

## ART SYSTEMS LIMITED STANDARD CONDITIONS OF SALE

In these Conditions:

Authorised Officer :	a person whose position with Art is that of Chairman, Director, Customer Services Manager or Credit Manager of Art
Art :	means Art Systems Limited of Unit 10 11 & 12 Glaisdale Point, Glaisdale Parkway, Nottingham, Nottinghamshire, NG8 4GP
Backorder :	an Order accepted by Art for which the Goods are not available at time of Order placement and which are still to be received by Art from its main supplier
Buyer :	is the person (including a natural person, corporate or unincorporated body, whether or not having a separate legal personality) who places an Order with Art for the purchase of the Goods or the provision of the Services and whose order is accepted by Art in accordance with these Conditions
Charges :	the amounts payable for the Goods or the Services, as set out in the relevant Order accepted by Art
Conditions :	the terms and conditions set out in this document (as amended from time to time), and any special terms and conditions on the face of Art's tender or Art's written acceptance of the Order, the conditions and terms of use governing the use by the Buyer of Art's website and the terms and conditions of any supplier of Art, copies of which shall be made available on request (as the case may be)
Contract :	is each individual contract between Art and the Buyer for the purchase and sale of the Goods and/or Services in accordance with these Conditions
Data Controller	has the meaning set out in the Data Protection Legislation
Data Protection Legislation :	means the General Data Protection Regulation ((EU) 2016/679) ("GDPR") as amended or updated from time to time and the Data Protection Act 2018 and any successor legislation to the GDPR or the Data Protection Act 2018
Data Subject :	an individual who is the subject of Personal Data
Delivery :	the delivery of the Goods either (i) by Art's carrier, completion of which being Art's carrier's notification to the Buyer that the Goods are ready to be off-loaded at the address supplied by the Buyer or(ii) by Buyer's carrier, completion of which being Art's notification to Buyer that the Goods are ready for collection
Electronic Means :	any electronic means including without limit on the Web, by EDI or XML, or other platform utilised for the placing of Orders
End User:	any third party to whom the Buyer resells the Goods or Services (for the avoidance of doubt, such third party can be another reseller)
Goods :	are any hardware or software, whether packaged, licensed or as a service, and instalments of the Goods or any parts of them sold by Art to the Buyer in accordance with the Conditions;
Insolvency Event :	any one or more of the events listed at clauses 2.2.2 – 2.2.8 (inclusive)
Order :	is the Buyer's order for the Goods or Services placed with Art (including Backorders)
Personal Data :	has the meaning given to it in the applicable Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Buyer is the Data Controller and in relation to which Art is providing services under the Contract.
Processing and process :	has the meaning set out in the applicable Data Protection Legislation

Services :	any installation, resiting, repair, maintenance, servicing, customisation, implementation, or configuration services (or part of them) relating to the Goods to be provided by Art to the Buyer from time to time under these Conditions;
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The headings in these Conditions are included for convenience only and shall not affect the interpretation or construction of these Conditions.

**THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 8 AND 9.**

**1. BASIS OF SALE**

- 1.1. All Contracts shall be governed by these Conditions (and where applicable any other terms agreed in writing by an Authorised Officer of Art) to the exclusion of any other terms and conditions, including without limit any terms on or referred to in any Buyer purchase order or other Buyer documentation. In the case of Orders placed by Electronic Means which refer to any terms and conditions of the Buyer, Art's automatic taking on to its system of such order shall amount to a rejection of the Buyer's terms and conditions and an offer to supply the Goods ordered on the basis of these Conditions.
- 1.2. No variation to these Conditions shall be binding unless agreed in writing by an Authorised Officer of Art.
- 1.3. Subject to clause 1.2, Art's employees or agents have no authority to make any representations concerning the Goods or Services. In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations (unless made fraudulently).
- 1.4. Any advice or recommendation for the Goods given by Art or its employees or agents to the Buyer or its employees or agents not confirmed in writing by an Authorised Officer is followed or acted upon entirely at the Buyer's own risk and Art shall not be liable for any such advice or recommendation.
- 1.5. All references in these Conditions to Art agreeing, approving, waiving or specifying a matter apply only if such is confirmed in writing by an Authorised Officer.
- 1.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Art shall be subject to correction without any liability on the part of Art.
- 1.7. It shall be a condition of any quotation and subsequent Contract (if applicable) that the information provided by the Buyer is correct, accurate, not misleading and a complete response to Art's request(s) when provided and remains so for at least until the later of the date when the quotation lapses or the relevant Goods and/or Services are delivered.
- 1.8. Any quotation for the Goods given by Art shall (i) not constitute an offer and (ii) only be valid for a period of 5 business days from its date of issue
- 1.9. Any Order constitutes an offer by the Buyer to purchase the Goods incorporating these Conditions. Orders accepted by Art are accepted solely subject to these Conditions and the Contract shall come into existence when Art accepts the Order in writing or by processing the Order for delivery (whichever is earlier).

**2. CANCELLATION OF ORDERS**

- 2.1. No accepted Order may be cancelled by the Buyer unless agreed in writing by Art if so agreed, the Buyer shall indemnify Art in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by Art as a result of cancellation.
- 2.2. Art shall have the right immediately to cancel or to suspend any accepted Order or any delivery to be made under the Contract without any liability to the Buyer if:
  - 2.2.1.the Buyer fails to make any payment when due or breaches any provision of the Contract and the Buyer has failed to remedy such breach within 7 days after receipt of notice in writing from Art requiring the Buyer to do so; or
  - 2.2.2.the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; OR
  - 2.2.3.the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (c) makes an application to court for protection from its creditors generally; or

- 2.2.4.the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or a winding-up order is made other than solely in relation to a solvent amalgamation or reconstruction (or in the case of an individual is made bankrupt); or
  - 2.2.5.an administrator, receiver or administrative receiver is or is likely to be appointed in relation to the Buyer or any of its assets; or
  - 2.2.6.any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within ten Business Days; or
  - 2.2.7.the Buyer ceases, or threatens to cease, to carry on business; or
  - 2.2.8.Art reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
  - 2.2.9.the Buyer commits or is a party to dishonest or fraudulent conduct in relation to the Contract.
- 2.3. If clause 2.2 applies then, without prejudice to any other right or remedy available to Art, Art shall be entitled to do any one or more of the following:
- 2.3.1.cancel each and every Contract yet to be performed (in whole or in part);
  - 2.3.2.suspend any further deliveries under each and every Contract without liability to the Buyer;
  - 2.3.3.immediately revoke any and all credit extended to the Buyer on such terms as Art shall in its sole and absolute discretion determine;
  - 2.3.4.reduce or cancel all quantity and other discounts offered to the Buyer; and
  - 2.3.5.if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### 3. DELIVERY

- 3.1. Unless otherwise agreed in writing with an Authorised Officer the costs of packing and Delivery shall be for the Buyer's account. If Art pays for or incurs all or part of such costs, it shall invoice its costs so incurred to the Buyer at the date of dispatch.
- 3.2. The Buyer warrants the details of any address for Delivery stipulated by the Buyer (including those of End Users). Art reserves the right to invoice the Buyer for any losses incurred by Art for failed or re-routed deliveries as a result of inaccurate information provided by the Buyer (including where recipient is not available/unwilling to accept the Goods).
- 3.3. Any Delivery dates given are estimated dates only and time is not of the essence for Delivery. Changed specifications or instructions may result in revised estimated Delivery times.
- 3.4. The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by Art to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 3.5. If the Buyer (i) arranges collection of the Goods from Art and the Buyer's carrier fails to take receipt of the Goods after Art has notified the Goods are ready for collection or (ii) fails to give Art adequate Delivery instructions or (iii) has requested a delay in Delivery or (iv) is unable to give access to its premises for the purposes of Delivery or installation then Art may at the risk and expense of the Buyer:
  - 3.5.1.store the Goods until actual Delivery and invoice the Buyer for all such costs of storage and re-Delivery; or
  - 3.5.2.sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer (if available) or charge the Buyer for any shortfall (as applicable).
- 3.6. Where Goods are to be exported out of the United Kingdom by either (i) Art to the Buyer or (ii) by the Buyer itself (subject to any special terms agreed in writing between the Buyer and Art and notwithstanding any other provision of these Conditions):
  - 3.6.1.The terms of purchase of the Goods will be subject only to warranty provided by the original equipment manufacturer ("OEM") and the Buyer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;
  - 3.6.2.The Buyer shall ensure that it complies with any export controls as notified by Art, the OEM or a third party or as contained within any supporting documentation provided with the Goods;
  - 3.6.3.The relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the contract;

- 3.6.4. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;
  - 3.6.5. Unless otherwise agreed in writing between the Buyer and Art, the Goods shall be delivered FOB at the air or sea port of shipment and Art shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
  - 3.6.6. the Buyer shall be responsible for arranging for testing and inspection of the Goods at Art's premises before shipment. Art shall have no liability for any claim in respect of any defect in the Goods, which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;
  - 3.6.7. The Buyer shall not be entitled to withhold payment of the price for the Goods due to the Buyer's failure to comply with the provisions of this clause; and
  - 3.6.8. The Goods will be packaged in accordance with Art's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.
- 3.7. The Buyer's failure to make due payment in respect of any deliveries or instalments under any Contract shall entitle Art to delay, suspend or cancel further deliveries in whole or in part at its option.
- 3.8. Where the Buyer fails to take Delivery of the whole quantity of the Order at the due time, any discount or other allowance in respect of the Goods, which the Buyer is or would be entitled to shall be forfeited.
- 3.9. Where Art has agreed to ship Goods or perform Services direct to End User on behalf of Buyer any such shipment or performance shall be deemed to be Delivery to Buyer and any refusal by the End User to accept Delivery or performance shall be deemed to be a refusal by Buyer. It shall be Buyer's obligation to report any delivery discrepancies in accordance with this clause 3 when Goods are shipped direct to End User or when Goods are sent onto End User by Buyer.

#### **4. ACCEPTANCE AND RETURNS PROCEDURE**

- 4.1. Art shall not be liable in respect of any damage to the Goods, discrepancy in the Order, shortage in the Goods Delivered, loss of the Goods in transit or any claim that the Goods delivered or collected do not otherwise comply with the Contract other than in accordance with this Condition and warranty clause 8 as stated below.
- 4.2. Damage, discrepancies, shortages and invoice queries:
- 4.2.1. The Buyer shall be responsible for inspecting the boxed / parcel contents containing the Goods on Delivery to check the Goods for damages, discrepancies and shortages. On Delivery, the Buyer must write on the despatch note prior to signing of any damages, discrepancies and shortages.
  - 4.2.2. The invoiced Charges shall, in the absence of a manifest error, be deemed accepted by the Buyer unless the Buyer notifies Art customer services in writing within 14 days of the date of the invoice.
  - 4.2.3. The Buyer shall notify Art customer services in writing within 48 hours of Delivery of any short Deliveries, damaged Goods Delivered or any non-shipment of Goods detailed on the proof of Delivery.  
Save for bona fide notifications received by Art under 4.2(i), 4.2(ii) and 4.2(iii) above, Art shall have no liability whatsoever to Buyer in respect of the matters noted above.
- 4.3. Goods that fail on installation ("DOAs"): Art operates a returns procedure for DOAs. The DOA returns procedure may vary depending on the OEM of the Goods and will be notified to the Buyer upon the Buyer notifying Art (within 14 days of Delivery) that the Goods have apparently failed on installation.
- 4.4. Goods that fail after installation ("Faulty Goods"): In no circumstances may the alleged Faulty Goods be returned to Art without Art's prior written consent. Where Goods are returned a handling charge may be levied at Art's discretion and shall be either deducted from any credit allowed by Art (should the Goods be accepted at Art's discretion as Faulty Goods) or be payable to Art by the Buyer upon demand. The Buyer must notify Art immediately of the fault becoming apparent and follow Art's instructions in relation to the fault.
- 4.5. General provisions relating to DOAs and Faulty Goods: (1) The Buyer shall pay all Art's reasonable costs and expenses if the Goods suspected to be DOA or Faulty Goods by the Buyer prove not to be DOA or Faulty Goods (at Art's sole discretion). (2) Any returns shall be subject to and the Buyer shall comply with Art's returns authorisation procedures. (3) DOA and Faulty Goods shall be dealt with in accordance with the applicable OEM's DOA or Faulty Goods procedures and the Buyer

shall comply with the same. (4) The Buyer shall be responsible for all transportation and insurance costs relating to returned Goods. (5) The Buyer shall have no right to return any Goods delivered in accordance with the Contract. (6) Goods must be received by Art within 14 days of Art issuing a returns authorisation number to Buyer.

- 4.6. Where a return under this clause 4 is approved in writing by Art, the Goods (or part thereof) to be returned must be delivered to Art's premises in its original packaging together with supporting documentation confirming the alleged fault and quoting the relevant returns number. In the event the Buyer fails to comply with this clause 4.6, Art will be entitled to levy a handling fee as applicable in the circumstances.
- 4.7. Art shall be under no obligation to accept return of any Goods other than as provided in the warranty clause below.

## **5. PRICE**

- 5.1. All Art prices for Goods and/or Services ("Price(s)") are quoted subject to (i) acceptance within any period specified and (ii) any increase which may occur as a result of factors falling outside the control of Art, which without limitation, shall include any of the following circumstances:
- 5.1.1. where the Buyer has requested (whether before or after a Contract has been made) any variation whatsoever to the quantity, capacity, form, content, style or description of the Order or Goods and/or Services, or has requested an earlier or a later Delivery date to that originally requested; or
  - 5.1.2. where steps are taken by Art to comply with any statutory provisions from time to time in force, and any increases in the price charged to Art of any equipment or goods bought in from Art's suppliers in order for Art to fulfil the Contract; or
  - 5.1.3. where the supply of the Goods or the provision of Services is suspended, varied or otherwise delayed by any acts or omissions of the Buyer.
  - 5.1.4. where Art has incurred any additional or unforeseen import duties after the Contract has been made.
- 5.2. Unless otherwise stated, the Price does not include the costs of Delivery and VAT and any other applicable customs or excise duties or taxes (where applicable) and these will be added to all invoices at the rate ruling at the date of despatch.

## **6. PAYMENT**

- 6.1. Payment of the Charges or any part thereof and any other charges due under the Contract must be made by the Buyer within 28 days from the date of Art's invoice (unless otherwise specified in writing by an Authorised Officer).
- 6.2. Should the Buyer fail to make payment by the due date, Art shall be entitled to charge interest on the overdue amount at the rate of 4% above Barclays Banks' base rate from time to time. Such interest shall accrue on a daily basis from the due date until the actual date of payment (whether before or after judgment).
- 6.3. The Buyer shall make all payments in pounds sterling immediately when due without set off, deferment, deduction or withholding whatsoever (whether on account of any claim or counterclaim or otherwise). Where payments in an alternative currency are authorised in writing by the Authorised Officer prior to the Contract being concluded, such payments shall be made by telegraphic transfer to the account to be designated by the Authorised Officer from time to time.
- 6.4. The time of payment shall be of the essence of the Contract.
- 6.5. The Buyer shall indemnify Art against the total costs incurred (without limitation) by Art arising out of the Buyer's breach(es) of these Conditions.
- 6.6. On the happening of a "Relevant Event" Art shall be entitled in its sole and absolute discretion to alter its terms of payment or to alter any credit terms which may have been granted. For the purposes of this clause 6.6, a "Relevant Event" shall be defined as being:
- 6.6.1. where Art is notified or otherwise reasonably believes that the Buyer's credit record has worsened to a level unacceptable to Art; or
  - 6.6.2. where Art in its sole discretion deems the Buyer's financial position to be unacceptable; or
  - 6.6.3. where Art's trade indemnity insurers require such alteration.
- 6.7. Notwithstanding clause 6.6, Art reserves the right to withdraw any credit facilities afforded to the Buyer at any time, without notice.
- 6.8. In the event that the trading relationship between the Buyer and Art is terminated for whatsoever reason then all sums due by the Buyer shall immediately become due and payable.

## **7. RETENTION OF TITLE AND RISK**

- 7.1. Risk in the Goods will pass to the Buyer on completion of Delivery.
- 7.2. Title to the Goods (including full legal and beneficial ownership but excluding software, title of which shall never pass to the Buyer) shall not pass to the Buyer until:
  - 7.2.1. Art receives payment in full for the Goods as supplied to the Buyer; and
  - 7.2.2. Art receives payment in full for all and any other debts owed by the Buyer to Art at any given time; or
  - 7.2.3. The Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at such time as specified in clause 7.5.
- 7.3. Until title to the Goods has passed to the Buyer, the Buyer will:
  - 7.3.1. hold the Goods as bailee for Art;
  - 7.3.2. store the Goods separately from all other material in the Buyer's possession;
  - 7.3.3. take all reasonable care of the Goods and keep them in reasonable condition;
  - 7.3.4. insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Price (v) noting Art's interest on the policy;
  - 7.3.5. ensure that the Goods are clearly identifiable as belonging to Art;
  - 7.3.6. not remove or alter any mark on or packaging of the Goods;
  - 7.3.7. inform Art as soon as possible if it becomes subject to an Insolvency Event; and
  - 7.3.8. provide Art such information concerning the Goods as Art may request from time to time.
- 7.4. Notwithstanding clause 7.3, and subject to clause 7.5, the Buyer may use or resell the Goods in the ordinary course of its business (but not otherwise) before Art receives payment for the Goods. However, if the Buyer resells the Goods before that time:
  - 7.4.1. It does so as principal and not as Art's agent; and
  - 7.4.2. Title to the Goods shall pass from Art to the Buyer immediately before the time at which resale by the Buyer occurs.
- 7.5. If, at any time before title to the Goods has passed to the Buyer, the Buyer informs Art, or Art reasonably believes, that the Buyer has or is likely to become subject to an Insolvency Event and the Goods remain in the possession or control of the Buyer, then, without limiting any of Art's other rights and remedies:
  - 7.5.1. The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 7.5.2. Art may at any time:
    - 7.5.2.1. at its sole discretion elect to transfer title to Buyer; or
    - 7.5.2.2. require the Buyer at the Buyer's expense to redeliver the Goods to Art and if Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 7.6. Where the Buyer uses banking facilities or factoring or an invoice discounting company which involves the selling of debtors or using debtors as security, the Buyer shall notify the third party concerned of Art's interest in the Goods and specifically that title in the Goods has not passed until Art's invoice has been paid in full and otherwise as set out in these Conditions.

## **8. LIMITED WARRANTY**

- 8.1. Buyer acknowledges that Art does not manufacture the Goods (or where Goods comprise computer software does not publish or license the software) and subject to the conditions set out below in this clause 8 Art only sells Goods with the benefit of the OEM's warranty. Warranties are offered from the OEM on a pass-through basis to End User or directly by OEM to End User.
- 8.2. Art warrants that at the time of Delivery, Goods will conform to the specifications stated by the OEM in its published data sheet for the Goods. To the extent legally and contractually permitted, Art shall pass through to Buyer any transferable Goods warranties, indemnities, and remedies provided to Art by the OEM, including those for intellectual property infringement.
- 8.3. The warranty in clause 8.2 above is in lieu of all warranties whatsoever (whether expressed or implied and whether arising at common law or by statute) all of which are hereby excluded to the full extent permitted by law. Art does not attempt to exclude the warranty as to title.
- 8.4. Art's warranty in clause 8.2 shall only operate where Art is able to claim under the OEM's warranty. The Buyer shall be responsible for making itself aware of the terms of the OEM's warranty prior to the Contract being formed and complying in all respects with the same at all times.
- 8.5. Art's obligations in respect of Services which are late or not performed in accordance with the Order are limited to the re-performance of the Services within a reasonable time.

## **9. LIMITATION OF ART'S LIABILITY**

- 9.1. ART'S LIABILITY UNDER ANY CONTRACT IS LIMITED TO MAKING GOOD DAMAGE OR FAILURES TO THE EXTENT DESCRIBED IN CLAUSE 4 AND SUBJECT TO CLAUSE 8.
- 9.2. ART'S LIABILITY TO BUYER IS LIMITED TO BUYER'S DIRECT DAMAGES UP TO AN AMOUNT NOT EXCEEDING THE PRICE OF THE GOODS AT ISSUE. THIS LIMITATION OF LIABILITY DOES NOT APPLY IN CASE OF DEATH OR PERSONAL INJURY CAUSED BY ART'S NEGLIGENCE. Art IS NOT LIABLE FOR AND BUYER IS NOT ENTITLED TO ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (FOR EXAMPLE, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, REWORK, REPAIR, MANUFACTURING EXPENSE, COSTS OF PRODUCT RECALL, INJURY TO REPUTATION OR LOSS OF CUSTOMERS). TO THE EXTENT Art CANNOT LAWFULLY DISCLAIM ANY IMPLIED OR STATUTORY WARRANTIES, BUYER'S STATUTORY RIGHTS ARE NOT AFFECTED BY THIS LIMITATION OF LIABILITY.
- 9.3. TO THE EXTENT THE LAW DOES NOT PERMIT SUCH LIABILITY TO BE EXCLUDED, Art DOES NOT ATTEMPT TO LIMIT ITS LIABILITY FOR DAMAGE TO THE TANGIBLE PROPERTY OF THE BUYER RESULTING FROM THE NEGLIGENCE OF Art OR ITS EMPLOYEES OR AGENTS TO THE EXTENT THAT Art IS INSURED AGAINST SUCH LOSS.
- 9.4. THE BUYER UNDERTAKES WITH Art THAT IT WILL ENSURE COMPLIANCE SO FAR AS IS REASONABLY PRACTICABLE BY ITSELF, ITS EMPLOYEES, AGENTS AND LICENSEES WITH ANY INSTRUCTIONS GIVEN BY Art OR THE OEM FOR THE PURPOSE OF ENSURING THE GOODS WILL BE SAFE AND WITHOUT RISK TO HEALTH WHEN PROPERLY USED AND WILL TAKE ANY STEPS AND PRECAUTIONS, HAVING REGARD TO THE NATURE OF THE GOODS AS ARE NECESSARY TO PRESERVE THE HEALTH AND SAFETY OF PERSONS HANDLING, USING OR DISPOSING OF THEM.
- 9.5. ART GIVES NO UNDERTAKING THAT THE GOODS ARE FIT FOR ANY PARTICULAR PURPOSE (INCLUDING ANY PURPOSE FOR WHICH SUCH GOODS ARE COMMONLY SUPPLIED) OR IS OF ANY PARTICULAR QUALITY IN RESPECT OF ITS APPEARANCE, FINISH, SAFETY, DURABILITY OR FREEDOM FROM DEFECTS OR OTHERWISE. THE BUYER HAVING GREATER KNOWLEDGE OF HIS OWN REQUIREMENTS RELIES ENTIRELY ON HIS OWN SKILL AND JUDGEMENT IN EVALUATING WHETHER THE EQUIPMENT IS IN EVERY RESPECT OF SATISFACTORY QUALITY.

## **10. FORCE MAJEURE**

Art shall not be liable for any loss or damage and be entitled to cancel or rescind any Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond Art's control including (but not limited to) the delays or default of supplies or the defaults of any sub-contractor, act of God, explosion, fire or accident, war, threat of war, sabotage, insurrection, civil disturbance, requisition, Acts, restrictions, regulations, bye-laws, prohibitions or measures of any Government or Parliamentary or Local Authority, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour, import or export regulations or embargoes. If due to any such event Art has insufficient stocks to satisfy an Order Art may apportion available stocks between its customers at its sole discretion.

## **11. CONFIGURATION**

- 11.1. The Buyer shall be solely responsible for the accuracy of a configuration services Order and Art shall provide such services entirely under Buyer's instruction without warranting that the configured Goods are satisfactory for the purpose for which it is required.
- 11.2. Configuration services have a warranty of 14 days from date of shipment to Buyer. Art's sole liability in respect of any defective configuration services for which Art is responsible shall be the repair (or at Art's sole option, replacement) of the Goods on which the services have been performed. Claims under this clause 11.2 must be made within 21 days of the date of shipment.

## **12. DATA PROTECTION**

- 12.1. The parties acknowledge and agree that some or all of the Services to be provided by Art pursuant to an Order entered into pursuant to these Conditions may involve Art processing Personal Data of which Buyer is the Data Controller. The parties acknowledge and agree that, in respect of such processing, for the purposes of the Data Protection Legislation, Buyer is the Data Controller and Art is the Data Processor.
- 12.2. Buyer warrants that:

- (i) it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to Art for the duration and purposes of any Contract;
  - (ii) all instructions given by it to Art in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
  - (iii) it has undertaken due diligence in relation to Art's processing operations, and it is satisfied that Art's processing operations are suitable for the purposes for which the Buyer proposes to use the services and engage Art to process the Personal Data.
- 12.3. Art shall process the Personal Data only in accordance with Buyer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by Buyer.
- 12.4. Art shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 12.5. Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 12.6. Art warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (i) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (b) the nature of the data to be protected; and
  - (ii) take reasonable steps to ensure compliance with those measures.
- 12.7. On the basis Art warrants to adhere to the remainder of this condition 12.7, Buyer consents to Art engaging sub-processors for carrying out any processing activities in respect of the Personal Data. Prior to appointing any such sub-processor, Art warrants that:
- (i) prior to the relevant sub-processor carrying out any processing activities in respect of the Personal Data, Art appoints each sub-processor under a written contract containing materially the same obligations as under this condition 12;
  - (ii) Art ensures each such sub-processor complies with all such obligations; and
  - (iii) Art to remain fully liable for all the acts and omissions of each sub-processor as if they were its own.
- 12.8. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, penalties, fines, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this condition 12.
- 12.9. Buyer acknowledges that Art is reliant on Buyer for direction as to the extent to which Art is entitled to use and process the Personal Data. Consequently, Art will not be liable for any claim brought by a Data Subject arising from any action or omission by Art, to the extent that such action or omission resulted directly from Buyer's instructions.
- 12.10. The Buyer agrees that Art may transfer Personal Data that is processed pursuant to Art providing the goods and/or services in accordance with an Order to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an **International Recipient**), provided all transfers by Art of Personal Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of appropriate safeguards and in accordance with Data Protection Laws.
- 12.11. Art shall promptly (i) refer all data subject requests it receives to the Buyer and (ii) notify the Buyer of the Personal Data Breach and provide any necessary details of the same.

### 13. GENERAL

- 13.1. Where applicable, Buyer is responsible for all obligations and liabilities under the European Union's (i) Waste Electrical and Electronic Equipment Directive (2012/19/EU), (ii) Packaging Waste Directive (94/62/EC) and (iii) Batteries Directive (2006/66/EC), all as amended and all related national implementing measures in force from time to time. Art shall have no liability or obligations under the preceding directives.
- 13.2. Buyer agrees to comply with the UK Bribery Act 2010 and corresponding legislation applicable in the jurisdictions Buyer conducts business in. Buyer shall not make any direct or indirect payment, offer to pay, or authorise to pay, any gift, money, promise to give or authorise the giving of anything of value to any government official or politician or the immediate family of the same for the purpose of influencing acts or decisions of such individual in order to assist directly or



- indirectly Buyer or Art in obtaining or retaining business or securing an improper advantage. Buyer's commitment to comply with the Bribery Act 2010 and other such legislation shall also extend to its dealings with Art, its suppliers, the End Users and any other commercial parties.
- 13.3. Art may assign any of its rights and/or obligations under a Contract. The Buyer may not without the prior written consent of Art assign any of its rights and/or obligations under any Contract.
  - 13.4. No delay or failure by Art in enforcing any provision shall constitute a waiver of that provision or any other provision. No waiver by Art of any breach of a Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - 13.5. If any provision of these Conditions is held by any competent authority 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.
  - 13.6. Art's rights are cumulative and in addition to any rights available to it at common law.
  - 13.7. These Conditions are Art's current Conditions. Art maintains the right to add to or amend these Conditions at any time and in its sole discretion. The Buyer will be responsible for satisfying themselves as to the Conditions on an ongoing basis and those applicable to the transaction(s) in hand, by either viewing the Art website or requesting a hard copy direct from Art.
  - 13.8. Nothing in these Conditions shall confer on any third party (that is, any party other than Art or the Buyer) any benefit or the right to enforce any term of these Conditions and the application of the Contracts (Rights of Third Parties) Act 1999 to these Conditions is hereby excluded.
  - 13.9. The Buyer and Art agree that each Contract (incorporating these Conditions) shall be governed by and construed in accordance with English law and each of the Buyer and Art irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including but not limited to non-contractual disputes and claims).
  - 13.10. Art may monitor, record, store and use any telephone, email or other communication with the Buyer in order to (i) check any instructions given to Art, (ii) for training purposes, (iii) for crime prevention and (iv) to improve the quality of Art's customer service.
  - 13.11. Except as specifically permitted in writing by (a) Art or (b) the relevant manufacturer(s) of relevant Goods or (c) the provider of relevant Services, the Buyer hereby agrees that it will not (and will inform third parties they are not permitted to): (i) copy or manufacture any Goods; or (ii) translate, modify, adapt, enhance, extend, decompile, disassemble or reverse engineer any of the Goods.