

Opses Limited general terms and conditions of purchase

## 1 INTRODUCTION

1.1 In these Conditions the following terms shall have the following meaning:

**“Applicable Law”** means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or nation (or international in any relevant jurisdiction).

**“Additional Services”** shall mean any Extended Warranty, Installation Services, Vehicle Conversions or such other custom and bespoke conversion work as may be required, and/or Training Services and such other services agreed to be provided by the Company to the Customer.

**“Applicable Data Protection Laws”**: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data;
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Company is subject, which relates to the protection of personal data;
- c) All other data protection and privacy legislation from time to time in force as applicable to a party, including the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**“Bribery Laws”** means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010.

**“The Company”** means Opses Limited, a company registered in England and Wales under company number 09620557 and its registered office being 37 Commercial Road, Poole, Dorset, BH14 0HU.

**“Conditions”** means the Company’s terms and conditions set out in this document.

**“Confidential Information”** means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract.

**“Contract”** means the agreement between the Company and the Customer for the sale and purchase of the Goods and any Additional Services incorporating these Conditions, the EULA, the Company’s Privacy Policy [Privacy and Cookie Policy - Opses](#) and the Order, and including all its schedules, attachments, annexures and any statements of work should they apply.

**“Control”** has the meaning given to it in section 1124 of the Corporation Tax Act 2010 OR means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the Company and **Controls, Controlled and under common Control** shall be construed accordingly.

**“Customer(s)”** means the legal entity who is purchasing the Goods and/ or Additional Services from the Company.

**“Customer Data”** means any data which may be processed by the Company in the provision of its Services.

**“Delivery Date”** means the anticipated delivery date as set out in the Order, or such other dates as may be agreed between the Company and the Customer.

**“Documentation”** means any descriptions, instructions, operating manuals, literature, technical details or other related materials supplied in connection with the Goods and/or Additional Services.

**“EULA”** shall mean the end user licence agreement outlining the terms of use for the Software by the Customer and its authorised users.

**“Extended Warranty”** shall mean a period of enhanced warranty protection to be provided by the Company to the Customer if elected in any Order and purchased by the Customer for as long as any Vehicle remains in commission or alternatively, no later than 5 years.

**“Fix”** means resolving a defect so that the Software performs.

**“Force Majeure”** means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Company’s or its workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay.

**“Goods”** means the Company’s products (hardware and Software) specified in the Order and agreed to be supplied to the Customer in accordance with these Conditions.

**“Group”** means in relation to any company, that company and every other company which is from time to time a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms subsidiary and holding company shall have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 but for the purposes of section 1159(1) a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the Company).

**“Installation Services”** shall mean any installation of the Goods by the Company if elected by the Customer in any Order.

**“Intellectual Property Rights”** means all vested, contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

**“Order”** means an order for the Goods from the Company placed by the Customer arising from the Company’s quotation.

**“Permitted Purpose”** means the use of the Software by the Customer to receive the benefit from the Goods;

**“Price”** means the price exclusive of VAT for the Goods as stated in the Order unless clearly specified.

**“Software”** means (a) the Software Applications within the Goods; (b) any Customisations (where applicable); (c) all other Deliverables (including the Specification and other documentation) which

are created or developed by the Company in connection with the provision of the Services; and (d) all Fixes.

**“Software Applications”** means the software defined in the Order, associated Specification and any Fixes.

**“Specification”** means the description, any samples, or Documentation provided for the Goods and their packaging set out or referred to in the Contract.

**“Training Services”** means any training provided by the Company to the Customer in the use and operation of the Good as specified in any Order.

**“Third Party Equipment”** shall mean any third-party equipment supplied by the Customer to Company, to enable the Company to supply the Goods and/or Additional Services.

**“Vehicle”** shall mean the vehicle(s) to which this Contract applies to whether it is for the purpose of installation of the Software or for any Additional Services.

**“Vehicle Conversions”** shall mean the conversions of such Vehicles including but not limited to emergency vehicles, as specified by any Customer in any Order.

**“Warranty”** shall mean the 12-month period of warranty cover offered by the Supplier to the Customer on the Order. For the avoidance of doubt, this Warranty shall only cover the Vehicle to which the Order applies.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract;

## **2 SCOPE OF CONTRACT/FORMATION OF CONTRACT**

2.1 These Conditions apply in their entirety to the supply of all Goods and Additional Services by the Company. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of this Contract except to the extent that Company otherwise agrees in writing.

2.3 The Customer acknowledges that it has not relied on any statement, representation, assurance or warranty that is not set out in the Contract.

2.4 The person that accepts these Conditions warrants that he or she has authority to bind such entity to these Conditions as the Customer.

2.5 Any Order placed by the Customer is subject to acceptance by the Company and no contract shall be formed until the Company indicates such acceptance. Each accepted Order (together with these Conditions) shall constitute an individual legally binding Contract between the Company and the Customer.

2.6 The Company may indicate acceptance of an Order at its discretion including without limitation by signing and Order referring to these Conditions, verbally, in writing or by delivering and/or supplying requested Goods and/or any Additional Services.

2.7 If the Company is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.

2.8 The Company may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods or Additional Services shall arise, until the earlier of:

2.8.1 the Company's written acceptance of the Order; or

2.8.2 the Company dispatching the Goods or Additional Services or notifying the Customer that they are available for collection (as the case may be).

2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptances or offer, invoice or other documentation or information issued by the Company shall be subject to correction without any liability on the part of the Company.

- 2.10 The Company shall sell, and the Customer shall purchase the Goods and/or Additional Services in accordance with these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions made or purported to be made the Customer.
- 2.11 The Company may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods or Services and are incapable of being accepted by the Customer.
- 2.12 The Company's shall be free to supply its Goods and Additional Services to any customer.
- 2.13 Where the Customer shall elect to purchase any Training Services from the Company, such services shall be agreed between the parties at mutually agreed times. Any Documentation or operating manuals may be provided by the Company.
- 2.14 These Conditions apply to any Order placed by the Customer.

### **3 ORDER**

- 3.1 The Customer shall indicate its requirements for Goods and/or Additional Services by placing an Order and the Customer shall be solely responsible for the accuracy of each Order including, without limitation, measurements and dimensions of the Goods required, and the Company shall not be under any obligation to indicate or correct any inaccuracies, omissions or errors and the Company does not accept any liability if any alterations to the Order are necessary arising from any inaccuracies in the Order and reserves the right to charge the Customer for all reasonable costs, expenses or losses, including direct and indirect consequential losses, arising from such alterations.
- 3.2 Subject to acceptance by the Company of an Order and the Customer discharging its obligations provided by this Contract and in consideration of payment by the Customer of the Price the Company shall supply the Goods and/or Additional Services in accordance with the terms of this Contract.
- 3.3 No Order which has been accepted by the Company may be cancelled by the Customer and the Customer may not return undamaged Goods except with the Company's prior written agreement. The Customer will pay the Company for all reasonable costs and losses including administration costs incurred by the Company in respect of the work completed by the Company and/or arising from the cancellation of the Contract.

### **4 VARIATION**

- 4.1 All terms of the Contract between the Customer and the Company are contained in these Conditions. No variation or addition to the Contract shall have effect unless agreed in writing and signed by a Director of the Company and a fully authorised representative of the Customer. No alleged oral agreement will be accepted.

## **5 PRICE AND PAYMENT**

- 5.1 The Price for the Goods and/or Additional Services shall be as set out in the Order, or any schedule to the Contract, or as advised by the Company from time to time before the date the Order is placed.
- 5.2 The Price payable shall be any fees charged by the Company together with any value added tax (where applicable) and any delivery charges which the Customer shall pay in accordance with Condition 5.3.
- 5.3 The Price elected by the Customer will either be the Company's standard fees or additional fees for any Additional Services. Specific details will be set out in the Order.
- 5.4 The Customer shall pay to the Company the Price in cash, cheque, debit/credit card or bank transfer in pounds sterling upon receipt of the invoice. Payment will only be deemed to have been made when the Company has received cleared funds, unless the Customer has an agreed credit account with the Company or payment by alternative means.
- 5.5 The Company may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Company of supplying the relevant Goods and/or Additional Services and which is due to any factor beyond the control of the Company.
- 5.6 The Customer shall not be entitled to deduct any monies from the payment due whether by way of set-off, counterclaim, discount, abatement or otherwise unless ordered by a valid court order or agreed in writing at the Company's entire discretion.
- 5.7 All payments required under the Contract shall become immediately due and payable on termination of the Contract in accordance with clause 17.
- 5.8 Time of payment is of the essence. If the Customer fails to make any payment on the due date pursuant to the Contract the Customer shall pay default interest to the Company on the amount outstanding at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 and any amendments to the same in enforce from time to time, together with any compensation applicable under that Act. Interest will run from the date payment was due until the date payment is received by the Company and/or any Court Judgment whichever comes sooner. The Company further reserves the right to charge for all reasonable costs including administration to enforce payment of the outstanding sums such costs are to be added to the debt owed by the Customer.
- 5.9 Any variation to the applicable rate of VAT or any imposition of VAT or other taxes imposed by the legislation will be charged at the appropriate rate at the time of delivery.

## **6 ALTERATIONS TO AN ORDER**

- 6.1 The Company does not accept any liability if alterations are made to the Order and reserves the right to charge the Customer for all reasonable costs, expenses or losses, including direct and indirect consequential losses, arising from alterations.

- 6.2 Any alterations required by the Customer must be notified by email to the Company and the Customer accepts that such alterations may incur delays in delivery of the Goods or provision of any Additional Services and/or additional costs and charges. In the event that alterations are required the Company does not give any guarantee that the colour size finish or component of the replacement Goods will match those Goods previously ordered.
- 6.3 The Company reserves the right to make reasonable alterations to Goods and Additional Services to accommodate the Customer's request for alterations and/or Customer premises and reserves the right to make reasonable adjustments to the Price to reflect any alterations made.

## **7 ACCESS AND PREPARATION**

- 7.1 Where it has been agreed that the Company shall provide Installation Services or Training Services, the Customer shall grant the Company and all persons employed or subcontracted to the Company an irrevocable licence to enter the Customer's premises at all times for the purpose of delivering the Goods and delivering any applicable Installation Services or Training Services, and where the Customer's right to retain the Goods has terminated, to recover them.
- 7.2 Failure by the Customer to fulfil the above obligations will result in delay of the provision of any Additional Services and the Company shall be entitled to recover any additional costs and charges it incurs as a result of such delay from the Customer and such additional costs and charges shall be added to the Price and payable by the Customer.
- 7.3 Where the Company is engaged to provide the Vehicle Conversion Services, the Customer agrees to provide the Vehicle to the Company and will at all times maintain adequate insurance over the Vehicle and ensure the Vehicle is maintained and serviced accordingly.

## **8 DELIVERY**

- 8.1 The Goods shall be delivered by the Company, or its nominated carrier, on the agreed Delivery Date to the location as specified in the Order.
- 8.2 The Company will use its reasonable endeavours to supply the Goods and (where applicable) provide the Additional Services at a time convenient to the Customer but for the avoidance of doubt normally during the hours of 8am and 5pm Monday to Friday. Dates and approximate times will be advised by the Company. If the Customer fails to take delivery on the Delivery Date and time the Company reserves the right to charge the Customer for all reasonable costs (including, but not limited to, storage and administration costs), charges or losses, including direct, indirect and consequential loss, incurred by the Company as a result of the Customer being unable to take delivery of the Goods. Subject to the Customer being liable for such costs, charges or losses, the Company will postpone the delivery of the Goods and/or provision of any Additional Services by a reasonable period and advise the Customer of an alternative date and time.
- 8.3 The Goods shall be deemed delivered on arrival by the Company or its nominated carrier.
- 8.4 Time of delivery is not of the essence. The Company shall use its reasonable endeavours to meet delivery dates, but such dates are indicative only.

8.5 The Company shall not be liable for any delay in, or failure of delivery caused by:

8.5.1 the Customer's failure to make a delivery location available;

8.5.2 the Customer's failure to prepare the delivery location;

8.5.3 the Customer's failure to provide the Company with adequate instructions for delivery and installation;

8.5.4 Force Majeure.

8.6 If the Customer fails to accept delivery of the Goods the Company shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable storage and insurance charges, or any other costs and expenses incurred by the Company in doing so.

## **9 RISK AND TITLE**

9.1 All risks, damage or loss to Goods shall pass to the Customer on delivery. In the event that the Customer fails to take delivery without good reason, risk in the Goods shall also be deemed to have been passed to the Customer at the time of attempted delivery. The Customer must ensure that prior to the provision of the Additional Services the Goods will be stored separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property and at a dry and secure location.

9.2 Notwithstanding delivery or any other provision of these Conditions, the title and ownership in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the Price. Until ownership has passed the Customer shall (i) hold the Goods on a fiduciary basis as the Company's bailee; (ii) maintain the Goods in satisfactory condition; (iii) keep the Goods insured on the Company's behalf; and (iv) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; but the Customer may resell the Goods in the ordinary course of business.

## **10 SOFTWARE**

10.1 The Company will make available the Software to the Customer as built into the Goods purchased.

10.2 Subject to the limitations set out in Clause 10.3 and the prohibitions set out in Clause 10.4, the Company hereby grants to the Customer a non-exclusive limited, non-sub-licensable, non-transferable and revocable licence to use the Software for the Permitted Purpose for internal business purposes, in accordance with the Specification.

10.3 The licence granted by the Company to the Customer under Clause 10.2 is subject to the following limitations:

10.3.1 the Software may only be used by the Customer, its employees, agents and sub-contractors and is not available for resale;



- 10.3.2 the Customer and authorised users must comply at all times with the terms of the Website Terms of Use and the EULA, which shall be incorporated herein, and must procure that all users of the Software agree to and comply with those terms;
- 10.4 Except to the extent mandated by applicable law or expressly permitted in these Conditions, the licence granted by the Company to the Customer under this Clause 10 is subject to the following prohibitions:
  - 10.4.1 the Customer must not sub-licence its right to access and use the Software or allow any unauthorised person to access or use the Software;
  - 10.4.2 the Customer must not de-compile, reverse compile, disassemble, reverse engineer, copy, modify, duplicate, frame or otherwise re-publish or re-distribute the Software; and
  - 10.4.3 the Customer must not alter or adapt or edit the Software save as expressly permitted by the Specification; and
  - 10.4.4 the Company reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 10.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Software.
- 10.6 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or can access the Software.
- 10.7 The Customer must not use the Software in any way that causes, or may cause, damage to the Software or impairment of the availability or accessibility of the Software, or any of the areas of, or services on, the Software.
- 10.8 The Customer must not use the Software:
  - 10.8.1 in any way that is unlawful, illegal, fraudulent or harmful; or
  - 10.8.2 in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
  - 10.8.3 The Customer acknowledges and agrees that the Company and/or its licensors own all Intellectual Property Rights in the Goods, the Software, Additional Services and any Specification communicated to the Customer. Except, as expressly stated herein, these Conditions do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Goods, Software, Additional Services and Specification.

- 10.9 The Customer acknowledges that the Goods and the Software will be purchased and used at the Customer's risk. The Customer warrants to the Company that it shall use the Software and Goods in accordance with the Specification and "as is" available. The Customer is fully responsible for the authorised users who shall have access to the Goods and the Software and is responsible for how this is used by the authorised users.
- 10.10 The Customer shall ensure the Goods, and the Software are used responsibly and in accordance with the EULA. Unless agreed otherwise in the Order, the Customer is responsible for the use of the Goods and the Software. The Customer understands that if the Software provides any misleading or inaccurate information, the Company shall not be liable howsoever, save for where it is required by Applicable Law.
- 10.11 Where the Company is providing Installation Services to the Customer, once the Company has installed the Goods, the Company will test the hardware and the Software to ensure it is functioning correctly and the Customer will have deemed accepted the Goods on the earliest of its use by the Customer or any agreement in writing to the Company.
- 10.12 Where the Customer installs the Goods directly, the Customer agrees and acknowledges that the Company shall have no responsibility for the performance of the Goods following such installation.

## 11 **WARRANTY**

- 11.1 The Company warrants that subject to the other provisions of these Conditions upon delivery the Goods shall be of satisfactory quality and fit for purpose and will conform under normal use to the specifications. The Company does not warrant that the Goods or Software will be free from minor interruptions or errors and any warranty referred to in this clause 11 does not include such minor interruptions or errors, unless at the discretion by the Company.
- 11.2 The Company shall offer to the Customer its standard Warranty period of 12 months, or the Extended Warranty, if the Customer elects to purchase the additional warranty protection at the point of Order ("**Warranty Period**").
- 11.3 If within during the relevant Warranty Period, the Goods are deemed by the Company to be defective under proper use by reason of defect in materials or workmanship, the Company will, without charge for labour or parts, repair or at the Company's discretion replace the Goods or its defective parts, subject to the following exclusions:
- 11.3.1 no repair or replacement of parts will be provided due to wear and tear;
  - 11.3.2 if the Customer fails to give written notice of any defect to the Company within 14 days of discovery of such defect;
  - 11.3.3 if the Customer does not allow the Company a reasonable opportunity to inspect the Goods after receiving such notice;
  - 11.3.4 if the Customer makes any further use of the Goods after giving such notice;

11.3.5 the Order contains any inaccuracy in respect of the information provided by the Customer;

11.3.6 damage, defects or changes to the Goods as a result of any neglect, accident, misuse, wilful damage, failure to install or use the Goods in connection with its original purpose, or in accordance with the instructions provided or if the Customer failed to follow the Company's oral or written instruction as to the storage, installation, commissioning, use or maintenance of the Goods. For the avoidance of doubt, this means the Customer must not do anything to the Goods that causes any operational issues with the Goods, otherwise the Company will not be liable;

11.3.7 failure to keep the Goods in a safe place if not installed in any Vehicle;

11.3.8 any damage to the Goods including excessive heat, power surges, supply or voltage issues or any other use of the Goods in any way which is detrimental to the performance of the Goods;

11.3.9 any misuse of the Goods under the EULA and any breach thereof;

11.3.10 any repairs, alterations or revisions to the Goods in any way and by anyone not authorised by the Company.

In considering whether a full or partial refund is to be given, account will be taken of the benefit provided by the Goods to the Customer.

11.4 The Goods are designed for a single vehicle use and for installation and use in the Vehicle outlined in the Order. As such, the Customer undertakes to notify the Company and discuss any changes which may affect the use of the Goods. For the avoidance of doubt, the Warranty Period and any such rights in this clause 11 cannot be assigned without prior written agreement from the Company.

11.5 If the Company complies with clause 11.3, it shall have no further liability for a breach of the warranty in respect of such Goods.

11.6 Except as set out in this clause 11 the Company:

11.6.1 gives no further warranties and makes no representations in relation to the Goods;

11.6.2 shall have no liability for its failure to comply with the warranty in clause 11.1;

11.6.3 makes no warranty that the Software is error free or that its use will be uninterrupted, and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of the Contract;

11.6.4 gives no warranties that the Goods and specifically the Software will achieve any performance criteria; and

- 11.6.5 all warranties and conditions, whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 11.7 The Warranty Period and the terms referred to in this clause 11 are contingent upon the Customer using the Goods properly and installing the Goods properly. The warranties will not apply where the Customer makes any modifications howsoever.
- 11.8 The Customer may also elect to purchase an Extended Warranty from the Company as set out in any Order for Additional Services as an alternative warranty option. The Extended Warranty shall be effective if agreed between the parties from the Delivery Date until the Vehicle is no longer in commission by the Customer or no later than 5 years, whichever happens soonest. The Company shall outline any specific requirements of the Extended Warranty to the Customer at the time of the Order, but the Customer acknowledges and agrees that:
- 11.8.1 the Extended Warranty in this clause 11.8 if purchased by the Customer, shall only apply to any installation of the Goods in a single vehicle. If it gets moved to another vehicle then the Extended Warranty ceases to apply to the Customer, unless authorised by the Company at its discretion, or in the event clause 11.8.3 applies;
- 11.8.2 the Extended Warranty period shall be 5 years from the Delivery Date or earlier if the Vehicle is decommissioned (whereupon the Extended Warranty shall terminate), or it shall cease if the warranty is disappplied as a result of clause 11.8.1;
- 11.8.3 it can request to move the Goods to another vehicle in the first two years of commencement, without the Extended Warranty being affected, so long as the Goods have not been damaged or written off in an accident, and with the Company's written consent. The Company may elect to charge for a replacement if the Goods are inoperable when fitted into a new vehicle due to a significant accident/impact.
- 11.9 The Customer acknowledges that any additional warranty purchase under clause 11.2 in any Order for either the Company's standard Warranty or its Extended Warranty may be subject to additional terms and conditions as communicated to the Customer which shall be incorporated herein by reference.

## **12 ANTI-BRIBERY**

- 12.1 For the purposes of this clause 12 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 12.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 12.2.1 all of its personnel;
- 12.2.2 all others associated with it; and
- 12.2.3 all of its subcontractors;  
involved in performing the Contract so comply.

- 12.3 Without limitation to clause 12.2, neither party shall make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 12.4 Any breach of this clause 12 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Company to immediately terminate the Contract by notice.
- 12.5 The Company has a Bribery Policy which shall be made available to the Customer on request.

### **13 INDEMNITY AND INSURANCE**

- 13.1 The Customer shall indemnify the Company from and against any losses, damages, liability, costs (including legal fees) and expenses which the Company may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 13.2 Each party shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract.

### **14 LIMITATION OF LIABILITY**

- 14.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 14.1.1 Any breach of these Conditions;
- 14.1.2 Any use made by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- 14.1.3 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Applicable Laws) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these Conditions excludes or limits the liability of the Company:
- 14.3.1 For death or personal injury caused by the Company's negligence; or
- 14.3.2 For any other losses which cannot be excluded or limited by Applicable Law; or
- 14.3.3 For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 14.3.4 For fraud or fraudulent misrepresentation.

- 14.4 Subject to clauses 14.3 and 14.7, the Company shall not be liable for consequential, indirect or special losses.
- 14.5 Subject to clauses 14.3 and 14.7, the Company shall not be liable for any of the following (whether direct or indirect):
- 14.5.1 loss of profit;
  - 14.5.2 loss of revenue;
  - 14.5.3 loss or corruption of data;
  - 14.5.4 loss or corruption of software or systems;
  - 14.5.5 loss or damage to equipment;
  - 14.5.6 loss of use;
  - 14.5.7 loss of production;
  - 14.5.8 loss of contract;
  - 14.5.9 loss of commercial opportunity;
  - 14.5.10 loss of savings, discount or rebate (whether actual or anticipated);
  - 14.5.11 harm to reputation or loss of goodwill; and/or
  - 14.5.12 wasted expenditure.
- 14.6 Subject to clauses 14.3 and 14.7, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid by the Customer.
- 14.7 Any Warranty Period provided in clause 11.1 will be binding on the Company in respect of the Goods for the duration of the Warranty Period.

## **15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 All Intellectual Property Rights in the Goods, Additional Services, Software and Documentation throughout the world, shall remain vested in the Company and save for the licence contemplated by these Conditions, no rights shall be transferred or assigned to the Customer.
- 15.2 Neither party is granted any right, title or licence to, or interest in the other party's Intellectual Property Rights, provided however that one party may refer to the Goods by reference to the other party's Intellectual Property Rights so long as the references are truthful and not misleading.

## **16 CONFIDENTIALITY**

16.1 The Customer shall keep confidential all Confidential Information of the Company and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

16.1.1 any information which was in the public domain at the date of the Contract;

16.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

16.1.3 any information which is independently developed by the Customer without using information supplied by the Company; or

16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

16.2 This clause 16 shall remain in force for six (6) years after termination of the Contract.

16.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## **17. TERMINATION**

17.1. Without prejudice to any other provision in these Conditions and without prejudice to any rights or remedies either party may have against the other, the Contract shall terminate immediately and any rights to possession of the Goods which the Customer has at the time shall terminate immediately if:

17.1.1. the Customer commits a material breach of the Contract, and such breach is not remediable;

17.1.2. the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Company has given notification to the Customer that the payment is overdue; or

17.1.3. the Customer:

17.1.3.1. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

17.1.3.2. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;

17.1.3.3. becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

17.1.3.4. becomes subject to a company voluntary arrangement under the Insolvency Act 1986;

17.1.3.5. becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;

- 17.1.3.6. becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 17.1.3.7. has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 17.1.3.8. has a resolution passed for its winding up;
- 17.1.3.9. has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 17.1.3.10. is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced; or
- 17.1.3.11. has a freezing order made against it

17.2. The accrued rights of the parties as at termination shall not be affected.

17.3. On termination the Customer shall be liable to pay all outstanding and unpaid invoices, and the Company shall be entitled to raise and invoice for any Additional Services performed and/or Goods supplied but not invoiced and such invoice(s) shall become due for payment immediately on receipt by the Customer.

17.4. The Company may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.

17.5. Upon termination of the Contract, all the provisions of the Contract will cease to have effect, save that the following provisions of the Contract will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 9, 10, 11, 14, 15, 16, 19, 20, 21, 22, 25 and 26.

## **18. FORCE MAJEURE**

18.1. The Company shall not be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The Company shall further be under no liability to the Customer for any circumstances beyond the Company's control or any event which results from Force Majeure.

## **19. DATA PROTECTION**

19.1. Where the Company shall collect and use any personal data in connection with this Contract, it shall do so under its Privacy Policy [Privacy and Cookie Policy - Opses](#).

19.2. For the purposes of this clause 19, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.



- 19.3. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 19.4. The provisions set out in this clause 19 shall apply in respect of any circumstances in which the Customer is the controller, and the Company is a processor in relation to any personal data processed by the Company pursuant to this Contract or any Order. The parties acknowledge and agree that for the purposes of Applicable Data Protection Laws, where the Company processes any of the Customer's personal data on behalf of the Customer or its affiliates in connection with any Additional Services, this Contract or any Order, then the Customer shall be the controller, and the Company shall be the processor.
- 19.5. The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Company in connection with the processing of personal data, provided these are in compliance with the then-current version of the Company's privacy policy (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Contract, the Privacy Policy will take precedence.
- 19.6. Without prejudice to the generality of clause 19.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the any personal data to the Company for the duration and purposes of this Contract.
- 19.7. Without prejudice to the generality of clause 19.1, the Company shall, in relation to Customer Personal Data:
- 19.7.1. process that personal data only on the documented instructions of the Customer, unless the Company is required by Applicable Data Protection Laws to otherwise process that personal data ("**Purpose**"). Where the Company is relying on Applicable Data Protection Laws as the basis for processing personal data, the Company shall notify the Customer of this before performing the processing required by the Applicable Data Protection Laws unless those Applicable Data Protection Laws prohibit the Company from so notifying the Customer on important grounds of public interest. The Company shall inform the Customer if, in the opinion of the Company, the instructions of the Customer infringe Applicable Data Protection Laws;
  - 19.7.2. implement suitable technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, which shall be appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 19.7.3. ensure that any personnel engaged and authorised by the Company to process personal data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - 19.7.4. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Company), and at the Customer's cost

and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 19.7.5. notify the Customer without undue delay on becoming aware of a personal data breach involving the personal data;
- 19.7.6. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless the Company is required by Applicable Law to continue to process that personal data; and
- 19.7.7. maintain records to demonstrate its compliance with this clause 19.

19.8. The Customer provides its prior, general authorisation for the Company to:

19.8.1. appoint processors to process the personal data, provided that the Company:

- 19.8.1.1. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Company in this clause 19;
- 19.8.1.2. shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Company; and
- 19.8.1.3. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Company's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Company for any losses, damages, costs (including legal fees) and expenses suffered by the Company in accommodating the objection.

19.8.2. transfer personal data outside of the UK as required for the Purpose, provided that the Company shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Company, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

19.9. Either party may, at any time on not less than 30 days' notice, revise this clause 19 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## **20. DATA SECURITY**

20.1. The Company shall notify the Customer immediately if it suspects or becomes aware of any actual, threatened or potential breach of security of Customer Data or any of the Customer's Confidential Information.

## **21. ASSIGNMENT**

- 21.1 The Company may assign any of its rights under the Contract or sub-contract, sub-licence, transfer, mortgage, charge or deal in any other manner with any or all of its rights to any person, firm or company but the Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **22. GENERAL**

- 22.1. Each right of remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 22.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 22.3. Any failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 22.4. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 22.5. The Contract constitutes the whole agreement and understanding or agreement between them relating to the subject matter of the Contract.
- 22.6. The Company shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.
- 22.7. The Customer recognises that any breach or threatened breach of the Contract may cause the Company irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Company, the Customer acknowledges and agrees that the Company is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **23. NOTICES**

- 23.1. All communication and notices between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post or via electronic communication ("email"):
- 23.1.1. (in case of communications to the Company) to its registered office or such changed address (including email) as shall be notified to the Customer by the Company; or
- 23.1.2. (in the case of communications to the Customer) to its registered office or such changed address (including email) as shall be notified to the Customer by the Company; or

23.1.3. Communications shall be deemed to have been received:

- 23.1.3.1. If sent by pre-paid first-class post, two days (excluding Saturdays, Sundays and banks and public holidays) after posting (exclusive of the day of posting); or
- 23.1.3.2. If delivered by hand, on the day of delivery;
- 23.1.3.3. If sent by email on a working day prior to 4:00pm, at the time of transmission and otherwise on the next working day.

## **24. CONFLICTS WITH CONTRACT**

- 24.1. If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

## **25. DISPUTE RESOLUTION**

- 25.1. Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 25.
- 25.2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 25.3. The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
- 25.3.1. Within 10 Business Days of service of the notice, the representatives of each of the parties shall meet to discuss the dispute and attempt to resolve it.
  - 25.3.2. If the dispute has not been resolved within 10 Business Days of the first meeting of the representatives, then the matter shall be referred to the managing directors (or persons of equivalent seniority) of each of the parties.
- 25.4. Subject to the steps referred to in clause 25.3 being exercised, if the parties are not able to resolve any dispute, the parties shall then refer the matter to mediation under CEDR's mediation procedure.
- 25.5. Until the parties have completed the steps referred to in clauses 25.3 and 25.4, and despite these, have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

## **26. GOVERNING LAW**

- 26.1. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and Wales and the parties submit to exclusive jurisdiction of the courts of England and Wales.