



Active Business Communications Ltd

General Terms and Conditions

We refer the customer, in particular, to the provisions of Conditions 5, 16 and 19

1 Interpretation

- 1.1 The definitions and rules of interpretation in this Condition 0 apply in these terms and conditions ("Conditions").

"Active" Active Business Communications Limited (company number 4439124) whose registered office is at Active House, 12 - 13 Bredbury Business Park, Bredbury Park Way, Bredbury, Stockport SK6 2SN;

"Business Day" any day except a Saturday or Sunday or public holiday in England and Wales;

"Contract" the Customer's order and Active's acceptance of it, or the Customer's acceptance of a quotation for Services and/or Goods by Active under Condition 2.2, or if applicable, a Services Contract;

"Customer" the person, firm or company who purchases the Services and/or Goods;

"Customer's Equipment" any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services and/or Goods;

"Goods" any goods (including, except where expressly set out otherwise, Third Party Goods) to be supplied to the Customer under the Contract;

"Intellectual Property Rights" any patents, copyright and related rights, trade marks, domain names, rights in designs, rights in computer software, database rights, rights in goodwill or, without limitation any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection anywhere in the world;

"Minimum Price" the minimum aggregate price that the Customer has agreed to pay under a Contract set out in the Order Confirmation, or if otherwise, as notified by Active to the Customer;

"Minimum Term" the minimum term of the Contract set out in the Order Confirmation or, if otherwise, as notified by Active to the Customer;

"Order Confirmation" Active's order confirmation setting out the Goods and/or Services to be supplied under the Contract (but absence of an Order Confirmation will not affect the validity of any Contract);

"Services" services to be provided by Active under the Contract including (a) advising about products and services offered by Suppliers ("Information Services") (b) procuring services and/or products for the Customer from Suppliers (including migration, product ordering and installation) ("Product Services") and (c) technical support relating to Product Services (the "Support Services"), (d) IT Services, as defined in a relevant Services Contract and (e) Managed Services, as defined in a relevant Services Contract;

"Services Contract" a contract between the Customer and Active relating to IT Services or Management Services (each as defined therein) on Active's standard terms and incorporating these Conditions (on the terms set out therein);

"Supplier" any third party supplier of Product Services (or any other goods or services) from time to time;

"Supplier's Equipment" any equipment, tools, systems, cabling or facilities, provided by a Supplier or its subcontractors and used in the supply of the Product Services;

"Third Party Goods" any goods supplied from time to time to a Customer by a Supplier (whether directly or via Active);

"Unauthorised Access" unauthorised, unlawful or illegal access, or use of or interference by a third party with (i) any Goods and Services, (ii) the Customer's Equipment, (iii) the Customer's data, networks or resources (including theft, hacking, fraud, the transmission of anything intended to adversely affect the operation of any programme or data, including viruses) or any accidental or unauthorised loss or disclosure of the Customer's data; and

"VAT" value added tax and any replacement tax or similar tax in any jurisdiction.

- 1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and words in the singular include the plural and vice versa.
- 1.3 Any reference to an enactment includes references to such enactment as re-enacted, amended or extended from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.4 A reference to **"writing"** or **"written"** includes faxes and e-mail.
- 1.5 **"Include(s)", "including"** or **"in particular"** are illustrative and do not limit the sense of words preceding them.
- 1.6 Any obligation in the Contract on the Customer not to do something includes an obligation not to agree or allow that thing to be done.

2 Application of Conditions

- 2.1 These Conditions will apply to:
- 2.1.1 and are incorporated into any Contract from time to time entered into between Active and the Customer; and
- 2.1.2 the exclusion of any other terms or conditions (whether contained or referred to in a Customer's purchase order, order confirmation, acceptance, specification or other document, or implied by custom or a course of dealing).
- 2.2 The Customer's purchase order, the Customer's acceptance of Active's quotation for Services and/or Goods by Active, or the signature of an order form, Services Contract or summary by or for the Customer, constitutes an offer by the Customer to purchase the Services and/or Goods on these Conditions. No offer placed by the Customer will be accepted by Active other than:
- 2.2.1 by an Order Confirmation or written acknowledgement issued by Active; or
- 2.2.2 or Active's signature and dating of a Services Contract; or
- 2.2.3 (if earlier) by Active starting to provide the Services and/or Goods, when the Contract on these Conditions will be formed (the **"Start Date"**).
- 2.3 Active gives quotations on the basis that no Contract will come into existence except under Condition 2.2. Any quotation is valid for 30 days unless Active withdraws it within that period.

3 Commencement and duration

- 3.1 The Information Services will be supplied to the Customer from the Start Date in accordance with Condition 4 and will end on the date on which the Support Services are terminated.
- 3.2 The Support Services will be supplied to the Customer from the Start Date in accordance with Condition 6 and will, subject to Conditions 3.4 and 18, continue for the minimum period of any relevant contract between the Customer and a Supplier (including a contract which is deemed to be in force between the Customer and Supplier by virtue of clause 0) and, after that, will continue to be supplied unless terminated by one of the parties giving to the other not less than 30 days' notice.
- 3.3 The Start Date and applicable termination date of any Managed Services and IT Services shall be as set out in the relevant Services Contract.
- 3.4 If the contract between the Customer and Supplier to which Support Services relate is terminated for any reason:
- 3.4.1 the Customer must notify Active immediately; and
- 3.4.2 Active may terminate the Support Services at any time without notice and Conditions 18.2 and/or 19 will apply (as applicable); and
- 3.5 The Product Services will be supplied to the Customer in accordance with Condition 5 but are subject to the Supplier's terms and conditions.

- 3.6 Subject to Condition 18, rental of any Goods by the Customer will be for the Minimum Term and after that, will continue unless terminated by one of the parties giving to the other not less than 90 days' notice.

4 Information Services

- 4.1 In supplying Information Services Active will use reasonable endeavours to make recommendations about Product Services and/or Goods after receipt of a request from the Customer to advise.
- 4.2 Active selects products and services from a range of Suppliers, although for certain products, Active may only deal with a single Supplier or select from a limited number of Suppliers. Active is not obliged to update its recommendations from time to time.
- 4.3 The Customer acknowledges that in recommending certain products and services to the Customer, Active may rely on information provided by the Suppliers and other third parties. Active does not warrant, and excludes all liability in respect of, the accuracy, completeness, fitness for purpose or legality of any information provided by any Supplier or third party and the Customer agrees that sole responsibility for the accuracy, completeness, fitness for purpose or legality of information supplied by any Supplier rests with the Customer.

5 Product Services

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

- 5.1 In providing Product Services, Active will be the Customer's disclosed agent and will liaise with Suppliers on the Customer's behalf. The Customer authorises Active to enter into such contracts on its behalf.

This means that even if Active sets up a contract in its name on a Customer's behalf, the contract will be deemed to be between the Supplier and the Customer and the Customer will be bound to have agreed to honour that contract's terms with any Supplier minimum term.

- 5.2 Active will not be held responsible at any time if any Third Party Goods or services provided by Suppliers from time to time are not available to the Customer for any reason.
- 5.3 The Customer acknowledges that:
- 5.3.1 Third Party Goods will be supplied on the Supplier's terms and conditions and the Customer is responsible for obtaining a copy of any such terms and conditions complying with those terms and conditions;
- 5.3.2 unless otherwise agreed in writing by Active, the Customer is responsible for paying Suppliers directly for any services or Third Party Goods supplied by Suppliers; and
- 5.3.3 Active will not enter any contractual arrangements on behalf of or in the name of the Customer relating to the supply of products or services.
- 5.4 Active strongly recommends that the Customer reads the Supplier's terms and conditions or other relevant contracts or documents relating to the services or Third Party Goods supplied by a Supplier.
- 5.5 Active will liaise with Suppliers and the Customer in relation to the delivery of Third Party Goods and services to the Customer and will use reasonable endeavours to arrange delivery at such times and dates as the Customer reasonably requests provided always that the Customer acknowledges that Active has no control over the Suppliers and can give no warranty in this regard.

6 Support Services

- 6.1 The Customer should note that Support Services relate to technical support relating to Product Services provided under Condition 5. Condition 6 will not apply to the Services provided in a Services Contract unless that Services Contract expressly states that it does.

- 6.2 In providing the Support Services, Active will be the Customer's disclosed agent for the purposes of liaising and negotiating with Suppliers, obtaining quotations or advice or any products or services as may be required from any Supplier or other third party from time to time.
- 6.3 Active will, between 8:30 a.m. and 5:30 p.m. on every Business Day during the term of a Contract under which it provides Support Services upon request by the Customer give reasonable advice and assistance by telephone in relation to the Goods or products supplied by Suppliers, including in relation to fault queries, billing enquiries and general customer service issues.
- 6.4 Active will use reasonable endeavours to respond to any fault report by no later than the following Business Day following a written report from the Customer setting out full details of any fault and will use all reasonable endeavours to liaise with Suppliers as it considers necessary.
- 6.4.1 Support Services will not include diagnosis and rectification of any fault with any Goods arising out of:
- 6.4.2 the improper use, operation or neglect, or modification of Goods; or
- 6.4.3 the Customer's Equipment; or
- 6.4.4 the failure by the Customer to implement Active's recommendations in relation to solutions to any faults previously notified to Active.
- 6.5 Support Services do not include any services outside of the normal scope of the Support Services set out above, including:
- 6.5.1 expedited advice or assistance (including responding to or dealing with matters in shorter timescales than outlined in Condition 6.4);
- 6.5.2 matters outside of ordinary fault, billing or general customer service issues.
- 6.6 Active will notify the Customer of any Support Services outside its normal scope and provide a quotation to the Customer for dealing with such matters.

7 Service changes

- 7.1 Active may (acting in its capacity as agent for the Customer) from time to time and without notice, change:
- 7.1.1 the Services and/or Goods;
- 7.1.2 the product and service lines made available by Active from time to time;
- 7.1.3 the Suppliers providing services to the Customer;
- 7.1.4 the terms of any contract between the Customer and Supplier, provided that such changes do not materially affect the nature or scope of the Services or materially reduce the core functionality of Goods available to the Customer under the Contract. If Active changes the Services and/or Goods or any contract pursuant to this Condition 7.1, Active may make reasonable additional charges to the Customer for such work.

8 Customer's obligations

- 8.1 The Customer will:
- 8.1.1 co-operate with Active in all matters relating to the Services and/or Goods (including any rented Goods);
- 8.1.2 provide, for Active, the Suppliers, their agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, Customer's Equipment, office accommodation, network, data and other facilities as requested by Active or the Supplier;
- 8.1.3 provide, in a timely manner, such information or documents (in any form) as Active or the Supplier may request and ensure that it is accurate in all material respects;
- 8.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services and/or Goods, including managing any hazardous materials to prevent any risk to Active, the Supplier, or their respective employees, contractors or agents;

- 8.1.5 inform Active and the Supplier of any health and safety rules and regulations or security requirements that apply at any of the Customer's premises;
- 8.1.6 ensure that all Customer's Equipment is in reasonable working order;
- 8.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and/or Goods, the installation of the Supplier's Equipment, the use of the Customer's Equipment in relation to the Services before the date on which the Services are to start;
- 8.1.8 keep, maintain and insure the Supplier's Equipment in good condition and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- 8.1.9 not at any time breach any agreement which the Customer has with any Supplier.
- 8.2 If Active's performance of its obligations under the Contract is prevented or delayed by any act or omission of a Supplier or the Customer, their agents, contractors or employees, Active will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 8.3 The Customer will be liable to pay to Active, on demand, all reasonable costs, charges or losses sustained or incurred by Active (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Active confirming such costs, charges and losses to the Customer in writing.
- 8.4 The Customer will not, without the prior written consent of Active, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from Active or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Active in the provision of the Services.

9 Supply and rental of Goods

- 9.1 Active may from time to time supply or rent Goods to the Customer.
- 9.2 The quality and description of such Goods will be as set out in Active's quotation. All samples, drawings, descriptive matter, specifications and advertising issued by Active are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract and this is not sale by sample.
- 9.3 In this Condition 9 and in Conditions 10 and 11, reference to 'Goods' will not include Third Party Goods.

10 Delivery and installation of Goods

- 10.1 Unless otherwise agreed in writing by Active, delivery of the Goods will take place at the address notified to Active by the Customer in the relevant purchase order (the "Delivery Point").
- 10.2 Active may use a third party contractor to install Goods. The Goods will be deemed delivered at the point when Active delivers the Goods to, or the Goods are collected by the third party contractor for transmission to the Customer. Otherwise, delivery will be ex works in accordance with Incoterms 2000.
- 10.3 The Customer will (at its own cost) prepare the Delivery Point for delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods (as the case may be).
- 10.4 Active will endeavour to deliver the Goods within the time agreed and if no time is agreed within a reasonable time, but Active will not be liable for loss or damage caused by any delay in the delivery of the Goods, nor unless such delay exceeds 180 days will any delay entitle the Customer to decline delivery of the goods.

- 10.5 If the Customer fails to accept delivery of any Goods when they are ready for delivery, or Active (or its contractor) is prevented or delayed from delivering and/or installing Goods due to the Customer's failure to comply with Condition 10.3 or because the Customer has not provided appropriate instructions, documents, licences, authorisations or access to premises, then (without prejudice to Condition 10.2):
 - 10.5.1 Active may store the Goods until the Customer takes possession of them and the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance) and Active will not be liable for any loss or damage to the Goods during such period of storage whether caused by its negligence or otherwise;
 - 10.5.2 any sums due for payment by the Customer in relation to the supply or rental of Goods will continue to be payable as if the Customer had taken possession of the Goods; and
 - 10.5.3 Active may levy further charges to recover its losses arising from this event.
- 10.6 The Customer will provide at the Delivery Point and at its expense:
 - 10.6.1 adequate and appropriate equipment and manual labour for unloading the Goods; and
 - 10.6.2 appropriate assistance and instructions for the installation of any Goods.
- 10.7 No claim for damage or shortages will be considered unless Active is notified in writing within 7 days of delivery, failing which, the Customer will be deemed to have accepted the Goods. No claim for non-delivery or failure to install or faulty installations will be considered unless Active is notified in writing within 21 days of the date of Active's invoice, failing which any claim will be deemed to have been waived and will be absolutely barred.
- 10.8 Any liability of Active for non-delivery and/or failure to install, or faulty installation of the Goods will be limited to replacing the Goods and/or re-installing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 10.9 Active may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of these Conditions.
- 10.10 Each delivery and instalment will be a separate Contract and no cancellation or termination of any one Contract relating to delivery or instalment will entitle the Customer to repudiate or cancel any other Contract or instalment.

11 Risk/title in the goods

- 11.1 The Goods are at the risk of the Customer from the time of delivery.
- 11.2 Ownership of the Goods (except Goods that have been rented) will not pass to the Customer until Active has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 11.2.1 the Goods; and
 - 11.2.2 all other sums which are or which become due to Active from the Customer on any account.
- 11.3 Ownership of Goods that have been rented to the Customer will never pass to the Customer and will remain under the ownership of Active at all times.
- 11.4 Until ownership of the Goods has passed to the Customer and during any rental of Goods, the Customer will:
 - 11.4.1 hold the Goods on a fiduciary basis as Active's bailee;
 - 11.4.2 subject to Condition 11.5, store the Goods (at no cost to Active) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Active's property;
 - 11.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 11.4.4 maintain the Goods in satisfactory Condition and keep them insured on the Active's behalf for their full price against all risks to the reasonable satisfaction of Active. On request the Customer will produce the policy of insurance to Active.

- 11.5 The Customer will be able to use Goods that have been rented for the purpose for which they were rented.
- 11.6 The Customer's right to possession of the Goods will terminate immediately if:
 - 11.6.1 any of the events listed in Condition 18.1 occurs; or
 - 11.6.2 the Customer encumbers or in any way charges any of the Goods; or
 - 11.6.3 the Customer fails to make any payment due in accordance with Condition 12; or
 - 11.6.4 the Customer damages (or allows damage to be done) any Goods rented to the Customer.
- 11.7 Active may recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Active.
- 11.8 The Customer grants Active, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them and the Customer will indemnify Active in full for all costs associated with recovering the Goods.
- 11.9 If the Customer's right to possession has terminated and any Goods cannot be readily recovered, the Customer will indemnify Active for the full reinstatement value of such Goods together with all costs associated with obtaining such reinstatement.
- 11.10 Where Active is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer will be deemed to have sold all goods of the kind sold by Active to the Customer in the order in which they were invoiced to the Customer.
- 11.11 On termination of the Contract, howsoever caused, Active's (but not the Customer's) rights contained in this Condition 11 will remain in effect.

12 Security, hacking and fraud prevention

- 11.1 Active does not warrant that the Goods and Services and related networks or resources will be free from Unauthorised Access. Active cannot police or be responsible for any loss or damage suffered by the Customer or any third party arising as a result of any Unauthorised Access. This is not affected by Active providing (as part of or in connection with the Services) any security, anti-virus, anti-malware or similar software or hardware or any security systems Active may put in place.
- 11.2 Any business can be vulnerable to excessive charges as a result of telecommunication system hacking. As such hacking is a criminal activity the Customer must note that liability for any resulting call charges remains with the Customer.
- 11.3 The Customer will promptly inform Active if it suspects or uncovers any Unauthorised Access, and will use all reasonable endeavours promptly to remedy such Unauthorised Access.
- 11.4 The Customer acknowledges that it is the Customer's responsibility to have in place (to be maintained and engaged at its own cost):
 - 11.4.1 appropriate technical and organisational measures to protect the Customer against Unauthorised Access;
 - 11.4.2 an appropriate disaster recovery plan with procedures and measures intended to protect against, and support recovery from, any disaster or event affecting the Goods and Services or any Unauthorised Access; and
 - 11.4.3 adequate insurance against loss or damage arising as a result of Unauthorised Access or any disaster.

13 Charges and payment

- 13.1 Subject to Condition 13.3, the price for any Goods and/or Services supplied to the Customer will be the price set out in:
 - 13.1.1 the Services Contract; or
 - 13.1.2 the Order Confirmation; or,
 - 13.1.3 subject to the above, Active's quotation; or
 if not applicable, the price confirmed by Active.

- 13.2 All Active's prices are exclusive of any VAT which shall be chargeable in addition to the price.
- 13.3 Active may increase, upon 1 month's written notice to the Customer at any time, the price payable for any:
 - 13.3.1 of the Services; or
 - 13.3.2 rented Goods; or
 - 13.3.3 to reflect any increase in its base costs incurred for the purposes of, or the charges payable by us on the Customer's behalf in connection with, providing the Services
- 13.4 The Customer acknowledges that the Supplier may pay Active certain monies in consideration for introducing the Customer and/or in relation to Active providing the Support Services. Those monies belong to Active. The Customer acknowledges that Active may calculate prices taking into account such monies. Active may increase its prices at any time by giving notice to the Customer if any Supplier ceases to pay or reduces the amount it pays to Active. This may happen, in particular, if the fixed term of the Customer's contract with the Supplier expires and the Customer does not enter into a new fixed term with the Supplier.
- 13.5 Active may (entirely at its own discretion), use any funds received from a Supplier (or otherwise) how it sees fit, including to provide the Customer with:
 - 13.5.1 Goods (at no cost); or
 - 13.5.2 an amount of credit (an "Equipment Fund") which can be utilised by the Customer towards purchasing Goods and/or Services on reasonable notice to Active.
- 13.6 The Customer agrees and acknowledges that any Equipment Fund:
 - 13.6.1 is made available by Active entirely at its discretion and as a gesture of goodwill only;
 - 13.6.2 may be changed, withdrawn or suspended, by Active at any time for any reason whatsoever;
 - 13.6.3 may, in particular, be changed from time to time to reflect an increase or decrease in the Customer's spend with Active;
 - 13.6.4 will cease to be available on termination of the Contract in any event; and
 - 13.6.5 is the exclusive property of Active.
- 13.7 Notwithstanding the content of any Order Confirmation, or any other documentation whatsoever, the Customer will have no entitlement to the Equipment Fund whatsoever including but not limited to on termination or expiry (at any time) of the Contract for any reason.
- 13.8 If a Contract is terminated for any reason whatsoever and in relation to that Contract at the time of its termination, the Customer has not paid to Active the Minimum Price, Active may:
 - 13.8.1 invoice the Customer for the full price of any Goods provided under Condition 13.5.1;
 - 13.8.2 invoice the Customer for the full price of any Goods and/or Services purchased using the Equipment Fund;
 - 13.8.3 invoice the Customer for the balance of the sum that would have been received from the Customer if the Minimum Price had been achieved, discounted at a rate of 5%; and/or
 - 13.8.4 invoice the Customer for any sums that would have been received from a Supplier in accordance with Condition 13.4, discounted at a rate of 5%.
- 13.9 Condition 13.6 will apply to each Contract as a separate obligation.
- 13.10 Active may at any time require payment in advance of providing Goods and/or Services.
- 13.11 If Active has agreed to waive its rights to receive payment in advance in accordance with Condition 13.10, the Customer will pay each invoice submitted to it by Active, in full and in cleared funds, within 14 days of receipt (without deduction or set-off).
- 13.12 Active may, at its discretion and as a gesture of goodwill, set out a greater length of time to pay on any invoice, Order Confirmation or other documentation. Active reserve the right to withdraw such gesture of goodwill and insist on payment within 14 days in accordance with clause 13.11.

13.13 Active reserves the right to request the Customer to set up direct debits in relation to its charges where it feels this is appropriate.

13.14 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Active on the due date, Active may:

13.14.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Royal Bank of Scotland, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment providing always that Active reserves its right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;

13.14.2 suspend all Services and/or the delivery of Goods until payment has been made in full; and

13.14.3 seek to recover any Goods that are in the Customer's possession.

13.15 Time for payment will be of the essence of the Contract.

13.16 Active may, without prejudice to any other rights it may have, set off any liability of the Customer to Active against any liability of Active to the Customer including the right to reduce the credit available to the Customer in and/or appropriate out of or pay any sums owed to Active out of the Equipment Fund or any other account.

14 Lien

Active will (without prejudice to any other remedy available to Active) have in respect of all unpaid debts due from the Customer a general lien on all property of the Customer in its possession for whatever purpose and whether worked upon or not and may on the expiration of not less than 14 days' notice in writing to the Customer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

15 Active's property

15.1 All rights in any documents and materials developed or provided by Active (including Intellectual Property Rights) will be owned by Active. Active licenses to the Customer free of charge and on a non-exclusive, worldwide basis such rights and to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Contract is terminated, this licence will automatically terminate.

16 Limitation of liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

16.1 This Condition 16 sets out the entire financial liability of Active (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of these Conditions or any representation, statement or tortious act or omission of Active (including negligence) arising under or in connection with these Conditions at any time.

16.2 Where the Customer is not dealing as a consumer for the purposes of these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.

16.3 Where the Customer is dealing as a consumer for the purposes of these Conditions, neither of Active or the Customer will be responsible for any losses that the other suffers as a result, except for those losses which are a foreseeable consequence of the failure to comply with the provisions of these Conditions.

16.4 Nothing in these Conditions limits or excludes the liability of Active for death or personal injury resulting from negligence, or, for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Active or in relation to any goods supplied by Active in the course of the Services for any breach of the obligations implied by section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or for losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability.

16.5 Whether or not the Customer is a consumer for the purposes of these Conditions, subject to Conditions 16.2, 16.4 (as the case may be) and 16.4, Active will not be liable for:

16.5.1 loss of profits;

16.5.2 loss of business;

16.5.3 depletion of goodwill and/or similar losses;

16.5.4 loss of anticipated savings;

16.5.5 loss of goods;

16.5.6 loss of contract;

16.5.7 loss of use;

16.5.8 loss or corruption of data or information;

16.5.9 or any special, indirect or pure economic loss, costs, damages, charges or expenses,

provided that where the Customer is dealing as a consumer, nothing in these Conditions will prevent any claim hereunder for foreseeable loss of, or damage to, physical property.

16.6 If at any time Active provides Services which are unsatisfactory to the Customer, and it would be reasonably possible for Active to re-perform such Services, Active undertakes to re-perform such Services expeditiously and with all due care and if it does so re-perform such Services this will be in settlement of any claim that the Services in question were unsatisfactory.

16.7 Subject to Conditions 16.2, 16.3, 16.4 and 16.5, Active'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 Services and/or supply of the Goods pursuant to these Conditions at any time will be limited the lower of (i) 3 times the aggregate amount payable by the Customer to Active under the Contract in the 12 month period ending on the date on which the liability arises (ii) the limit of any applicable insurance policy.

16.8 Subject to the other provisions of these Conditions, Active will not be liable for any direct, indirect or consequential loss (including pure economic loss, loss of profits, loss of business, depletion of goodwill or any similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery:

16.8.1 of any products and/or services by any Supplier; or

16.8.2 of any Third Party Goods; or

16.8.3 of any Support Services arising as a result of any default, neglect or delay by any Supplier or by the Customer; or

16.8.4 of any Services and/or Goods arising as a result of any failure, default, neglect or delay by any third party or any third party equipment, goods or services, telephone line or communication equipment providers or utilities providers.

17 Data protection

17.1 Active will comply with all applicable Data Protection Legislation and will only to use, process, share and transfer the Customer's data in accordance with, and for the purposes set out in, Active's privacy policy at <https://www.activeukltd.com/privacy-policy/>.

17.2 Active may make changes to the privacy policy and will notify the Customer if it does so. Active will ensure that any changes to the privacy policy comply with Data Protection Legislation.

18 Termination

18.1 Without prejudice to any other rights or remedies which the parties may have, Active may terminate any Contracts without liability to the Customer immediately on giving notice to the Customer if:

18.1.1 the Customer fails to pay any amount due to Active on the due date for payment;

18.1.2 the Customer commits a material breach of any of the terms of any Contract (other than a breach the subject of Condition 18.1.1) and (if such a breach is in the opinion of Active remediable) fails to remedy that breach within 14 days of the Customer being notified in writing of the breach; or

- 18.1.3 an administration order is made against the Customer, or an order is made for its winding-up or dissolution (save for the purposes of a solvent reorganisation), or
- 18.1.4 a resolution is passed for the Customer's winding-up or for the appointment of an administrator (save for the purposes of a solvent reorganisation), or
- 18.1.5 a moratorium is declared in respect of any of the Customer's indebtedness, or
- 18.1.6 the Customer enters into any composition or arrangement with one or more of its creditors, or
- 18.1.7 an administrator or other receiver, manager, administrator or other similar official is appointed in relation to it in relation to the whole or a substantial part of the Customer's undertaking or assets, or
- 18.1.8 an encumbrancer takes possession of the whole or a substantial part of the Customer's undertaking or assets, or
- 18.1.9 (other than frivolous or vexatious proceedings for the purposes of a solvent reorganisation) an application is made for the appointment of a liquidator, administrative or other receiver, manager, administrator or other similar official (which is not discharged, stayed or dismissed within 28 days of commencement), or
- 18.1.10 proceedings (other than frivolous or vexatious proceedings) are initiated against the Customer under any applicable liquidation, insolvency, composition, reorganisation or other similar laws (which are not discharged, stayed or dismissed within 28 days of commencement), or
- 18.1.11 any notice of an intention to appoint an administrator is given by the Customer's directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the IA 86); or
- 18.1.12 the Customer ceases, or threatens to cease, to trade; or
- 18.1.13 there is a change of control of the Customer; or
- 18.1.14 the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
- 18.1.15 any of the events listed in Condition 11.6 occur.
- 18.2 On termination of the Contract for any reason:
 - 18.2.1 the Customer will immediately pay Active all of Active's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, Active may submit an invoice, which will be payable immediately on receipt;
 - 18.2.2 the Customer will, within a reasonable time, return all of Active's equipment. If the Customer fails to do so, then Active may enter the Customer's premises and take possession of it. Until it has been returned or repossessed, the Customer will be solely responsible for their safe keeping; and
 - 18.2.3 the accrued rights of the parties at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, will not be affected.
- 18.3 The Customer acknowledges that notwithstanding the termination of the Contract for any reason, any products or services to be supplied by a Supplier (including Third Party Goods) will continue.

19 Termination payment

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

- 19.1 If a Contract is terminated (for any reason) prior to the end of the Minimum Term, the Customer must pay the greater of:
 - 19.1.1 the Minimum Price; or
 - 19.1.2 all sums the Customer would have paid had the rental continued for the full Minimum Term, discounted at a rate of 5% per annum.
- 19.2 The Customer's attention is particularly drawn to Condition 13.6 in relation to failure of the Customer to achieve the Minimum Price and termination of any contract with a Supplier before the end of the minimum term of such contract.

20 Force Majeure

Active will have no liability to the customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of active or any other party), failure of a utility service or transport network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, pandemic or epidemic, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

21 Assignment

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

22 General

- 22.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any provision (or part of a provision) is found to be invalid, unenforceable or illegal, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them invalid, unenforceable or illegal.
- 22.2 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.
- 22.3 Nothing in the Contract is will or is intended to create a partnership or agency between the parties.
- 22.4 No person who is not a party to the Contract will have any rights under it.
- 22.5 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 22.6 Active reserve the right to amend the Contract from time to time provided that Active has given the Customer one month's written notice of such changes. Subject to that, and clause 7 no variation to the Contract will be effective unless signed by or on behalf of the parties to it.

23 Notices

Notices given under the Contract will be in writing, sent for the attention of the person, and to the address, email or fax number, given in the Contract (or such other address, email, fax number or person as the relevant party may notify to the other party) and will be delivered personally, sent by email, fax or sent by pre-paid, first-class post or recorded delivery.

24 Governing law and jurisdiction

The Contract will be governed by English law. The parties irrevocably agree that the English courts will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.