

Terms & Conditions

HI Audio Visual Limited (HIAV)

Conditions of Sale, Installation and Maintenance of Equipment

1. Interpretation

1.1 In these Conditions, the following words and expressions shall have the following meanings:

HIAV - means HI Audio Visual Limited a company registered in Scotland whose registered office is at 39 Dalsholm Avenue, Dalsholm Industrial Estate, Glasgow G20 0TS;

Customer - means the person whose details are set out on the Quotation; and where the Customer is a partnership references to "Customer" include all partners and each partner is jointly and severally liable for performance of the Customer's obligations under the Agreement;

Agreement - means the agreement made between HIAV and the Customer comprising these Conditions, the Quotation and the Scope of Work;

Delivery and Installation Date(s) - means the estimated dates for the delivery and installation of the Equipment as set out in the Quotation;

Equipment - means the items of equipment and accessories specified on the Quotation and any other items of equipment agreed between the parties from time to time;

Initial Maintenance Fee - means the fee for provision of Maintenance Services during each Maintenance Year of the Initial Maintenance Term, as set out in the Quotation;

Initial Maintenance Term - means the initial maintenance term set out in the Quotation;

Maintenance Commencement Date - means the date from which HIAV will perform the Maintenance Services, being the date on which the tests referred to in Condition 4.7 have been successfully completed;

Maintenance Fee - means the fee payable annually for Maintenance Services, as increased from time to time in accordance with the Agreement, including the Initial Maintenance Fee but excluding for the avoidance of doubt any other sums charged by HIAV from time to time in respect of services not included in Maintenance Services;

Maintenance Year - means the period of 12 months commencing on the Maintenance Commencement Date and expiring on the first anniversary of the Maintenance Commencement Date, and each successive period of 12 months thereafter during which HIAV provides Maintenance Services;

Maintenance Services - means the number of preventive maintenance visit(s) per Maintenance Year set out in the Quotation and the provision of maintenance and repair services for the Equipment in response to a fault, as set out in the Quotation and Conditions 8 - 11 of the Agreement;

Price - means the price for the supply and installation of the Equipment as set out in the Quotation;

Quotation - means HIAV's quotation attached to these Conditions;

Response Time - means, where Maintenance Services are provided, the number of hours, commencing from the time at which a notification of the fault is received by HIAV, within which HIAV agrees to respond to notification of a fault, as set out in the Quotation and Condition 8.3;

Scope of Work - means the document entitled "Scope of Work" agreed in writing between the parties setting out the Customer's operational, installation and performance requirements for the Equipment;

Site - means the address specified in the Quotation where Equipment is to be installed and maintained;

Software - means software licensed by HIAV to the Customer pursuant to the Agreement to enable the Customer to use the Equipment, excluding, for the avoidance of doubt, Third Party Software;

Third Party Software - means the software described in the Quotation for which HIAV will procure a licence for the Customer in accordance with Condition 6;

Warranty Period - means the period of twelve months commencing on the date on which the tests referred to in Condition 4.7 have been successfully completed;

Working Hours - means 9 a.m. to 5 p.m. Monday to Friday inclusive (excluding bank and public holidays in Scotland).

1.2 Each Quotation is valid until the date specified in it, unless HIAV withdraws the Quotation before that date. If no date is specified in the Quotation, it shall be valid for 30 days from the date of the Quotation. A contract shall not exist and the Agreement shall not come into force until a valid Quotation signed by the Customer has been received by HIAV.

1.3 The Agreement shall govern the contract between HIAV and the Customer for the sale, installation and maintenance of the Equipment to the exclusion of any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order, specification or other document.

1.4 If any of the provisions of these Conditions, the Quotation and the Scope of Work are inconsistent, such inconsistency shall be resolved by applying the provisions of the documents in the following order of decreasing precedence to the extent of such conflict only:

- Scope of Work;
- Quotations;
- these Conditions.

1.5 In these Conditions the headings are for ease of reference only and the plural shall include the singular and vice versa.

2. *Scope of Agreement*

2.1 in accordance with the Agreement HIAV will:

- 2.1.1 supply and install the Equipment at the Site;
- 2.1.2 supply the Maintenance Services for the Equipment, where applicable;
- 2.1.3 grant to the Customer a licence of the Software on the terms of Condition 5; and
- 2.1.4 procure for the Customer a licence of the Third Party Software in accordance with Condition 6.

2.2 The Customer will:

- 2.2.1 pay the Price and, where appropriate, the Initial Maintenance Fee, subsequent Maintenance Fees and other sums due to HIAV in accordance with the terms of the Agreement; and
- 2.2.2 perform its obligations under the Agreement in a timely manner and co-operate with HIAV to enable HIAV to perform its obligations under the Agreement.

Supply and Installation of Equipment

3. Supply of the Equipment

3.1 The price for the supply and installation of the Equipment shall be as set out in the Quotation and, unless stated otherwise in the Quotation, and subject to Condition 3.2, HIAV may invoice the Customer any time after completion of installation of the Equipment, and such invoice shall be payable within 30 days of the date of HIAV's invoice. The terms of Condition 12 shall also apply.

3.2 If the Price is more than £25,000, HIAV shall, in its sole discretion, have the ability to do either of the following:

3.2.1 split the Agreement into two parts, being the supply of the Equipment and the installation of the Equipment. Each part shall constitute a separate contract. Each part shall be invoiced for separately: those elements of the Price relating to the supply of the Equipment shall be invoiced on or after delivery of the Equipment to the Site, and the remaining elements shall be invoiced on or after completion of installation of the Equipment. Such invoices shall be payable within 30 days of date of invoice. Any delay or defect in delivery of the Equipment shall not entitle the Customer to cancel the contract for installation of the Equipment; or

3.2.2 require payment(s) on account of its eventual charges upon receipt of the Customer's signed Quotation or any time thereafter. Such payment(s) shall be invoiced out first against the parts of the Price which relates to the supply of the Equipment, and then against the other parts. To the extent that any payment(s) on account exceeds HIAV's total eventual charges, such amounts shall be returned to the Customer as soon as reasonably practicable after HIAV's final invoice in respect of the Agreement is issued.

3.3 The Customer warrants to HIAV that the Scope of Work contains all the Customer's requirements in relation to the Equipment. The Customer is responsible for ensuring that the contents of the Quotation and the Scope of Work are complete and accurate.

3.4 The Equipment will be as described in the Quotation. All drawings, descriptive matter, specifications and advertising issued by HIAV or contained in HIAV's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the equipment described in them. They shall not form part of the Agreement.

3.5 If the Equipment is delivered to the Customer prior to installation the Equipment will be at the Customer's risk from the time of delivery until commencement of installation and during that period the Customer will insure the Equipment in accordance with Condition 3.7.2. Thereafter risk in the Equipment will pass to the Customer on the date on which the tests referred to in Condition 4.7 have been successfully completed.

3.6 Ownership of the Equipment will not pass to the Customer until HIAV has received in full in cash or cleared funds:

3.6.1 all sums payable in respect of the supply and installation of the Equipment; and

3.6.2 all other sums which are or which become payable by the Customer to HIAV on any account including any interest on such sums.

3.7 Until ownership of the Equipment has passed to the Customer, the Customer shall:

3.7.1 hold the Equipment on a fiduciary basis as HIAV's Bailee; keep the Equipment separate from other equipment belonging to the Customer or any third party in a way that it is readily identifiable as HIAV's property; and not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and/or

3.7.2 keep the Equipment in satisfactory condition insured for its full price against all risks, hold the proceeds of insurance on trust for HIAV and not mix them with any other money, nor pay them into an overdrawn bank account.

3.8 The Customer's right to possession of the Equipment shall terminate immediately and all sums shall become due and payable immediately and the Customer agrees that HIAV shall have the right to rescind or terminate any order for the Equipment and/or services (including where the Equipment has been delivered) and/or to suspend any further deliveries under any order for the Equipment if before ownership of the Equipment has passed to the Customer:

3.8.1 the Customer is affected by any of the events specified in Condition 11.2.2; or

3.8.2 the Customer encumbers or in any way charges any of the Equipment or suffers or allows any execution, whether legal or equitable, to be levied on the Customer's property or obtained against the Customer, or fails to observe or perform any of the Customer's obligations under the Agreement or the Customer ceases to trade.

3.9 HIAV shall be entitled to recover payment for the Equipment and installation notwithstanding that ownership of any of the Equipment has not passed from HIAV.

3.10 The Customer grants HIAV, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be kept (including but not limited to the Site) in order to inspect it or, where the Customer's right to possession has terminated, to recover it.

3.11 The Customer shall inform HIAV as soon as reasonably practicable if the Customer wishes to cancel or postpone the installation of the Equipment. If HIAV receives notice of such cancellation or postponement less than 72 hours before installation is due to commence, HIAV may charge the Customer a fee of an amount equal to the elements of the Price relating to the provision of labour for installation of the Equipment, to the extent that HIAV is unable to reallocate such anticipated labour to another contract for HIAV. Such fee shall be without prejudice to HIAV's right to charge the Customer for those elements of the Price which relate to services, goods or third party disbursements which it has incurred before the time it receives notification of such cancellation or postponement.

3.12 On termination of the Agreement, howsoever caused, HIAV's (but not the Customer's) rights contained in this Condition 3 shall remain in effect.

Delivery and Installation of the Equipment

4. Delivery and Installation of the Equipment

4.1 Any date specified for delivery and/or installation is an estimate only and time for delivery or installation shall not be of the essence or capable of being made of the essence by notice. HIAV will not be liable for any losses (including loss of profit) or costs incurred by the Customer which are caused by any delay in the delivery or installation of the Equipment nor will any delay entitle the Customer to terminate or rescind the Agreement.

4.2 Subject to Condition 4.3 and to the Customer complying with its obligations under the Agreement and unless otherwise agreed, HIAV will carry out the installation and commissioning of the Equipment at the Site following delivery of all Equipment and necessary installation equipment to the Site.

4.3 HIAV shall inspect the Site before installation of the Equipment to confirm that the Site is suitable for the installation of the Equipment. If in HIAV's opinion the Site is not suitable, HIAV will notify the Customer of the issues that need to be rectified before installation can take place. Inspection of the Site in accordance with this Condition 4.3 will not render HIAV liable in any respect for the suitability of the Site.

4.4 The Customer will provide HIAV with a stabilized clean mains power supply and technical earth at the Site, in accordance with HIAV's reasonable instructions, and maintain the same until the Equipment is installed.

4.5 The Customer warrants that it has obtained any necessary consents, including but not limited to landlord consents, listed building consents, conservation area consents, planning permissions and building regulations approvals (together "Relevant Consents") as may be required for the installation of the Equipment at the Site, and that it will notify HIAV of any specific requirements of such Relevant Consents which are applicable to the installation of the Equipment at the Site.

4.6 If the Customer has not fully complied with its obligations under the Agreement at the time HIAV is due to commence installation of the Equipment, HIAV shall be entitled to remove the Equipment from the Site and give notice in writing to the Customer requiring it to perform its obligations within the time period specified in the notice. The Customer will be liable to HIAV for all loss, damage, costs and expenses suffered or incurred by HIAV as a result of the Customer's breach and HIAV may require payment of such sums prior to installation of the Equipment. If the Customer fails to remedy the breach or make the required payment, HIAV may terminate the Agreement by notice in writing to the Customer.

4.7 Following installation of the Equipment, HIAV will carry out tests to confirm that the Equipment is operating in accordance with the Scope of Work. If the tests are not completed successfully HIAV will carry out any necessary work on the Equipment and repeat the tests within a reasonable time. Following successful completion of such tests (whether the initial tests or the repeat tests), the Customer shall sign such paperwork as HIAV requires confirming the same. The Customer's acceptance of the Equipment shall be deemed to have occurred on whichever is the earliest of:

- 4.7.1 the signing by the Customer of the paperwork referred to in Condition 4.7;
- 4.7.2 the expiry of five days after the completion of the tests referred to in Condition 4.7; and
- 4.7.3 the use of the Equipment by the Customer in the normal course of its business.

4.8 HIAV shall provide, within a reasonable time following installation, one copy of the manufacturer's operational manual pertaining to the operation of the Equipment or a bespoke operation manual, if included in the Quotation. HIAV reserves the right to charge for the supply of further literature at its then current price. Any such charges shall be due and payable within 30 days of the date of HIAV's invoice.

Software Licence

5. Software Licence

5.1 HIAV shall, subject to this Condition 5.1, grant to the Customer a perpetual, non-exclusive, non-transferable licence to use the Software in relation to the Equipment at the Site. The licence shall commence when installation has been successfully completed and the Customer has paid the Price and Initial Maintenance Fee, if applicable, and may be terminated by HIAV in accordance with Condition 5.6.

5.2 No licence is granted for use of the Software with any other hardware or at any other address.

5.3 The Customer acknowledges that it shall have no rights in the Software or in any trade mark, trade name, or service mark used in association with the Software.

5.4 The Customer shall not:

- 5.4.1 copy, reproduce, assign or otherwise deal with the Software without HIAV's prior written approval; or
- 5.4.2 modify, de-compile, disassemble, reverse engineer, merge or combine with other software, copy, translate, adapt, or vary any of the Software without HIAV's prior written consent except as expressly permitted by applicable law.

5.5 HIAV will indemnify the Customer against any claim that the use or possession of the Software (but for the avoidance of doubt, not the Third Party Software), as authorised by the Agreement infringes the intellectual property rights of any third party provided that HIAV is given immediate and complete control of such claim, the Customer does not prejudice HIAV's defence of such claim and the claim does not arise as a result of the use of the Software in combination with any equipment or software not supplied or approved by HIAV. HIAV shall have the right to replace or change all or any part of the Software in order to avoid any infringement or to terminate the Agreement and the Maintenance Services (if any) and refund to the Customer an appropriate portion of the price paid by the Customer for the supply and installation of the Equipment. The foregoing states the entire liability of HIAV to the Customer in respect of the infringement of intellectual property rights of any third party.

5.6 HIAV shall be entitled to terminate the Customer's licence to use the Software immediately by notice in writing:

- 5.6.1 if the Customer attempts or purports to transfer or assign the licence of the Software or is in breach of any other provision of the Agreement;
- 5.6.2 the Customer is affected by any of the events specified in Condition 11.2.2;
- 5.6.3 in accordance with Condition 5.5.

Third Party Software

6. Third Party Software

HIAV shall provide the Third Party Software to the Customer under the standard licence terms provided by the relevant third party, copies of which shall be provided to the Customer. The Customer agrees to comply with such licence terms and to

indemnify and hold HIAV harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising. HIAV may treat the Customer's breach of any such licence as a breach of the Agreement.

HIAV's Warranties

7. HIAV's Warranties

7.1 Subject to the provisions of Condition 7.2 below, HIAV warrants to the Customer:

7.1.1 that HIAV has full right and title to the Equipment and the right to pass title in the Equipment to the Customer and to grant the licence of the Software pursuant to Condition 5;

7.1.2 HIAV shall install the Equipment with reasonable care and skill; and

7.1.3 that during the Warranty Period the Equipment will perform substantially in accordance with the Scope of Work and be free from defects arising from defective materials or workmanship.

7.2 The warranties contained in Condition 7.1 are given subject to the following:

7.2.1 any claims made pursuant to Condition 7.1 must be notified to HIAV within the Warranty Period and must include a written statement of the defect and evidence of its the existence;

7.2.2 replacement parts supplied are warranted only for the unexpired portion of the Warranty Period;

7.2.3 the Customer and/or the Customer's employees have operated the Equipment (or relevant part thereof) at all times in accordance with the operational manual or manuals provided to the Customer by HIAV in accordance with Condition 4.8 for each constituent item of the Equipment;

7.2.4 the Customer is not in breach of any of the Customer's obligations pursuant to the Agreement; and

7.2.5 the Equipment or the Software has not been modified, altered or interfered with in any way without HIAV's prior written consent or been subject to misuse, improper maintenance, negligence or other damage; and

7.2.6 HIAV shall not have any liability for the Third Party Software.

7.3 In the event of a breach of any of the warranties contained in Condition 7.1, HIAV's liability to the Customer:

7.3.1 with regard to the supply and installation of Equipment, shall be limited to repairing or replacing or re-installing the Equipment in question; and

7.3.2 with regard to Software, shall be limited to HIAV using reasonable efforts to correct such defect in each case within a reasonable period of time.

Maintenance

8. Maintenance Services

These maintenance terms apply only if the Customer has stated on the Quotation that it wishes HIAV to perform the Maintenance Services in respect of the Equipment.

8.1 HIAV shall provide Maintenance Services with reasonable care and skill.

8.2 Unless otherwise agreed, HIAV shall provide during each Maintenance Year the number of preventative maintenance visit(s) set out in the Quotation at such time(s) during Working Hours and on such date(s) as the parties agree from time to time. During such visit HIAV shall:

8.2.1 carry out routine inspection and testing of the Equipment in accordance with HIAV's recommendations; and

8.2.2 carry out such repairs, replacement of parts, cleaning, lubrication or adjustment as HIAV shall believe to be necessary in respect of any Equipment.

8.3 Where during a Maintenance Year the Customer experiences a fault or malfunction with the Equipment, the Customer shall notify HIAV. Where possible, the Customer shall attempt to rectify the fault or malfunction by discussing the problem on the telephone with one of HIAV's engineers and following his/her instructions. Where this is not possible, HIAV shall use reasonable endeavours to arrange for one of its engineers to arrive at the Customer's premises during Working Hours within the Response Time.

8.4 If HIAV decides that Equipment reported to be faulty cannot be repaired at the Site, HIAV shall be entitled to remove the Equipment for repair. If the Customer objects to the removal of the Equipment, HIAV shall not have any further obligation to provide Maintenance Services with respect to that Equipment and shall cease to do so, but will use reasonable endeavours to provide Maintenance Services for the remaining Equipment. The Customer shall not be entitled to a refund of any part of any Maintenance Fee payable in respect of the Initial Maintenance Term. Following expiry of the Initial Maintenance Term the Customer shall not be entitled to a refund of any part of the Maintenance Fee for the then current Maintenance Year, but the Maintenance Fees for subsequent Maintenance Years shall be reduced appropriately.

8.5 If HIAV has to remove any Equipment from the Site, it will use reasonable endeavours to loan to the Customer alternative equipment free of charge. Any such alternative equipment shall remain HIAV's property and shall be at the Customer's risk while it is at the Site. The Customer shall indemnify HIAV in respect of any damage to, theft or loss of the alternative equipment and shall insure it for its full value in accordance with Condition 3.7.2 while it is at the Site. When HIAV has repaired and, where applicable, re-installed the previously faulty Equipment or has informed the Customer that the faulty Equipment is not capable of repair, the Customer shall cease using the loaned equipment and make it available at the Site for collection by HIAV.

8.6 In respect of any Equipment for which HIAV is providing Maintenance Services under the Agreement, HIAV reserves the right to supply new, second-hand or reconditioned replacement parts. Any parts replaced by HIAV pursuant to the Agreement shall become HIAV's property as soon as they have been replaced, and the Customer warrants that either the Customer shall have a free and unencumbered title to such replaced parts or (where any such equipment has been leased or charged) that it shall have obtained all necessary consents and authorities to part with possession of and give good title in the replaced parts to HIAV.

Excepted Services

9. Excepted Services

9.1 Unless otherwise agreed, the Maintenance Services shall not include maintenance in respect of:

9.1.1 Third Party Software, any equipment used by the Customer in conjunction with the Equipment or accessories, attachments, or other devices not supplied to the Customer by HIAV under the Agreement; or

9.1.2 the correction of any fault or defect which arises due to:

- (a) the Customer's failure to maintain a suitable environment for the Equipment in accordance with HIAV's specifications including, without limitation, failure to maintain a constant power supply, air conditioning or humidity control;
- (b) the Customer's neglect or misuse of the Equipment or the Customer's failure to operate the Equipment in accordance with HIAV's or the manufacturer's instructions or for the purpose for which the Equipment was designed;
- (c) any alteration, modification or maintenance of the Equipment or its specification not approved by HIAV or the manufacturer or made by any party other than HIAV without HIAV's prior written approval;
- (d) the transportation or relocation of the Equipment save where the same has been performed by HIAV or under HIAV's direction;
- (e) the use of defective or inappropriate supplies with the Equipment;
- (f) accidental damage or normal wear and tear;
- (g) the need for electrical work external to the Equipment;
- (h) any accident or disaster affecting the Equipment including, without limitation fire, flood, water, wind, lightning, transportation, radiation in the environment, vandalism or burglary;
- (i) the Customer's failure, inability or refusal to give HIAV personnel proper access to the Equipment or to permit HIAV to remove the Equipment from the Site for repair; or
- (j) the Customer's continued use of the Equipment following notification to HIAV of a fault or defect; or
- (k) upgrades to the Equipment, the Software or the Third Party Software.

9.2 At the Customer's request HIAV may, but shall not have any obligation to, provide all or any of the services referred to in Condition 9.1, and charge for such services in accordance with Condition 9.3.

9.3 Where HIAV provides any services referred to in Conditions 8.4, 8.5, 9.1, 12.2 or 16.2, HIAV's charges shall be based on its labour charges in force at the time such services are provided plus any expenses reasonably incurred by HIAV in providing such services. Such additional charges shall be invoiced before the services are provided and shall be payable by the Customer within 30 days of receipt of such invoice.

9.4 The Maintenance Services, and the Maintenance Fee, do not include maintenance in respect of the following:

- 9.4.1 Equipment which in HIAV's opinion (its decision being final) is beyond economical repair. HIAV may in its discretion offer to supply replacement Equipment at HIAV's prices in force from time to time;
- 9.4.2 any software provided by others including Third Party Software;
- 9.4.3 cathode ray tubes; LCD panels; plasma display glass; lamps; screen material; changes to Software.

Maintenance Fees

10. Maintenance Fees

10.1 The Initial Maintenance Fee shall be as set out in the Quotation and shall be payable on the Maintenance Commencement Date and subsequently in accordance with this Condition 10. The Customer shall pay all Maintenance Fees annually in advance and the terms of Condition 12 shall apply.

10.2 Not later than 30 days before the expiry of a Maintenance Year HIAV shall notify the Customer in writing of the Maintenance Fee payable for the next Maintenance Year and shall accompany such notice with an invoice for payment requiring payment to be received by HIAV on or before the commencement of the next Maintenance Year.

10.2.1 Where the next Maintenance Year is part of the Initial Maintenance Term the Customer shall pay the Maintenance Fee within 14 days of invoice. If HIAV has not received the Maintenance Fee on the first day of the Maintenance Year to which it relates, HIAV may suspend the provision of Maintenance Services until the Maintenance Fee has been received by HIAV in cleared funds.

10.2.2 Where the Initial Maintenance Term has expired, the Customer may terminate Maintenance Services by not less than 14 days notice to HIAV to expire before the end of the current Maintenance Year. If HIAV has not received the Maintenance Fee on the first day of the Maintenance Year to which it relates, HIAV may terminate the Maintenance Services with immediate effect by notice in writing.

10.3 The Maintenance Fee shall not include the cost of any supplementary services referred to in Conditions 8.4, 8.5, 9, 12.2 or 16.2 for which HIAV shall be entitled to charge in accordance with Condition 9.3.

10.4 HIAV reserves the right to increase the Maintenance Fee for any Maintenance Year (including for the avoidance of doubt any Maintenance Year of the Initial Maintenance Term) if in HIAV's reasonable opinion the Equipment is, or will be, used in or subjected to environmental conditions which are exceptional, having regard to those recommended by HIAV or the manufacturer of the Equipment. Any such increase shall take effect from the date of written notice of the increase by HIAV to the Customer and a separate invoice shall accompany such notice to the Customer in respect of the increase plus VAT. Payment of the increase shall be due and payable within 30 days of the date of the notice and invoice. If HIAV has not received the relevant amount by the due date, HIAV may terminate the Maintenance Services by notice in writing.

Termination or Suspension of Maintenance Services

11. Termination or Suspension of Maintenance Services

11.1 The Customer agrees that Maintenance Services may not be terminated by the Customer during the Initial Maintenance Term set out in the Quotation. On expiry of the Initial Maintenance Term the provision of Maintenance Services may be terminated:

11.1.1 by the Customer giving not less than 14 days' notice to HIAV upon receipt of a notice of Maintenance Fee pursuant to Condition 10.2;

11.1.2 forthwith by HIAV by notice in writing if the Customer fails to pay a Maintenance Fee in accordance with Condition 10.2 or any increase in the Maintenance Fee in accordance with Condition 10.4;

11.1.3 forthwith by HIAV by notice in writing if the Customer fails to pay any additional charges due here under within 30 days of the due date;

11.1.4 forthwith by HIAV by notice in writing in respect of any Equipment in respect of which the Customer withholds consent pursuant to Conditions 8.4 or 8.5, or which in HIAV's reasonable opinion can no longer be maintained in good working order by the provision of replacement or spare parts or is not capable of repair.

11.2 The provision of Maintenance Services may be terminated, including for the avoidance of doubt during the Initial Maintenance Term:

11.2.1 forthwith by either party if the other party commits any material breach of any term of the Agreement (other than one falling within Condition 11.1.2 or 11.1.3) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request by the other party to remedy the same;

11.2.2 forthwith by either party if the other party (being an individual or partnership) has a bankruptcy order made against it or any partner or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), 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 or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party; or

11.2.3 automatically if HIAV terminates the Customer's licence of the Software in accordance with Condition 5.5 or 5.6.

11.3 If HIAV terminates its provision of Maintenance Services pursuant to this Condition 11 HIAV shall be entitled to retain all Maintenance Fees paid by the Customer prior to such termination and shall not have any further obligation to provide Maintenance Services to the Customer.

11.4 Subject to Condition 11.2.3, termination of Maintenance Services shall not terminate or affect the licence of the Software which shall continue in force in accordance with its terms.

11.5 Notwithstanding any other provision of these Conditions HIAV may:

11.5.1 terminate and/or suspend provision of Maintenance Services at any time during the Initial Maintenance Term if the provisions of Condition 11.1.2 - 11.1.4 apply; or

11.5.2 terminate the provision of Maintenance Services on not less than 30 days notice to the Customer to expire on the last day of the Initial Maintenance Term or any subsequent Maintenance Year.

Price and Payment Terms

12. Price and Payment Terms

12.1 All prices, fees and other sums due under the Agreement shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance which the Customer shall pay in addition at the then prevailing rate.

12.2 The price for supply and installation of the Equipment, the Initial Maintenance Fee and Maintenance Fees, all other prices quoted by HIAV for the provision of services apply on the basis that work will be carried out during Working Hours. If, at the Customer's request, HIAV performs any services outside Working Hours HIAV will charge for such work a supplementary charge at HIAV's then prevailing rates. For the avoidance of doubt nothing in the Agreement shall oblige HIAV to perform work outside Working Hours.

12.3 The Customer will make all payments due to HIAV under the Agreement without any deduction by way of set-off, counterclaim, discount, and abatement or otherwise.

12.4 If the Customer fails to pay HIAV any sum due pursuant to the Agreement on the due date the Customer will be liable to pay interest to HIAV on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HIAV's bankers accruing on a daily basis until payment is made, whether before or after any judgment.

12.5 The Customer shall not be entitled to delay any payments due under the Agreement by reason of a failure or delay in the performance by HIAV of its obligations under this Agreement.

12.6 Time shall be of the essence for all payments payable by the Customer under the Agreement.

Customer's Obligations and Acknowledgements

13. Customer's Obligations and Acknowledgements

13.1 The Customer agrees throughout the continuance of the Agreement:

13.1.1 to grant HIAV such access to the Equipment and/or the Site as HIAV reasonably requires from time to time in order to discharge its obligations under the Agreement;

13.1.2 to make available in respect of the Equipment such facilities as HIAV reasonably requires in order to discharge HIAV's obligations under the Agreement including, without limitation, adequate workspace, storage, office furniture and equipment;

13.1.3 to take all necessary precautions to protect the health and safety of HIAV's employees, agents and sub-contractors whilst on the Site;

13.1.4 to make available the Equipment and supply all documentation, operating records and any other information necessary for HIAV to discharge its obligations under the Agreement;

13.1.5 to keep and operate the Equipment in a proper and prudent manner and ensure that only competent trained persons are allowed to operate it;

13.1.6 not to make any addition, modification or adjustment to the Equipment without HIAV's prior written consent; and

13.1.7 to provide any other assistance as is reasonably required by HIAV in order to perform its obligations under the Agreement.

13.2 The Customer will ensure that the air conditioning system at the Site is fully operational prior to any installation and/or maintenance of the Equipment by HIAV and that all foreign bodies present in such system have been removed.

13.3 The Customer warrants that all information it provides to HIAV including the information on the Quotation is true and accurate and agrees that HIAV may disclose information about the Customer and the Agreement as HIAV considers reasonable and necessary.

Limit of Liability

14. Limit of Liability

14.1 The provisions of clause 7 and the following provisions of this Clause 14 set out HIAV's entire liability (including any liability for the acts or omissions of HIAV's employees, agents and sub-contractors) to the Customer in respect of any:

14.1.1 breach of the Agreement;

14.1.2 representation, statement or tortious act or omission, including negligence or breach of statutory duty, arising under or in connection with the Agreement.

14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

14.3 Nothing in these Conditions excludes or limits HIAV's liability:

14.3.1 for death or personal injury caused by HIAV's negligence;

14.3.2 under section 2(3) of the Consumer Protection Act 1987;

14.3.3 for any matter which it would be illegal for HIAV to exclude or attempt to exclude its liability; or

14.3.4 for fraud or fraudulent misrepresentation.

14.4 Subject to Conditions 7, 14.2 and 14.3:

14.4.1 HIAV shall not be liable to the Customer for the Third Party Software or for any pure economic loss, loss of profit, goodwill, business opportunity or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement; and

14.4.2 HIAV'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 Agreement shall be limited:

(a) in relation to loss of or damage to the Equipment or any part of it caused by HIAV's negligence, to HIAV at its own expense and at its absolute discretion either restoring such Equipment or part to the condition it was in immediately before

such damage or replacing such Equipment or part with items or part (as the case may be) in a condition similar to that which the lost or damaged Equipment or part was in immediately before such loss or damage;

(b) in relation to loss of, or physical damage to, the Site or to any property, other than the Equipment, lawfully on the Site caused by HIAV's negligence, to £100,000 per event or in aggregate whether the same shall arise out of any single event or a series of connected events;

(c) in relation to the supply of Maintenance Services, to the Maintenance Fee paid by the Customer for the Maintenance Services for the Maintenance Year during which the claim is made;

(d) in relation to any other breach, to the price paid by the Customer for the supply and installation of the Equipment the subject of the claim.

14.5 In no event will HIAV be liable in respect of any failure by the Customer to comply with any Relevant Consents as defined in Condition 4.5 above or to perform any of its other obligations under the Agreement.

14.6 During the continuance of the Agreement HIAV shall have Employer's Liability insurance of not less than £10 million in respect of any one occurrence, Public Liability Insurance of not less than £5 million in respect of any one occurrence, and Product Liability Insurance of not less than £5 million in respect of any one occurrence and in aggregate.

Events beyond HIAV's control

15 Events beyond HIAV's control

HIAV reserves the right to defer the date of delivery and installation of the Equipment or the performance of the Maintenance Services or to cancel the Agreement (without liability to the Customer) if HIAV is prevented from or delayed in carrying on its business due to circumstances beyond HIAV's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or sub-contractors or inability or delay in obtaining supplies of adequate or suitable materials.

Change Control and Technology Substitution

16 Change Control and Technology Substitution

16.1 The Customer may, by giving written notice to HIAV at any time prior to the delivery and installation of the Equipment, request a change to the Equipment.

16.2 Within seven Working Days of receipt of such notice, HIAV shall, at its standard rates then in force, prepare for the Customer, as appropriate, a written quote for or estimate of any increase or decrease in the Price and Initial Maintenance Fee, and of any effect that the requested change would have on the Agreement and the Delivery and Installation Date.

16.3 Within 14 Working Days of receipt of the written quote or estimate referred to in Condition 16.2, the Customer shall notify HIAV in writing whether or not it wishes the requested change to be made. If the change is required, HIAV shall not make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the Agreement, the Delivery and Installation Date, Price and Initial Maintenance Fee. If the Customer does not wish the requested change to be made the Delivery and Installation Date set out in the Quotation will be amended as appropriate to reflect the time taken by the change control procedure.

Confidentiality

17 Confidentiality

17.1 Except as may be required by law, the Customer agrees to keep all information disclosed to it in the course of the Agreement confidential and to use it only for the purpose of performing its obligations under the Agreement. The Customer

shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the party's obligations under the Agreement and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as the recipient.

17.2 This Condition 17 shall survive termination of the Agreement.

Miscellaneous

18. Miscellaneous

18.1 Any termination of the Agreement or any part of it shall not release any liability of either party arising from events prior to the termination. Any terms which either expressly or by their nature are to continue after termination shall survive and remain in effect.

18.2 These Conditions, the Quotation and the Scope of Work contain the entire agreement between the parties with respect to the subject matter of the Agreement and supersede all oral and written communications and any prior agreement with respect thereto. No variation to the Agreement shall have effect unless expressly agreed to in writing and signed by duly authorised representatives of HIAV and the Customer.

18.3 The Customer acknowledges that, in entering into the Agreement, it has not done so on the basis of or relied on any representation, warranty or other provision except as expressly provided in the Agreement.

18.4 The Customer shall not assign or otherwise transfer any of its rights or obligations under the Agreement without HIAV's prior written consent, such consent not to be unreasonably delayed or withheld. HIAV shall be entitled to assign or sub-contract any of its rights or obligations under the Agreement to any holding, associated or subsidiary company.

18.5 Any notice or other document to be given under the Agreement shall be in writing and shall be deemed to have been served (if delivered by hand) on the date of delivery, (if delivered by first class post) on the second Working Day following the date of posting, (if given by facsimile transmission) on the date of transmission provided that within 24 hours after transmission a confirming copy thereof is sent by first class prepaid post to the other party at the address set out in the Agreement.

18.6 Nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.

18.7 In the event that any of the terms, conditions or provisions of the Agreement shall be determined by any competent authority to be invalid, unlawful, unenforceable or unreasonable to any extent, such term, condition or provision shall to that extent be severed from the body of this Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

18.8 Failure or delay by HIAV in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by HIAV of any breach of, or any default under, any provision of the Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

18.9 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by Scots Law and the parties submit to the jurisdiction of the Scottish Courts.

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