



Trading name of: **Day2Day Fire & Security Ltd**

Unit 1, 2 & 4 The Granaries, Nuttys Farm, Childerditch Lane,
Little Warley, Brentwood, Essex, CM13 3EH

Tel: 0300 303 2536; Email: helpdesk@itsfire.co.uk Internet: www.itsfire.co.uk

Our trading 'Terms and Conditions'.

Note that in some areas of these terms the Customer's rights will depend on whether the Customer is a "Consumer" or not as defined below.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for usual commercial non-automated business.

Commencement Date: has the meaning set out in Clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with Clause 15.7.

Consumer: The Customer is a Consumer if the Customer is an individual, and the Customer is buying products, the System, Installation, or Ongoing Services from the Supplier for personal use, that is not for use in connection with the Customer's trade, business, craft or profession.

Contract: the contract between the Supplier and the Customer for the supply and Installation of the System and/or Ongoing Services in accordance with these Conditions and the Maintenance Agreement.

Customer: the person or firm who purchases the System and/or Ongoing Services from the Supplier, and the Supplier may contact the Customer by telephone or by writing to it at the email address or postal address provided in the Order.

Premises: has the meaning set out in Clause 4.1.

Force Majeure Event: has the meaning given to it in Clause 14.1.

Installation: the installation of the System as set out in the System Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



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Maintenance Agreement: the agreement which sets out the Ongoing Services to be supplied by the Supplier to the Customer.

Order: the Customer's written acceptance of the quotation for the supply of the System and/or Ongoing Services set out in the System Specification.

Ongoing Services: the services, if any, supplied by the Supplier to the Customer on an ongoing basis as set out in the Maintenance Agreement including but not limited to agreed maintenance or monitoring services and as varied or amended from time to time.

Premises: has the meaning in clause 4.1.

Supplier: Day2Day Fire & Security Limited which also trades as ITS Fire & Security registered in England and Wales with company number 09029532 with the registered office 1,2 &4, The Granaries, Nuttys Farm, Childerditch Lane, Little Warley, Brentwood, Essex, CM13 3EH. The Supplier can be contacted by telephoning its customer service team on 0300 30 32 536, by email on helpdesk@itsfire.co.uk or servicedesk@itsfire.co.uk or in writing at 1,2 &4, The Granaries, Nuttys Farm, Childerditch Lane, Little Warley, Brentwood, Essex, CM13 3EH.

Supplier Materials: has the meaning set out in Clause 6.3.

System: the goods (or any part of them) set out in the System Specification.

System Specification: the specification setting out the System and describing the Installation including any relevant plans or drawings, which are agreed in writing by the Customer and the Supplier.

Warranty: has the meaning set out in clause 5.1.

Warranty Period: has the meaning set out in clause 5.1.

1.2 Construction:

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;





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- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase the System and Installation in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). The Supplier will advise the Customer if it is unable to accept an Order, and in such an event if the Customer is a Consumer, the Supplier will not charge for any products or Ongoing Services included in that Order.
- 2.3 If the Customer is not a Consumer then the Contract, System Specification and the Maintenance Agreement constitutes the entire agreement between the parties.
- 2.4 If the Customer is not a Consumer than it acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the System, Installation or illustrations or descriptions of the Ongoing Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the System, Installation and/ or Ongoing Services described in them. They shall not form part of the Contract or have any contractual force. Although the Supplier makes every effort to ensure that any colours used are accurate, the Supplier cannot guarantee their accuracy.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.
- 2.8 The Supplier will only sell to a Customer located on the United Kingdom Mainland.



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2.9 If the Customer is a Consumer and wishes to make a change to its Order after the Supplier has accepted it, the Customer must contact the Supplier as soon as possible. The Supplier will advise whether such a change is possible, and if so, how this changes the price and timing of supply and installation.

3. SYSTEM

3.1 The System is described in the System Specification.

3.2 The Supplier reserves the right to amend the System Specification if required by any applicable statutory or regulatory requirements or in the event the System or any part of it becomes unavailable for any reason.

4. DELIVERY AND INSTALLATION OF THE SYSTEM

4.1 The Supplier shall deliver the System to the location set out in the Order (**Premises**) at any reasonable time after the Supplier notifies the Customer that the System is ready for delivery and Installation.

4.2 Delivery of the System shall be completed on the Systems arrival at the Premises.

4.3 Any dates quoted for delivery and Installation are approximate only, and the time of delivery and/or Installation is not of the essence.

4.4 The Supplier shall not be liable for any delay in delivery or Installation of that is caused by a Force Majeure Event, being an event outside of the Supplier's control, or the Customer's failure to provide the Supplier with adequate delivery instructions, the Customer's failure to allow access to the Premises, the Customer's failure to have adequate cabling, electricity or technical services in place that are required for the System or its testing, changes to the System Specification by the Customer at any time or any other instructions that are relevant to the supply and/or Installation.

4.5 Subject to clause 12, if the Supplier fails to deliver and/or install the System, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining a replacement system and installation of similar description and quality in the cheapest market available, less the price of the System and Installation. The Supplier shall have no liability for any failure to deliver and/or Install the System to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions, the Customer's failure to allow access to the Premises, the Customer's failure to pay the Supplier in accordance with these terms and the Order, the Customer's failure to have adequate cabling, electricity or technical services in place that are required for the System or its testing, changes to the System Specification by the Customer at any time or any relevant instruction related to the supply and/or Installation.





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4.5 If the Customer fails to accept or take delivery of the System and allow Installation within 10 Business Days of the later of the Supplier notifying the Customer that the System is ready or the agreed Installation date (if any), then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the System:

(a) delivery of the System shall be deemed to have been completed at 9.00 am on the 11th Business Day following the later of the day on which the Supplier notified the Customer that the System was ready or the agreed Installation date; and

(b) the Supplier shall store the System until delivery and Installation takes place and charge the Customer for all related costs and expenses (including insurance).

4.6 If 30 Business Days after the later of the Supplier notifying the Customer that the System was ready for delivery or the agreed Installation date the Customer has not accepted delivery and Installation of the System, the Supplier may resell or otherwise dispose of part or all of the System and, after deducting reasonable storage, selling and installation costs, account to the Customer for any excess over the price of the System or charge the Customer for any shortfall below the price of the System.

4.7 The Supplier may deliver and Install the System in instalments.

5. QUALITY OF THE SYSTEM

5.1 The Supplier warrants that for a period of 12 months from the date of delivery (**Warranty Period**), the System shall conform in all material respects with its description (**Warranty**). The Warranty excludes any existing system or equipment the Customer has or uses.

5.2 subject to clause 5.3 if:

(a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the System does not comply with the Warranty; and

(b) the Supplier is given a reasonable opportunity of examining the System

the Supplier shall, at its option, repair or replace the defective System or part of the System or refund the price of the defective System or part System.

5.3 The Supplier shall not be liable for the System's failure to comply with the warranty in [Clause 5.1](#) if:

(a) the Customer makes any further use of such System after giving a notice in accordance with [Clause 5.2](#);



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

the defect arises because of the Supplier following any drawing, design or instruction supplied by the Customer;

(c) the Customer alters, tampers with or repairs the System or part of it without the written consent of the Supplier;

(d) the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

(e) the System differs from the System Specification because of changes made to ensure they comply with applicable legal or regulatory standards, or to implement minor technical adjustments and improvements;

(f) the Customer fails to maintain the System in accordance with industry standard practices;

(g) the defect occurs after the end of the Warranty Period.

5.4 Except as provided in this [Clause 5](#), and subject to clause 12, the Supplier shall have no liability to the Customer in respect of the Systems failure to comply with the Warranty set out in [Clause 5.1](#).

5.5 The terms of these Conditions shall apply to any repaired or replacement System or part of the System supplied by the Supplier under [Clause 5.2](#).

6. TITLE AND RISK

6.1 The risk in the System shall pass to the Customer on completion of delivery. That means that the Customer becomes responsible for it from this time.

6.2 Title to the System shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the System and any other goods or parts that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the System shall pass at the time of payment of all such sums.

6.3 Any equipment which forms part of the Installation but which has not been sold to the Customer (including but not limited to any signalling equipment or firmware) (**Supplier Equipment**) remains the property of the Supplier and will be replaced, repaired and maintained





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at the Supplier's cost unless repair, maintenance or replacement is required as a result of the Customer's having:

- (a) failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Supplier Equipment or System or (if there are none) good trade practice;
- (b) altered, tampered with or repaired the Supplier Equipment or System or part of it without the written consent of the Supplier;
- (c) wilfully damaged, been negligent, or used the Supplier Equipment or System in abnormal working conditions.

6.4 Supplier Equipment must be delivered up to the Supplier on termination of this agreement or the Maintenance Agreement without delay and access on reasonable notice must be granted by the Customer to the Supplier to the Premises to recover the Supplier Equipment.

7. SUPPLY OF SERVICES

7.1 The Supplier shall provide the Ongoing Services to the Customer in accordance with the Maintenance Agreement in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Ongoing Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Ongoing Services.

7.3 The Supplier shall have the right to make any changes to the Ongoing Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Ongoing Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier reserves the right to update, vary or amend any Ongoing Services including but not limited to monitoring and maintenance services and the costs of those Ongoing Services.

7.5 Any change to the Ongoing Services or the costs will be notified to the Customer in writing at least one month before the changes take effect.

7.5 The Supplier warrants to the Customer that the Ongoing Services will be provided using reasonable care and skill.



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8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and the System Specification are complete and accurate;
- (b) ensure that the Supplier is informed of any circumstances that could affect the System, the Installation or the provision of the Ongoing Services without delay;
- (c) co-operate with the Supplier in all matters relating to the System, Installation and Ongoing Services including allowing access to the Premises prior to Installation for any measuring or surveying that needs to be carried out and access to repair, monitor or test the System or Supplier Equipment;
- (d) ensure that all technical criteria required for the System, Installation and the provision of the Ongoing Services have been met and are in place this will include, but is not limited to, telephone lines, cabling and internet requirements. The Supplier will not be liable for any losses caused by faulty cabling, telephone lines and internet services;
- (e) be responsible for and meet all third-party costs associated with the System, Installation and Ongoing Services to include, but not limited to, telephone and internet costs of being linked and communicating with any alarm receiving centre or emergency services response team;
- (f) ensure that any System which is connected and routed via the internet has the adequate security and protection. The Supplier will not be liable for any losses caused by the Customer in failing to ensure their internet connection and any devices secured to it are secure;
- (g) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Premises, office accommodation and other facilities as reasonably required by the Supplier to provide System, Installation and the Ongoing Services;
- (h) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Ongoing Services, and ensure that such information is accurate in all material respects;
- (i) prepare and ensure free and safe access to the Premises for the supply of the Ongoing Services;
- (j) obtain and maintain all necessary licences, permissions and consents which may be required for the System, Installation or Ongoing Services before the date on which the Installation is due and



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Ongoing Services are to start;

- (k) ensure that any new or pre-existing cabling is functioning properly and will support the System. Customer's cabling is not covered by any warranty given by the Supplier;
 - (l) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - (m) not interfere with, adjust, repair, service or reset the System at any time without the Supplier's consent;
 - (n) notify the Supplier in advance of any work being carried out by a third party that will or may affect the System and/or any Ongoing Services;
 - (o) notify the Supplier of any change to the layout of the Premises that could affect the System, effectiveness of the System and any Ongoing Services; and
 - (p) if the System activates any alarm receiving centre or emergency response team notify the Supplier immediately.
- 8.2** If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Installation and any Ongoing Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this [Clause 8.2](#); and
 - (d) if the Customer is not a Consumer, then the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.



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9. CHARGES AND PAYMENT

- 9.1** The price for the System and Installation shall be the price set out in the System Specification. The price for the Ongoing Services will be set out in the Maintenance Agreement. The price of the System and Installation is exclusive of all costs and charges of packaging, insurance, transport of the System (including parking, congestion or carriage charges), which shall be paid by the Customer when it pays for the System.
- 9.2** The price for the Ongoing Services is subject to annual increases and the Supplier will use best endeavours to notify the Customer of any increase in the cost of the Ongoing Services at least one month before they take effect.
- 9.3** The Supplier reserves the right to increase the price of the System, by giving reasonable notice to the Customer at any time before delivery, to reflect any increase in the cost of the System to the Supplier that is due to:
- (i)** any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii)** any request by the Customer to change the delivery date(s), the System or any part of it, or the System Specification; or
 - (iii)** any delay caused by any instructions of the Customer in respect of the System or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the System.
- 9.4** In respect of the System and Installation, the Supplier shall invoice the Customer before Installation and payment in full is due no later than the date of Installation. The System Specification will set out whether a deposit is required and any other costs that must be paid in advance of the Installation such as payments for Ongoing Services and to obtain a unique reference number (URN) from the Police.
- 9.5** The Customer shall pay each invoice submitted by the Supplier in full and in cleared funds in accordance with the payment terms set out in the System Specification and Maintenance Agreement and time for payment shall be of the essence of the Contract.
- 9.6** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on



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receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Ongoing Services or System at the same time as payment is due for the supply of the Ongoing Services or System.

- 9.7** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank Plc's base rate from time to time. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.8** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1** All Intellectual Property Rights in or arising out of or in connection with the Contract, System Specification and Ongoing Services shall be owned by the Supplier.
- 10.2** The Customer acknowledges that, in respect of any third party Intellectual Property Rights in The Ongoing Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3** All Supplier Materials are the exclusive property of the Supplier.

11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This [Clause 11](#) shall survive termination of the Contract.



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12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 The provisions of clauses 12.2 to 12.4 only apply if the Customer is not a Consumer.

12.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a)** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b)** fraud or fraudulent misrepresentation.

12.3 Subject to [Clause 12.2](#):

- (a)** the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b)** the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid by the Customer to the Supplier under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 The provisions of clauses 12.6 to 12.9 only apply if the Customer is a Consumer.

12.6 The Supplier is responsible to the Customer for foreseeable loss and damage caused by the Supplier. If the Supplier fails to comply with these terms, the Supplier is responsible for loss or damage that the Customer suffers that is a foreseeable result of the Supplier breaking this contract or the Supplier failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Supplier and the Customer knew it might happen, for example, if it was discussed during the sales process.



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- 12.7** The Supplier does not exclude or limit in any way its liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by the Supplier's negligence or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of the Customers legal rights in relation to the products and for defective products under the Consumer Protection Act 1987
- 12.8** If the Supplier is providing Ongoing Services, the Supplier will make good any damage to the Customer's property caused by us while doing so. However, the Supplier is not responsible for the cost of repairing any pre-existing faults or damage discovered while providing the Ongoing Services.
- 12.9** If the Customer is a Consumer the Supplier only supplies the products for domestic and private use. If the Customer uses the products for any commercial, business or re-sale purpose our liability will be limited as is the Customer is not a Consumer.
- 12.10** This [Clause 12](#) shall survive termination of the Contract.

13. CANCELLATION AND TERMINATION

- 13.1** Without limiting its other rights or remedies either party may cancel the purchase of the System and its Installation by giving the other party written notice which must be given no later than 15 days before the date the System is due for Installation.
- 13.2** The Maintenance Agreement can be terminated by giving 30 days written notice to expire no earlier than the first anniversary of the Commencement Date. Such notice can be delivered by email to servicedesk@itsfire.co.uk or helpdesk@itsfire.co.uk or by submitting the appropriate form through the website <http://itsfire.co.uk>
- 13.3** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a)** the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
 - (b)** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as



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having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in [Clause 13.2\(b\)](#) to [Clause 13.2\(i\)](#) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental





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or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Ongoing Services or all further deliveries of the System under the Contract, the Maintenance Agreement or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in [Clause 13.2\(b\)](#) to [Clause 13.2\(m\)](#), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13.5 The Customer's rights upon such termination will depend on what has been bought or ordered, whether there is anything wrong with it, how the Supplier is performing, and when the Customer decides to end the Contract.

13.6 If the Customer is a Consumer then clauses 13.7 to 13.11 shall apply.

13.7 If the Consumer Customer is ending the Contract for a reason set out at (a) to (e) below the Contract will end immediately and the Supplier will refund the Customer in full for any products or services which have not been provided and the Customer may also be entitled to compensation. The reasons are:

- (a) the Supplier has told the Customer about an upcoming change to the System or the Ongoing Services or these terms which the Customer does not agree to;
- (b) the Supplier has advised of an error in the price or description of the System or Ongoing Services and the Customer does not wish to proceed;
- (c) there is a risk that supply of the System or the Ongoing Services may be significantly delayed because of events outside the Supplier's control;
- (d) the Supplier has suspended supply of the System or the Ongoing Services for technical reasons, or notifies that they are going to suspend for technical reasons, in each case for a period of more than 12 weeks; or
- (e) the Customer has a legal right to end the contract because of something the Supplier has done wrong.

13.8 A Consumer Customer, for most products bought online or not from the Supplier at the Suppliers usual business premises, has a legal right to change its mind within 14 days and



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receive a refund. This does not apply to the provision of any Ongoing Services once these have been completed even if the cancellation period is still running. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail below.

13.9 To cancel the Contract a Consumer Customer must:

- (a) tell the Supplier that it wants to cancel the Contract by Phone or email or through the Supplier's website or by post to include details of its name, home address, details of the order and, where available, phone number and email address; and
- (b) return the System to the Supplier within 14 days of telling the Supplier that the Customer wishes to end the Contract or allow the Supplier to collect them from the Customer.

13.10 The Supplier will pay the costs of return:

- (a) if the products are faulty or misdescribed;
- (b) if the Consumer Customer is ending the contract because of an upcoming change to the product or these terms, an error in pricing or description, a delay in delivery due to events outside the Supplier's control or because the Consumer has a legal right to do so as a result of something the Supplier has done wrong; or

In all other circumstances (including where the Customer is a Consumer exercising its right to change its mind) the Customer must pay the costs of return.

13.11 The Supplier may make a deduction from refunds from monies owed to a Consumer Customer exercising its right to change its mind:

- (a) to reflect any reduction in the value of the goods, if this has been caused by the Customer's handling of the goods; or
- (b) to reflect delivery costs that the Supplier has incurred;
- (c) in the case of services, an amount for the supply of the service for the period for which it was supplied, ending at the time when the Supplier was notified of the Consumer Customer's change of mind.

13.12 Subject to the provisions of clauses 13.7 to 13.11 inclusive, on termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all the Supplier's outstanding unpaid invoices and interest and, in respect of Ongoing Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer



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immediately on receipt;

- (b) the Customer shall return all the Supplier Materials and any part of the System which has not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents the Supplier from providing any of the System, Installation or Ongoing Services for more than 12 weeks then:

- (a) the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer; and
- (b) if the Customer is a Consumer, the Customer will receive a refund for any goods paid for but not received.

15. GENERAL

15.1 Assignment and other dealings



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- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract or Maintenance Agreement and may subcontract or delegate in any manner any or all its obligations under the Contract or Maintenance Agreement to any third party. The Supplier will always tell you in writing if this happens and will ensure that the transfer will not affect the Customer's rights under the contract.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract or Maintenance Agreement. However, if the Customer is a Consumer then the Warranty may be transferred to a person who has acquired the product or, where the product is services, any item or property in respect of which the Supplier has provided the services.

15.2 Notices

- (a) Any notice or other communication given to a party under or in connection with this Contract or the Maintenance Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

15.3 Severance

- (a) If any provision or part-provision of the Contract or Maintenance Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract or the Maintenance Agreement.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract or the Maintenance Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and



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enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 Waiver

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

15.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms save as provided for at clause 15.1(b).

15.7 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

15.8 Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

15.9 Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation



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(including non-contractual disputes or claims).

