

TERMS AND CONDITIONS OF TRADING

1. DEFINITIONS

- Acknowledgement** : The written acknowledgement and confirmation of the order prepared and sent by TDSi to the Buyer.
- TDSi** : Means Time and Data Systems International Limited and where the context so admits or requires their employees and authorised sub-contractors.
- Buyer** : Means the person, firm or company ordering the System from TDSi.
- Conditions** : Means these terms and conditions set out below, including any Special Conditions.
- Contract** : Means the contract for sale and purchase of the System and/or the licensing of software made between TDSi and the Buyer.
- Documentation** : Means all the software information and data (including the Software and any documentation for the Software) which is provided to the Buyer howsoever recorded.
- End User** : The person or entity intending to use the System and not distribute the System or any part of it to third parties.
- Site** : Means the location at which the System is to be installed.
- Software** : Means any computer program or suite of computer programs, howsoever recorded comprised in or supplied for use with the System.
- Special Conditions** : Means any specific terms set out in any written quotation or written acceptance of order by TDSi and signed by a director of TDSi.
- System** : Means all and any products, goods, services and/or equipment detailed on the acceptance of order and where the context so admits shall include any Software.

2. INTERPRETATION

- 2.1 A reference to writing or written includes fax and email.



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- 2.2 A reference to a Condition or Conditions shall be a reference to any one or more of the terms and conditions set out in these Conditions.
- 2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 2.4 Any words following the terms including, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. APPLICATION, QUOTATIONS AND ORDERS

- 3.1 All Contracts are entered into upon these Conditions and any other terms that the Buyer seeks to impose, incorporate or which are implied by trade, custom, practice or course of dealing are expressly excluded from the Contract.
- 3.2 If there is any conflict between the Conditions and the Special Conditions then the Special Conditions shall prevail.
- 3.3 Subject to Condition 3.2 above, these Conditions shall prevail over any inconsistent terms, conditions, warranties or representations referred to in the Buyer's order or in correspondence or elsewhere and any terms, conditions, warranties or representations to the contrary are hereby excluded to the fullest extent permitted in law.
- 3.4 The Conditions shall also apply to any subsequent agreement between TDSi and the Buyer for the sale and purchase of spare parts, upgrades or other equipment.
- 3.5 Any quotation is given on the basis that no Contract shall come into existence until, either, TDSi dispatches the Acknowledgement or TDSi delivers the System to the Buyer. Any quotation given by TDSi shall not constitute an offer and is valid for a period of 30 days only from its date, provided that TDSi has not previously withdrawn it.
- 3.6 An order placed by the Buyer shall constitute an offer to purchase the System, subject to these Conditions and any Special Conditions. Acceptance of such order (which shall constitute the Contract) shall occur on the date of the Acknowledgement or on the date of delivery of the System to the Buyer.
- 3.7 The Buyer warrants the accuracy of any order submitted to TDSi.
- 3.8 A minimum order value of £50 (Fifty pounds GBP) will be applied to all orders.
- 3.9 Any samples, drawings, descriptive matter or advertising issued by TDSi including but not limited to those illustrations or descriptions appearing on TDSi's website and contained in TDSi's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the System described in them. They shall not form part of the Contract or have any contractual force.



4. PRICES

- 4.1 The price(s) payable for the System shall be the price(s) set out in the Acknowledgement, however TDSi reserves the right to vary the price(s) by giving written notice to the Buyer at any time before delivery should the price(s) differ at the date of dispatch from the price quoted in the Acknowledgement.
- 4.2 Depending on the terms agreed, prices are and shall be paid in Pounds Sterling, US Dollars or Euros and, unless otherwise agreed in writing, are exclusive of the costs of carriage, packing, insurance, VAT and any other applicable taxes all of which shall be invoiced to and paid by the Buyer.
- 4.3 When the System includes custom printed magnetic cards TDSi reserves the right to adjust the contract quantity by up to or minus 10% and to vary the price(s) payable accordingly.

5. PAYMENT AND CANCELLATION

- 5.1 TDSi reserves the right to call for the payment of a deposit, which will fall due for payment on submission of order. If the Buyer's order is not accepted by TDSi then the deposit shall be refunded to the Buyer. If the Buyer cancels its order prior to the date of dispatch pursuant to Condition 5.4, then the deposit shall be refunded subject to the right of TDSi to apply the deposit towards payment of any cancellation charges arising thereunder.
- 5.2 TDSi shall invoice the Buyer on or at any time after delivery of the System.
- 5.3 Payment of all fees due under the Contract shall be made in cleared funds within thirty (30) days from the date of TDSi's invoice, unless otherwise specified by TDSi. TDSi reserves the right to require that any payment from overseas customers (being a Buyer located outside of the United Kingdom) shall be made by irrevocable letter of credit issued or confirmed by a London clearing bank in terms acceptable to TDSi. Time for payment shall be of the essence.
- 5.4 TDSi shall accept cancellation of the Buyer's order up to 30 days before the date of dispatch of the System upon receipt of payment of a cancellation charge amounting to 15% of the total price of the System. Such acceptance of cancellation shall not be effective unless confirmed in writing by TDSi. Additional charges shall be payable by the Buyer where the System includes a bespoke design, includes non TDSi equipment or is adapted or upgraded to meet the Buyer's special requirements.
- 5.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid order issued by a court of England or Wales requiring an amount equal to such deduction to be paid by TDSi to the Buyer.



- 5.6 Interest shall be payable by the Buyer should it fail to make a payment to TDSi under the Contract by the due date as indicated in Condition 5.2 (the "**Due Date**"). Such interest shall accrue and be calculated on a daily basis from the Due Date, both before and after any judgment and until the date on which payment is received, at a rate equivalent to the rate prevailing at the Due Date as prescribed by the Secretary of State pursuant to section 6 of The Late Payment of Commercial Debts (Interest) Act 1998. Interest shall be compounded quarterly and be payable on demand
- 5.7 If the Buyer shall at any time default in payment of the fees on the Due Date or if the Buyer's credit standing is at any time, in the opinion of TDSi, impaired for any reason, then TDSi may without prejudice to any other of its rights:
- 5.7.1 demand immediate payment for so much of the System and/or the Software as has been delivered to the Buyer;
 - 5.7.2 withhold any and all deliveries of the System, the Software and/or any other products to be supplied to the Buyer under any other contract and any spare part until such payment is made in full;
 - 5.7.3 cancel the Contract without any further liability to the Buyer; and/or
 - 5.7.4 Supply the System and/or the Software on such terms in relation to payment as TDSi may require.

6. DELIVERY

- 6.1 TDSi shall ensure that each delivery of the System is accompanied by a delivery note which shows the date of the Acknowledgement, the contract number, the type and quantity of the System, special storage instructions (if any) and, if the order is being delivered by instalments, the outstanding balance of the System remaining to be delivered.
- 6.2 If the price includes costs of carriage, TDSi shall select the route and means of transport for delivery and, subject to Condition 6.3 , TDSi shall deliver at the Site (if named in the Special Conditions) or otherwise at the Buyer's premises.
- 6.3 Each System shall be delivered Ex-Works and where the Special Conditions provide for delivery CIF, FOB, FOB Airport or on the basis of any other relevant trade terms the meaning of such term contained in ICC Incoterms (1990) as amended shall apply to the extent that it is not inconsistent with any of the Conditions or the Special Conditions.
- 6.4 Delivery dates, any dates for installation or dates for acceptance are approximate only and shall not be of the essence of the Contract. TDSi shall be under no liability for any loss, injury, damage or expense consequent upon any delay in adhering to any such date from whatever cause, including but not limited to inadequate delivery instructions from the Buyer or TDSi's negligence.



- 6.5 If the Buyer fails to accept delivery on the date delivery is offered, the Buyer shall pay all costs and expenses of storage, any additional costs of carriage and any other costs or expenses incurred. The System shall for all purposes be deemed to have been delivered to the Buyer on the date of the first attempted delivery of the System and may be invoiced to the Buyer accordingly.
- 6.6 If the Buyer has not accepted delivery of the System within 10 days after the delivery date, TDSi may resell or otherwise dispose of part or all of the System and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the System or charge the Customer for any shortfall below the price of the System.
- 6.7 TDSi reserves the right to deliver the System in separate instalments. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment. Each Contract shall be invoiced and paid for separately.
- 6.8 The Buyer shall notify TDSi and the carrier in writing within 3 days of delivery of any damage or shortage, failing which TDSi will accept no liability for damage or loss.
- 6.9 Where the System is rejected by the Buyer as not being in accordance with the Buyer's order, TDSi will only accept the return of the System provided that TDSi receives written notice thereof, giving detailed reasons for rejection, within 7 days of receipt of the System by the Buyer, and if such notice is not received by TDSi within the said period of 7 days the System shall be deemed to have been accepted by the Buyer.
- 6.10 The Buyer shall notify TDSi in writing if delivery has not been made within 28 days of receipt of notice that dispatch has been made, failing which TDSi will accept no liability for damage or loss. Any liability of TDSi for any non-delivery of the System shall be limited to replacing the System within a reasonable time.

7. RISK AND TITLE

- 7.1 Unless the Special Conditions provide otherwise, risk in the System shall pass to the Buyer on delivery. If delivery is effected by any of the means set out in Condition 6.3 above, then risk in the System shall pass to the Buyer in accordance with the relevant ICC Incoterm used in the Special Conditions.
- 7.2 Until payment in full has been received by TDSi (in cash or cleared funds) for the System and any other goods or services supplied under this Contract or any other contract between the Buyer and TDSi:
- 7.2.1 Subject to Condition 7.3, the title to the property in the System shall remain with TDSi;
- 7.2.2 the Buyer will not remove the System, or allow it to be removed, from the Site or from the premises of the Buyer (other than to the Site);
- 7.2.3 The Buyer will keep the System in good and complete condition;



- 7.2.4 the Buyer shall ensure that the System is marked as the property of TDSi and the Buyer will not remove, deface or obscure any identifying mark or packaging nor will the Buyer allow the System to become the subject of any charge or lien, whether by operation of law or not;
- 7.2.5 the Buyer will allow inspection of the System by TDSi at reasonable times;
- 7.2.6 the Buyer shall store the System separately from all other goods such that it remains readily identifiable as TDSi's property;
- 7.2.7 The Buyer shall, from the delivery date, keep the System insured on TDSi's behalf up to its full price and against all risks to the reasonable satisfaction of TDSi on a policy of insurance that names TDSi as a joint policyholder. On request the Buyer shall produce full insurance policy documents to TDSi;
- 7.2.8 the Buyer grants TDSi, its employees and agents, an irrevocable licence at any time with or without notice to enter any premises where the System is stored in order to inspect or repossess the System;
- 7.2.9 TDSi may maintain an action against the Buyer for the total price of the System as specified in any invoice(s) notwithstanding that title to the System has not passed or that the Contract has terminated;
- 7.2.10 The Buyer's right to possession of the System shall terminate immediately if:
- a. the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;

the Buyer (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
 - b. the Buyer suffers a levy or allows any execution, whether legal or equitable, to be levied on his property or obtained against him, or fails to observe or perform any of his obligations under the Contract or any other contract between TDSi and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;
 - c. or the Buyer encumbers or in any way charges any of the System.



- 7.3 The Buyer who is an End User is not permitted to distribute, resell, transfer, assign or otherwise deal with the System or any part of it. The Buyer who is not an End User may only distribute, resell, transfer, assign or otherwise deal with the System if the Buyer has entered into a distribution agreement with TDSi.
- 7.4 Subject to Condition 7.5, the Buyer may resell or use the System in the ordinary course of its business (only if the Buyer has entered into a distribution agreement with TDSi but not otherwise) before TDSi receives payment for the System. However, if the Buyer resells the System before that time:
- 7.4.1 it does so as principal and not as the TDSi's agent; and
- 7.4.2 Title to the System shall pass from TDSi to the Buyer immediately before the time at which resale by the Buyer occurs.
- 7.5 If before title to the System passes to the Buyer, the Buyer becomes subject to any of the events listed in Condition 13.1 then, without limiting any other right or remedy TDSi may have:
- 7.5.1 the Buyer's right to resell the System or use it in the ordinary course of its business ceases immediately; and
- 7.5.2 TDSi may at any time:
- Require the Buyer to deliver up any part of the System in its possession which has not been resold, or irrevocably incorporated into another product; and
 - If the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the System is stored in order to recover the System.

8. INSTALLATION (UK ONLY)

- 8.1 If agreed in writing, TDSi will install the System.
- 8.2 Installation where agreed will be made between 9 am and 5 pm Monday to Friday inclusive (excluding public holidays). Installation outside these hours will incur an additional charge.
- 8.3 The Buyer shall prepare the Site for the System and provide free access thereto and to any services or facilities (including suitable mains power points) that may be required for the installation. Equipment to which the System is to be connected must be in place and operational. TDSi reserves the right to render an additional charge if the Site is not properly prepared for installation of the System or if access to the Site is not possible.

9. WARRANTY

- 9.1 Except where TDSi may otherwise expressly provide in writing and subject to Condition 9.3, TDSi warrants its products for the periods set out in the table in this clause 9.1 (the "**Warranty Periods**") from the date of dispatch.



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System	Warranty Periods
EX and MG Controllers	3 years
GARDIS Controllers	5 years
TDSi Readers	3 years
Third Party Readers	1 year
Biometrics	1 year
Ancillaries	1 year
Third Party Integration Products	6 months
Cards/tags	6 months
Software	30 days

9.2 TDSi warrants that:

9.2.1 The System shall be free from material defects in design, workmanship and materials (other than defects attributable to ordinary wear and tear) and, where applicable, shall meet the specifications referred to in the Special Conditions. If the System does not conform to such a warranty TDSi shall at its option:

- a. repair or replace the System or the relevant part of it found by TDSi in its sole judgement not to conform to the warranty (all parts replaced by TDSi shall remain the property of TDSi); or
- b. Take such steps as TDSi deems necessary to bring the System into a state where it is free from such defects or meets such specifications.

9.2.2 The Software shall conform to its published specification (although no warranty is given that use of the Software will be uninterrupted or error free) and if it does not, TDSi shall, at its discretion, replace the software or correct it so that it conforms to the specification.

9.3 If the System or any part thereof is the subject of a third party manufacturer's guarantee, then the Warranty Periods shall be restricted in duration to the length of the unexpired period of such third party manufacturer's guarantee.



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- 9.4 Subject as herein provided, the aggregate liability of TDSi 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 in no event exceed the price payable or paid by the Buyer for the System and/or the Software and performance of either one of the options in Condition 9.2 shall constitute an entire discharge of TDSi's obligations under the above warranties.
- 9.5 The above warranties are conditional upon the Buyer:
- 9.5.1 providing TDSi with adequate written notice of the alleged defect during the Warranty Periods and within 3 days of discovery of the alleged defect;
 - 9.5.2 affording TDSi reasonable opportunity to inspect the System on the Site or on the Buyer returning, at the Buyer's expense, the Software to TDSi within 7 days of discovering the alleged defect;
 - 9.5.3 installing, using and maintaining the System and/or the Software in accordance with any instructions or recommendations of TDSi; ensuring it is serviced annually by TDSi or a person approved by TDSi and not subjecting the System and/or the Software to any abnormal or excessive use or to misuse, abuse, neglect, accidental damage, improper alteration, modification or negligence in use, storage, transportation or handling;
 - 9.5.4 only altering or repairing the System with the written consent of TDSi; and
 - 9.5.5 As regards defects in design, having not made, furnished or supplied the defective design.
- 9.6 TDSi shall not be liable under the above warranties if:
- 9.6.1 the Buyer continues to use the System after notifying TDSi of the alleged defect; and/or
 - 9.6.2 The defect arises as a result of fair wear and tear, wilful damage or negligence by the Buyer and those whom the Buyer allows to use the System.
- 9.7 If any claim made under the above warranties is found to be in breach of the conditions in Condition 9.5, any costs of investigation, repair or replacement shall be paid by the Buyer.
- 9.8 The above warranties may not be assigned by the Buyer without prior written consent of TDSi.
- 9.9 Where the Special Conditions include the giving by TDSi of a 'lifetime warranty' then this shall mean a warranty given by TDSi on the above terms but where the Warranty Period is for the expected life of the System as notified in the relevant trade literature specified by TDSi and which relates to the System or, if not so specified, a maximum of five years from the date of delivery.

10. LIABILITY

- 10.1 TDSi does not exclude liability for;



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- 10.1.1 death or personal injury resulting from the negligence of TDSi or of its employees whilst acting in the course of their employment (to the extent the law does not permit such liability to be excluded);
- 10.1.2 any matter which it would be illegal for TDSi to exclude or attempt to exclude its liability; or
- 10.1.3 Fraud or fraudulent misrepresentation.
- 10.2 All recommendations and advice whether oral or written given by or on behalf of TDSi to the Buyer as to any methods of using or applying the System or the Software and the purposes to which the System or the Software may be used or applied are given without liability on the part of TDSi.
- 10.3 Save as provided in Conditions 9 and 10 TDSi shall have no liability to the Buyer in respect of any defect or malfunction in the System, the Software or the Documentation or other breach of Contract of whatsoever nature or other default or negligence on the part of TDSi, its employees, sub-contractors or agents and all conditions, warranties, terms or representations whether express, implied, statutory or otherwise are hereby excluded to the fullest extent permitted by the law. Without prejudice to the generality of the foregoing, TDSi shall not be liable to the Buyer for any economic loss, loss of profit, loss of business, loss of agreements/contracts, depletion of goodwill or claims for consequential compensation whatsoever (howsoever caused and in each case whether direct, indirect or consequential), which arise out of or in connection with the Contract.
- 10.4 The Buyer shall indemnify, and keep indemnified, TDSi in respect of any loss or damage whatsoever and against all associated damages, losses, costs and expenses, whether arising from the claim of any person against TDSi in relation to the System and/or the Software or otherwise. This indemnity shall be a continuing indemnity.
- 10.5 to Condition 10.1 and to the extent that any of the provisions in these Conditions that seek to limit or exclude liability are deemed unenforceable in law, the upper limit of TDSi's liability under any Contract shall be limited to the fee charged by TDSi under that Contract.
- 10.6 The Buyer shall fully and effectively indemnify TDSi against the total expense to TDSi arising out of the Buyer's breach or breaches of these Conditions. Such expense shall include (without limitation):
- 10.6.1 all expenses incurred by TDSi in sourcing and manufacturing the Systems and Software;
- 10.6.2 all court fees;
- 10.6.3 all amounts payable to TDSi's professional advisers (payable on an indemnity basis) in pursuing claims against the Buyer for breach or breaches of these Conditions and for enforcing any judgement(s) and/or order(s); and
- 10.6.4 All amounts payable to TDSi's insurers and/or debt recovery agents, in each case including anticipated sums payable by TDSi only after payment of any sums from the Buyer.
- 10.7 This Condition 10 shall survive termination of the Contract.



11. SOFTWARE LICENCE

- 11.1 The Buyer agrees and acknowledges that TDSi or the licensors of the Software have and shall retain all and any right, title and interest including copyright and any other intellectual property rights in and to the Software. The Buyer shall obtain only such rights as are specifically provided or referred to in the Conditions, the Special Conditions, or in any specific software licence agreement.
- 11.2 If TDSi informs the Buyer that the terms of any specific software licence agreement apply to the Software then, as a condition of the Contract the Buyer shall first be required to enter into such a software licence agreement.
- 11.3 In the absence of an agreement to the contrary, supply of the Software to the Buyer as an End User shall be deemed to confer upon the Buyer a non-exclusive non-transferable paid up licence or sub-licence from TDSi or the licensor of the Software (as appropriate) to use the Software and Documentation only on or in conjunction with the System upon and subject to these Conditions and in particular the following Conditions 11.1 to 11.9.
- 11.4 TDSi shall supply the Buyer with a single copy of the Software in machine readable form and the Buyer shall not make or cause to be made any copy, reproduction, translation, adaptation, variation, version or modification of the Software (other than copies for back-up use and archival purposes) without prior written consent of TDSi.
- 11.5 The Buyer shall keep the Software, the Documentation and all and any copies of the Software and the Documentation (in whatever form) within its own control at all times and shall take all steps as necessary to ensure that the Software and the Documents are not obtained by any third party whether by loan, theft or otherwise.
- 11.6 No right or licence granted to the Buyer in respect of the Software shall be assigned, sub-licensed or transferred or otherwise dealt with in any way without the prior written consent of TDSi.
- 11.7 All and any rights and licenses granted to the Buyer in respect of the Software (and any other software supplied by TDSi to the Buyer) shall terminate automatically, without the need for notice on the part of TDSi, in the event of the termination of the Contract for any reason.
- 11.8 Should the Buyer fail to comply with any of the Conditions, any Special Conditions or agreements relating to the Software or the Documentation (and if capable of remedy fail to rectify such non-compliance within 30 days of written notice of it) or upon the occurrence in relation to the Buyer of any of the events specified in Condition 13.1 then (and in any such case) TDSi reserves the right to give written notice to the Buyer to terminate, with immediate effect, all and any rights and licences granted to the Buyer in respect of the Software (and any other software supplied by TDSi to the Buyer).
- 11.9 In the event of termination of the rights and licences granted to the Buyer in respect of the Software howsoever arising, the Buyer shall return to TDSi or destroy (as TDSi shall direct) the Software, the Documentation and all copies (in whole or in part) of the Software and Documentation and (where required by TDSi) certify in writing that to the best of its knowledge all such copies have been returned or destroyed.



11.10 Supply of the Software to the Buyer who is acting as a distributor as opposed to an End User, shall not confer on the Buyer any right, licence or interest in the Software and the Buyer shall not supply the System or Software to any person without first entering into a distribution agreement with TDSi in the form required by TDSi.

12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

12.1 The Buyer, its directors, employees, agents and representatives shall:

12.1.1 keep confidential;

12.1.2 not copy or part with possession of (save as provided for in Condition 11.9);

12.1.3 not disclose in any manner to any other person,

in whole or in part, the Software, information relating to the System or any of the Documentation including drawings, descriptions, part lists and other technical or promotional material supplied by TDSi.

12.2 The Buyer shall use its best endeavours to protect all intellectual property rights in or relating to the System and the Software and the Documentation and shall promptly inform TDSi of any infringement or suspected infringement of such rights which may come to its attention.

12.3 All copyright and any other intellectual property rights in the System, the Software and/or the Documentation are and shall remain the exclusive property of TDSi or its supplier (as the case may be). If any intellectual property rights are created in the performance of the Contract they shall be the exclusive property of TDSi.

12.4 TDSi grants to the Buyer, where the Buyer is a distributor, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the System, the Software and the Documents for the sole purpose of supplying the System and Software to an End User.

12.5 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.4.

12.6 The Buyer shall not remove, cover, deface or alter any trade mark, trade name, copyright notice, guarantee or other statement or marking affixed or applied by TDSi on or to (or incorporated in) the System, the Software, the Documents or any related technical or promotional material or packaging.

13. TERMINATION

13.1 TDSi may give written notice to the Buyer terminating the Contract with immediate effect if the Buyer;

13.1.1 shall fail to make any payment when due;

13.1.2 shall breach any provision of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of written notice from TDSi to do so;



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- 13.1.3 in the opinion of TDSi, has a financial position that has deteriorated or is likely to deteriorate to such an extent that the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 13.1.4 shall cease or threaten to cease to carry on business;
- 13.1.5 shall make any composition with creditors or shall have entered into or shall propose to enter into any voluntary arrangement within the meaning of the Insolvency Act 1986, or shall suffer the appointment of a receiver, and/or manager, administrative receiver or administrator of the whole or any part of its assets or undertaking, or if any order shall be made or a notice be issued convening a meeting of shareholders to consider passing of a resolution for its winding-up (otherwise than for the purposes of amalgamation or reconstruction), or if the Buyer being an individual shall commit any act of bankruptcy or shall compound with his creditors or take or suffer any similar action in consequence of debt (and in any such case) then
- 13.2 Subject to Condition 13.3 below, if TDSi shall exercise its rights under Condition 13.1, then TDSi shall have no further liability whatsoever to the Buyer.
- 13.3 Termination of the Contract, howsoever arising, shall be without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination or any of the provisions of the Contract (such as those relating to liability, confidentiality and intellectual property rights) which are of a continuing nature.

14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Contract:
- 14.1.1 The Buyer shall immediately pay to TDSi all of TDSi's outstanding unpaid invoices and interest and, in respect of any System and/or Software that has been supplied but for which no invoice has been submitted, TDSi shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 14.1.2 The Buyer shall return any part of the System, Software and Documents which have not been fully paid for. If the Buyer fails to do so, then TDSi may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 14.2 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. EXPORT CONTROL

- 15.1 The Buyer undertakes to comply with English export control laws including without limitation (i) not to use any System or any Software or to (ii) sell or otherwise dispose of any System or licence any Software, directly or indirectly to any other person for use in connection with any stage in the development, production, handling, detection or storage of chemical, biological or nuclear weapons or missiles or



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any part thereof ("Prohibited Purposes") without the express prior written consent of TDSi which will only be given if TDSi first obtains the required governmental permission.

- 15.2 The Buyer undertakes to enquire as to the end use of any System or any Software which it intends to sell or otherwise dispose of including making all enquiries as would be made by a prudent business person to confirm that the System or any Software will not be used for a purpose prohibited by any law of England or any international law.
- 15.3 The Buyer undertakes to indemnify TDSi in full and on demand from any claim, cost, expense, loss or liability which TDSi may suffer or incur in connection with the use, sale or other disposal of any System or any Software contrary to the export control laws of England or otherwise as a consequence of a breach by the Buyer of this Condition 15.

16. GENERAL

- 16.1 TDSi shall not be liable for failure or delay in performing any of its obligations by reason of any circumstances outside its control, including (without limitation) any act of God, war, riot, labour dispute, accident, breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials, equipment, software or transport, refusal of any licence or permit or any order, sanction or request of any government or governmental authority.
- 16.2 All drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like (together the "Details"), contained in any Documents, literature or other material supplied by TDSi under or in connection with the Contract or otherwise communicated to the Buyer are provided or made by TDSi in the belief that they are as accurate as reasonably possible, however TDSi provides no warranty or grantee as to the accuracy or reliability of the aforesaid Details. Except for current Software specifications published by TDSi, the Details do not constitute a description of the System or of the Software, nor shall the Details be taken as being representations made by TDSi.
- 16.3 No relaxation, forbearance, delay or indulgence by TDSi in enforcing any of the terms of conditions of the Contract or the granting of time by it to the Buyer shall prejudice, affect or restrict its rights and powers under the Contract.
- 16.4 TDSi may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.5 The Buyer shall not assign, transfer, charge, subcontract or otherwise deal with the whole or any part of the Contract without the prior written consent of TDSi.
- 16.6 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing by TDSi.
- 16.7 If any provision or part-provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable 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



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deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 16.6 shall not affect the remaining provisions of the Contract and the remainder of the Contract shall continue in full force and effect.

- 16.8 The parties to this 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.
- 16.9 Any notice, invoice or other communication to be given under or in connection with the Contract shall be given in writing and delivered by hand or pre-paid first class post, to the principal address or place of business of the relevant party or to such other address as such party may have notified to the other for the purpose hereof. Any notice, invoice or other communication sent by pre-paid first class post shall be deemed (in the absence of evidence of earlier receipt) to have been served, if in the UK, three days after despatch or if overseas seven days after despatch. Any notice delivered by hand shall be deemed to have been served on the date of delivery at the proper address.
- 16.10 Any Contract and these Conditions are governed by and shall be interpreted in accordance with English law.
- 16.11 Each party irrevocably agrees, for the sole benefit of TDSi that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation. Nothing in this Condition 16.11 shall limit the right of TDSi to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.



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