties, implied or otherwise, that these dates can be met. The Buyer is made aware of the complex nature of Development and therefore its inability to guarantee these timescales.

13. The Buyer agrees to allow the Seller and their agents access to the Site to implement the Solution as required by the Seller and agree not to hinder or obstruct the implementation process in any way.

14. The Buyer agrees to provide Site welfare facilities (toilets, canteen, electricity, internet access and drinkable water), for the Seller's employees and their agents throughout implementation.

15. The Buyer agrees to correct any defects or issues in existing installations that would have a negative impact in the Solution being provided by the Seller immediately on Written notification by the Seller and at no cost to the Seller.

16. Any and all charges passed to the Seller from third parties as a result of unplanned delays, incidents or work required caused by the Buyer outside the scope of the Proposal/Quotation will be recharged to the Buyer. This includes but is not limited to, missed delivery charges, failure to provide labour as agreed, failure to provide data as agreed and/or not installing electrics or networking.
The Seller will invoice the Buyer for these charges and the Buyer agrees to pay the Seller within 30 days from the date of the invoice.

17. The Buyer agrees to provide every assistance in a timely fashion, at their own cost, to the Seller to successfully implement the Solution when requested to do so by the Seller in Writing.

18. The Seller will confirm training dates in Writing. Any cancellation or movement by the Buyer of these dates will be subject to the
following charges.

a) Dates cancelled or changed 28 or more days prior to the agreed dates – no charge.
b) Dates cancelled or changed between 28 and 14 days prior to the agreed dates – 50% of the training cost.
c) Dates cancelled or changed less than 14 days prior to the agreed dates – 100% of the training cost.

19. The **Buyer** agrees to receive an invoice for such charges and pay the **Seller** and pay the invoice within 30 days from invoice date. The **Buyer** accepts that cancelling or moving training will have a material impact on the estimated solution timescales and indemnifies
the **Seller** from any and all impacts and **Losses** caused because of the cancellation or movement. The **Buyer** accepts that the **Seller** cannot guarantee to move the training by the same amount of time cancelled by the **Buyer** due to the **Seller's** availability.

20. In order for the Solution to function, data importation can only be made from specific data formats and may need the Buyer to perform extra work on the data they provide to ensure that correct/factual information is imported into the Solution for the benefit of the Buyer. The Buyer will ensure that these data formats are met without cost to the Seller and ensure the quality of the data is accurate. Unless otherwise stated in Writing the Seller will perform one data import into the Solution for the Buyer. Additional data imports can be purchased by the Buyer from the Seller. The Buyer indemnifies the Seller from any and all issues and Losses arising from the Buyer providing inaccurate data.

21. Unless agreed in Writing the Seller may provide Super-User level training on the Products, Software and Firmware only as outlined in the Proposal/Quotation. The Buyer is responsible for ensuring all personnel and visitors interacting in any way with the Solution provided by the Seller will be trained appropriately.

Support

1. For Products: Support is provided to the Buyer from the Seller during the Warranty period of the Products purchased on the Proposal/Quotation. Once the warranty expires additional service and maintenance contracts can be purchased at additional cost to the Buyer.

2. For Software written by the Seller: Support and Upgrades are provided for the period stated in the Proposal/Quotation or 6 months from the date of software delivery if not stated in the Proposal/Quotation. Once Support and Upgrades expires additional Software Support and Upgrades contracts can be purchased at additional cost to the Buyer.

3. For Software written by the Manufacturer: Support is provided for the period stated in the Proposal/Quotation or 6 months from the software delivery if not stated in the Proposal/Quotation. Once Support expires additional Software Support contracts can be purchased at additional cost to the Buyer.

4. Unless otherwise specified in Writing by the Seller support is provided by telephone only and telephone support times are Monday to Friday 9am to 5pm excluding UK bank holidays and public holidays.

5. The **Buyer** agrees to submit support requests by email, telephoning a Support Telephone Number or submitting an on-line support request.

6. Unless otherwise specified in **Writing**, **Site** visits from the **Seller** to the **Buyer's** premises are not included during the **Warranty period**.

7. Unless otherwise specified in **Writing**, **Site** visits required for Support from the **Seller** to the **Buyer's** premises will incur the **Call out fee**.

8. The average Support Service Level Agreement response times calculated annually are based on what the **Seller** deems the priority of the nature of the support request from the **Buyer** and unless agreed otherwise with the **Seller** in **Writing** will currently be:

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
Business and financial exposure			
The application failure creates a serious business and financial exposure.	The application failure creates a serious business and financial exposure.	The application failure creates a low business and financial exposure.	The application failure creates a minimal business and financial exposure.
Work Outage			
The application failure causes the client to be unable to work or perform some significant portion of their job.	The application failure causes the client to be unable to work or perform some significant portion of their job.	The application failure causes the client to be unable to perform *some small* portion of their job, but they are still able to complete most other tasks.	The application failure causes the client to be unable to perform a *minor* portion of their job, but they are still able to complete most other tasks.
Number of users affected			
The application failure affects a *large* number of users.	The application failure affects a *large* number of users.	The application failure affects a *small* number of users.	The application failure may only affect one or two users.
Workaround			
There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).	There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).	There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).	There is likely an acceptable workaround to the problem.
Response Time			
The provider aims to respond to: 95% of phone calls within 30 minutes (in most cases it is anticipated an immediate response will be available, but volume of calls may cause restrictions). 95% of emails and items logged on the on-line system within 48 hours**.**			
Resolution Time			
The **Seller** aims to resolve within six hours.	The **Seller** aims to resolve within 7 business days.	The **Seller** aims to resolve within 30 business days.	The **Seller** will aim to resolve under a future minor release program within 180 days of acceptance of the issue.

Warranty

1. The **Seller** warrants that it will supply/provide the **Products** and/or **Services** and/or **Solution** using commercially reasonable care and skill.

2. The **Seller** does not warrant that the **Products** and/or **Services** will be error-free or perform uninterrupted, that the **Seller** will correct all errors, or that the **Products** and/or **Services** will meet the **Buyers** requirements or expectations. The **Seller** is not
responsible for any issues related to the performance, operation or security of the **Products** and/or **Services** that arise from **Buyer's** data or third-party applications or services provided by third parties.
3. For **Services**, the **Seller** warrants that the **Services** will be of workmanlike quality and will be performed by trained personnel.

4. For any breach of the **Service** warranty, the **Buyer's** exclusive sole remedy and the **Seller's** entire liability shall be the correction of the deficient **Service** that caused the breach of warranty.

5. For **Software** or **Firmware** purchases for upgrades developed by the **Seller**, revisions or additions, the **Seller** warrants that for thirty (30) days after proper installation the **Software** or **Firmware** will be free from substantial errors and defects.

6. For all new **Products**, the **Seller** warrants that for 12 months after delivery (the **Warranty Period**) the **Products** will meet their published specifications. The **Seller** disclaims all other representations and warranties of any kind with respect to the **Products**, including, without limitation, any warranties or representations as to merchantability, fitness for a particular purpose or infringement. In order for the **Product** warranty to be valid the **Buyer** must, within thirty (30) days after receipt of the **Product**, complete and return to the **Seller** its Warranty Registration Form.

7. For **Software** manufactured by the **Seller**, the **Seller** warrants that for 12 months after delivery (the **Warranty Period**) when used as intended the software will perform as it is intended to do so by the **Seller**. The software warranty does not apply to the **Buyer** where software defects occurred from:

a. Incorrect specifications or information supplied by the **Buyer**.
b. The **Buyer** misusing the **Software**.
c. By any modification to the software performed by the **Buyer** or any third-party unless specifically authorised in **Writing** by the **Seller** in advance.
d. By the **Buyer** or third parties altering settings in the **Software**.
e. The **Buyer's** computer hardware and/or infrastructure causing the **Software** to be slow.

1. For **Software** not manufactured by the **Seller**, the **Seller** warrants that for the **Manufacturer's** Warranty period after delivery (the **Warranty Period**) when used as intended the +

2. software will perform as it is intended to do so by the **Manufacturer**. The software warranty does not apply to the **Buyer** where software defects occurred from:

a. Incorrect specifications or information supplied by the **Buyer**;
b. The **Buyer** misusing the **Software**.
c. By any modification to the software performed by the **Buyer** or any third-party unless specifically authorised in **Writing** by the **Seller** in advance.
d. By the **Buyer** or third parties altering settings in the **Software**.
e. The **Buyer's** computer hardware and/or infrastructure causing the **Software** to be slow.

3. For **Firmware** not manufactured by the **Seller**, the **Seller** warrants that for the **Manufacturer's** Warranty period after delivery (the **Warranty Period**) when used as intended the firmware will perform as it is intended to do so by the **Manufacturer**. The software warranty does not apply to the **Buyer** where software defects occurred from:

a. Incorrect specifications or information supplied by the **Buyer.**
b. The **Buyer** misusing the **Firmware**.
c. By any modification to the software performed by the **Buyer** or any third-party unless specifically authorised in **Writing** by the **Seller** in advance.
d. By the **Buyer** or third parties altering settings in the **Firmware**.

4. To the extent that the **Product** incorporates third party hardware or software, such third-party hardware or software shall be covered only by the hardware or software provider's end-user license agreement warranty and the **Buyer's** remedies are limited solely to those specifically contained therein.

5. For **Software** or **Firmware** purchases for upgrades not developed by the **Seller**, revisions or additions, the **Seller** warrants only the manufacturer's warranty after proper installation.

6. Except as otherwise expressly provided herein, the **Seller** warrants that, to the best of its current knowledge, information, and belief, the **Product**(s), their sale, possession and intended use do not infringe on any Patent. This warranty extends only to infringement claims which pertain to the **Products** and to methods performed by the **Products**. This warranty does not extend to any charge of infringement which pertains to an article of Manufacture or which arises by reason of use of the **Products** in conjunction with other machinery not manufactured by the **Seller** or which arises from use of the **Products** in the practice of any process involving more than the inherent mode of operation of the **Products**. The **Seller** reserves the right to discontinue the delivery of any **Product**, the manufacture, sale or use of which, in its opinion, would infringe upon any Patent now or hereafter issued and under which the **Seller** is not licensed.

7. The **Seller's Product** Warranty shall be void if:

a. The **Product** is not stored or handled correctly by the **Buyer** or a third party.
b. A defect resulted from damages occurring after delivery of the **Product** caused by the **Buyer** or a third party**.
c. A defect was caused by the acts, omissions, or negligence of the **Buyer** or a third party.
d. The **Product** was incorrectly installed, incorrectly handled, misused, altered or was not maintained properly by the **Buyer** or a third party.
e. The **Product** is used outside its environmental conditions.
f. The **Product** is not used for its true intended purpose. Should there be any   debate over the true purpose of a product, the **Seller's** decision is final.
g. The **Product** is used or exported outside of the country in which it was created without written consent from the **Seller**.

8. Replacement parts provided, and **Products** repaired, under warranty shall be warranted for the greater of either:

a. The warranty provided by the manufacturer of the replacement part.
b. or The remainder of the original Warranty Period for the **Product**.

9. To the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for software, hardware, systems, networks or environments or for merchantability, satisfactory quality and fitness for a particular purpose.

Indemnification

1. The **Buyer** shall defend, indemnify and hold the **Seller** and its employees and agents harmless, from and against all sums, claims, costs, duties, liabilities, **Losses**, obligations, suits, actions, damages, penalties, awards, fines, interest and other expenses (including investigation expenses and legal fees) that the **Seller** may incur or be obligated to pay as a result of:

a. The **Buyer**'s negligence in the use, ownership, maintenance, transfer, export, transportation or disposal of the **Product**
b. Any infringement or alleged infringement of the industrial and intellectual property rights of others arising from the **Buyer**'s plans, specifications (including the **Buyer**'s trademarks and brand names)
c. The **Buyer**'s violation or alleged violation of any national laws or regulation, including without limitation, the laws and regulations governing product safety, general safety, fire safety, labelling, packaging and labour practices.
d. The **Buyer**'s breach of these **Terms**.

2. It is the **Buyer's** responsibility to verify the suitability of the **Products** and/or **Services** prior to purchase. The **Seller** is not liable for any such lack of verification or assumptions by the **Buyer**.
3. The **Buyer** agrees to indemnify the **Seller** from any damage caused by the **Buyers** employees or agents to delivered goods from the point of delivery.

4. All **Development** outlined on the **Proposal/Quotation** is based on the level of details provided by the **Buyer** to the **Supplier** in writing prior to the **Proposal/Quotation** being compiled. If the **Buyer's** requirements subsequently differ from those requirements submitted to the **Seller** the **Buyer** acknowledges that the **Seller** will be required to re-quote and re-schedule the **Development** in line with the new requirements. The **Buyer** also acknowledges that altering their **Development** requirements in any way may result in the estimated completion date being delayed and the **Buyer** indemnifies the **Seller** from any and all associated **Losses** due to the
Buyer changing their **Development** requirements.

5. The **Buyer** accepts that as in any system solution **Equipment** will break down. It is the **Buyer's** responsibility to ensure that procedures and spare equipment are in place to minimise disruption to their own business caused by any **Equipment** and **Solution** breakdowns. The **Buyer** indemnifies the **Seller** from any and all associated **Losses** however incurred because of these breakdowns. Under no circumstances will the **Seller** be liable for any **Losses** incurred.

6. The **Buyer** understands that they and the information they provide are an integral part to the final solution being provided by the **Seller**. The **Seller** accepts no liability for any and all failings of the **Buyer** to act or provide the correct information at the required times
and the implications and/or **Losses** incurred of such failings.

7. The **Buyer** accepts that no guarantees can be made as to the speed of any **Product**, **Software** or **Firmware** mentioned in the **Proposal/Quotation**. It is the **Buyer's** responsibility to ensure the hardware/operating systems/anti-virus software/email software and other pre-requisites that the solution mentioned in the **Proposal/Quotation** will meet the required specifications for that solution. The **Seller** accepts no liability for any and all implications and/or **Losses** incurred by the **Buyer** in their failure to ensure these pre-requisites meet specifications.

1. The **Buyer** accepts that no guarantees can be made as to the speed of the solution mentioned in the **Proposal/Quotation**. It is the **Buyer's** responsibility to ensure the solution meets their requirements prior to purchase.
2. Any typographical, clerical or other accidental errors or omissions in any sales literature, **Proposal/Quotation**, price list, acceptance of offer, invoice or other document or information issued by the **Seller** shall be subject to correction without any liability on the part of the **Seller**.

Solution Performance

1. It is the **Buyer's** responsibility to verify the suitability of the **Products** and/or **Services** prior to purchase. The **Seller** is not liable for any such lack of verification or assumptions by the **Buyer**.

2. The **Seller** only warrants that the **Solution**, where used consistently and properly by the **Buyer** as instructed by the **Seller**, will perform broadly as indicated in the **Proposal/Quotation** for the **Solution**.

3. The **Seller** offers no guarantees of performance where the **Buyer** has supplied values, figures, or calculations to which the **Seller** has based its estimated **Solution** performance.

4. It is the **Buyers** responsibility to check any perceived performance or written performance prior to ordering the solution as described from the **Seller**.

5. The **Buyer** accepts that the **Seller** is not responsible for the performance of third-party suppliers, their **Products** and/or **Services** and the impacts these have on the **Solution**.

6. The **Buyer** accepts that the **Seller** is not responsible for the performance of the **Buyer's** existing infrastructure **Products** and/or **Services** and the impacts these have on the **Solution**.

7. The **Buyer** accepts that the **Seller** is not responsible for the performance of the **Buyer's** employees and their agents and the impacts these have on the **Solution**.

8. The **Seller** reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the **Seller** specification, which do not materially affect their quality or performance.

Expedited Payment / Seller's Right to Cancel

1. If the **Buyer** fails to make any payments on the due dates then, without prejudice to any other right or remedy available to the **Seller**, the **Seller** shall be entitled to:-
a. Cancel the order or suspend any further work performed for the **Buyer**;
b. Appropriate any payment made by the **Buyer** to such of the **Products** and **Services** (or the **Products** and **Services** supplied under any other contract between the **Buyer** and the **Seller**) as the **Seller** may think fit (notwithstanding any purported appropriation by the **Buyer**); and
c. Charge the **Buyer** interest (both before and after any judgement) on the amount unpaid, at the rate of six per cent per annum above National Westminster Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

2. If the financial condition of the **Buyer** at any time does not, in the judgment of the **Seller**, justify continued performance of any instruction/contract, the **Seller**:
a. may require full or partial payment in advance; or
b. shall be entitled to terminate the instruction/contract and receive payment for all costs incurred to the point of termination.

3. The **Seller** may, by written notice to the **Buyer**, and without any liability to the **Seller** whatsoever, cancel the **Buyer**'s instruction/contract if the **Buyer**:

a. fails to perform any of the terms and conditions contained herein or in the purchase order, and the **Buyer** does not cure such failure to the **Seller**'s satisfaction within a period of ten (10) days after receipt of notice from the **Seller** in **Writing**; or
b. becomes insolvent, makes an assignment in favour of creditors, or becomes subject to any bankruptcy, dissolution or similar proceeding; or
c. amalgamates with, or all or a substantial part of its assets are sold to, another company, or there is a change of control of the **Buyer**.

4. As a non-exclusive alternative to cancellation, the **Seller** may, by written notice to the **Buyer**, and without any liability to the **Seller** whatsoever, suspend any of its obligations under an instruction/contract for any reason referenced in subsections 3(a) through (c) above. 5. The **Seller's** remedies hereunder are not exclusive, and the **Seller** shall be entitled to avail itself of any and all other remedies available to it at law or in equity.

Limitation of Liability

1. The **Buyer** accepts that the **Seller's** total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the **Contract** shall be limited to the money paid to the **Seller** by the **Buyer** under this **Contract** at the time liability was incurred or £1,000,000 whichever is the lower.
2. The **Seller** shall not be liable to the **Buyer** for any and all **Losses**, pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the **Contract**.
3. In no event, and under no circumstance, shall either party be liable to the other for any punitive, incidental, special, exemplary, consequential or similar type damages, including, but not limited to, any direct and indirect lost profits, lost revenues or lost opportunities regardless of whether those damages were foreseeable.

Force Majeure

1. The **Seller** is not liable for **Losses** or responsible for delay or failure to perform any of the **Seller**'s obligations under any purchase order or to make delivery of any **Product** or **Service** caused by:

a. Any cause beyond its reasonable control, including, but not limited to labour disputes, industry disturbance, fires, severe weather conditions, earthquakes, floods, natural disaster, declared or undeclared war, acts of terrorism, epidemics, pandemics, computer malfunctions, civil unrest, military authority, insurrection, embargoes, riots, lack of supplies, delay in transportation, governmental issues, computer hacking, computer malware, computer ransomware, related issues or delays, regulatory or legal action, loss of internet, governmental acts, act of God
b. By acts or omissions of the **Buyer**, including, but not limited to, **Buyer's** failure to promptly comply with the terms of payment (collectively "Force Majeure Event"). The date of delivery shall be extended for a period equal to the time lost by reason of any Force Majeure Event.

2. Without limiting the generality of section 1 above, the parties confirm that they are aware of the Coronavirus epidemic/pandemic. While the parties acknowledge that such epidemic or pandemic may have negative effects on the timely performance of the **Seller**'s contractual obligations and/or result in increased costs for the **Seller**, at the time of entering into the applicable contract governed by these **Terms**, the details and severity of any such effects remain unknown and/or

unquantifiable. In case the Coronavirus epidemic or pandemic, directly or indirectly, results in the **Seller**'s delay, or failure to perform, and/or increased costs of the **Seller**'s contractual performance, the **Seller** will not be liable or responsible for any such delay or failure to perform, and the parties shall agree in good faith upon an equitable adjustment of agreed delivery dates and applicable performance schedules, and/or an equitable adjustment of the purchase price, or otherwise agree in good faith regarding a mutually acceptable resolution.

Governing Law

1. These **Terms** and the sale of **Products, Software, Firmware** or **Services** between the **Seller** and **Buyer** shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

Dispute Resolution Procedure

1. Formal disputes regarding this contract should be emailed to enquiries@tkinv.com whereupon the dispute will be acknowledged within 2 business days and the formal Dispute Resolution Procedure within the **Seller** activated.
2. The **Buyer** agrees that should they raise disputes they do so in **Writing** to the Company address stated.

Confidentiality, Publications and Endorsements

The **Buyer** undertakes to the **Seller** that: -

1. The **Buyer** will regard as confidential the **Contract** and all information obtained by the **Buyer** relating to the business and/or **Products** and/or **Services** of the **Seller** and will not use or disclose to any third party such information without the **Seller's** prior written consent provided that this undertaking shall not apply to information which is in the public domain and authorised by the **Seller**.
2. The **Buyer** will not use or authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the **Seller** is licensed to use or which is owned by the **Seller** in any manner whatsoever unless such use shall have been previously authorised and approved in **Writing** by the **Seller** and (where appropriate) its Licensor.
3. The **Buyer** will use all reasonable endeavours to ensure compliance with this Condition by its employees, servants and agents.
4. The **Seller** may publicise the **Buyer** as a client of the **Seller** in relevant commercial marketing.
5. This Condition shall survive the termination of the **Contract**.

Cloud Services

1. If the **Buyer** uses the **Cloud Service** provided by the **Seller**, unless specifically included in the **Proposal/Quotation**, the **Buyer** must not use the **Cloud Service** to store or process any sensitive or special categories of data that imposes specific data security or data protection obligations on the **Seller** in addition to or different from those specified or referenced in the **Proposal/Quotation** for the Services.
2. If the **Buyer** uses the **Cloud Service** provided by the **Seller**, the **Seller** is the GDPR Data Processor for information held by the **Buyer** for the **Buyer's** own business purposes, that the **Buyer** shares with the **Seller** to complete a business task. It is the responsibility of the **Buyer** to ensure they comply with all GDPR regulations.
3. As between the **Seller** and **Buyer**, all title and intellectual property rights in and to the **Buyer** Data is owned exclusively by the **Buyer**. The **Buyer** acknowledges and agrees that in connection with the provision of the **Products** and/or **Services**, the **Seller** may store and maintain **Buyer** Data for

a period of time consistent with the **Seller's** standard business processes for the **Product** and/or **Services**. Following expiration or termination of the **Contract** or a **Buyer** account, if applicable, the **Seller** may deactivate the applicable **Buyer** account(s) and delete any data therein. The **Buyer** grants the **Seller** the right to host, use, process, display and transmit **Buyer** Data to provide the **Products** and/or **Services** pursuant to and in accordance with these **Terms** and the applicable **Proposal/Quotation**. The **Buyer** has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of **Buyer** Data, and for obtaining all rights related to **Buyer** Data required by the **Seller** to deliver the **Products** and/or **Services**.

4. The **Buyer** shall authorise access to and assign unique passwords and usernames to its Users. The **Buyer** will be responsible for the confidentiality and use of User's passwords and usernames. The **Buyer** will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, **Buyer** Data, and all other data of any kind contained within emails or otherwise entered electronically through the **Cloud Service** or under Buyer's account. The **Seller** will act as though any Electronic Communications it receives under **Buyer's** passwords, username, and/or account number will have been sent by the **Buyer**. The **Buyer** shall use commercially reasonable efforts to prevent unauthorised access to or use of the **Cloud Service** and shall promptly notify the **Seller** of any unauthorized access or use of the **Cloud Service** and any loss or theft or unauthorised use of any User's password or name and/or **Cloud Service** account numbers.

5. The **Buyer** understands that the technical processing and transmission of the **Buyer's** Electronic Communications is fundamentally necessary to use of the **Cloud Service**. The **Buyer** is responsible for securing DSL, cable or another high-speed Internet connection and up to date "browser" software in order to utilise the **Cloud Service**. The **Buyer** expressly consents to the **Seller's** interception and storage of Electronic Communications and/or **Buyer** Data as needed to provide the **Product** and/or **Services** hereunder, and the **Buyer** acknowledges and understands that **Buyer's** Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by the **Seller**. The **Buyer** further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. The **Seller** is not responsible for any Electronic Communications and/or **Buyer** Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by the **Seller**, including, but not limited to, the Internet and the **Buyer's** local network.

6. The **Buyer** is responsible for ensuring that its use of the **Cloud Service** to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall not store credit card data in the Cloud Service.

7. The **Seller** will act as a data processor and will act on the **Buyer's** instructions concerning the treatment of the **Buyer's** Personal Data. The **Buyer** agrees to provide any notices and obtain any consents related to the **Buyer's** use of the **Products** and/or **Services** and the **Seller's** provision of the **Products** and/or **Services**, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

General Restrictions

1. The **Buyer** may not, and may not cause or permit others to:

a. Use the **Products** and/or **Services** to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations;
b. Perform or disclose any benchmarking, availability or performance testing of the **Products** and/or **Services**; or
c. Perform or disclose any performance or vulnerability testing of the **Products** and/or Services without the **Seller's** prior written approval, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing. In addition to other rights that the **Seller** has in these terms and the **Proposal/Quotation**, the **Seller** has the right to take remedial action if these terms are violated, and such remedial action may include removing or disabling access to material that violates the policy.

2. The **Buyer** may not, and may not cause or permit others to:

a. Modify, make derivative works of, disassemble, decompile, reverse engineer (unless required to be permitted by law for interoperability), reproduce, republish, download, or copy any part of the **Products** and/or **Services** (including data structures or similar materials produced by **Software**);
b. Access or use the **Products** and/or **Services** to build or support, directly or indirectly, products or services competitive to the **Seller**; or
c. License, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the **Products** and/or **Services** to any third party except as permitted by these terms and the **Proposal/Quotation**.

3. The **Buyer** shall provide accurate, current and complete information on the **Buyer's** legal business name, address, email address and phone number, and maintain and promptly update this information if it should change.

4. Any notice required under these Terms shall be provided to the other party in writing. If the **Buyer** has a legal dispute with the **Seller** or if the **Buyer** wishes to provide a notice, or if the **Buyer** becomes subject to insolvency or other similar legal proceedings, the **Buyer** will promptly send written notice to the **Seller**.

Miscellaneous

1. If any provision of these **Conditions** is held by a court of competent jurisdiction to be invalid or unenforceable in whole or in part the validity of the other provisions of these **Conditions** and the remainder of the provision in question shall not be affected thereby and remain in full force and effect.
2. The waiver by the **Seller** of any breach by the **Buyer** of any provision of any of these **Terms** may not be construed to be either a waiver of the provision itself as to subsequent application or enforcement or any other provision of any of these **Terms**.
3. Nothing that in any way purports to modify any of these **Terms** is binding upon the **Seller** unless made in **Writing** and signed by an authorised officer of the **Seller**.
4. In case of a conflict between these **Terms** and any terms supplied by the **Buyer**, these **Terms** shall prevail unless the **Seller** has expressly agreed to the conflicting term in **Writing**. In case of a conflict between a purchase order from the **Buyer** and the **Seller**'s acceptance these **Terms** shall prevail.

5. The **Buyer** may not, directly or indirectly through one or more other persons or entities (whether as a principal, owner, shareholder, partner, member, joint venture, officer, director, manager, consultant, employee, agent, lender or otherwise), use the **Products** to engage in any activity that is substantially similar to or competitive with any part of the **Seller**'s or its affiliates' business, including, but not limited to, designing, manufacturing or developing, selling, or in any way providing ERP Software, Retail Software, Warehouse Management Software and/or stock control/stock management software.

6. The **Buyer** shall not, for the duration of this agreement and up to 12 months after completion, directly or indirectly induce or attempt to induce, or employ in any way, any employees, agents or staff of the **Seller,** including those who have been engaged in the provision, receipt, review or management of the **Products** and **Services** or otherwise in connection with this agreement to leave the employment of the **Seller**. Should an employee from the **Seller** be employed by the **Buyer** within this period the **Buyer** agrees to provide 12 months of the employee's gross salary (as previously paid to the employee by the **Seller**) to the **Seller** as compensation. This will be invoiced to the **Buyer** and the Buyer agrees to pay this within 30 days of invoice date.

7. The parties confirm that it is their wish that these **Terms**, as well as any other documents relating to these **Terms**, including notices and authorisations, have been and shall be drawn up in the English language only.

8. A person/company who is not a party to the **Contract** shall have no rights under the **Contract** pursuant to the Contracts (Rights of Third Parties) Act 1999.

9. Should the **Proposal/Quotation** outline utilise hosted solutions the **Buyer** accept that these hosted solutions are covered by additional **Terms**.