

1. DEFINITIONS

In these terms and conditions the following expressions have the following meanings;

“Conditions”	means these terms and conditions for the purchase of Products and/or Services which are incorporated into and form part of the Purchase Order;
“Contract”	means the contract between the Seller and the Purchaser for the supply of the Products and/or Services comprising:-
“Intellectual Property”	means without limitation, all database rights, rights in designs, rights in know-how, patents and rights in inventions (in all cases whether registered or unregistered and including all rights to apply for registration) and all other intellectual or industrial property rights in any jurisdiction) in any information, content, materials, data or processes.
“Issued Material”	means any property issued to the Seller by the Purchaser to be used in fulfilment of the Seller’s obligations;
“Products”	means the products, goods or items which are the subject of the Contract and which may (without limitation) comprise or include Software;
“Purchase Order”	means the purchase order (in the Purchaser’s standard form) overleaf together with the Conditions;
“Purchaser”	means Building Management Solutions Integrators Limited (“BMSI”) (company number 03584156) whose registered office is at Unit 6a Waltham Park, Waltham Road, White Waltham, Maidenhead, Berkshire, SL6 3TN;
“Seller”	means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made by the Purchaser;
“Services”	means the work or services or any of them to be provided and where necessary delivered by the Seller pursuant to the Purchase Order;
“Software”	means the software items which are comprised or included in or related to the Products and/or Services;

2. APPLICATION

- 2.1 For the avoidance of doubt, the Conditions shall apply to and be incorporated into the Contract. Any offer by the Seller and/or acceptance of a Purchase Order by the Seller shall be deemed to constitute an acceptance of and agreement to comply with the Conditions. The Conditions will govern the supply of the Products/Services, to the exclusion of all other terms and conditions whether implied, written or oral terms, conditions, arrangements, customs or practices.

3. QUALITY AND DESCRIPTION

- 3.1 All Products and Services supplied shall:
- (i) conform with the quantity, quality, description and any other particulars contained in the Contract;
 - (ii) conform with any sample drawing, description and specification furnished;
 - (iii) be of satisfactory quality (as defined in the Sale of Goods Act 1979 as amended), fit for any intended use expressly or impliedly made known to the Seller and free from defect;
 - (iv) comply with all performance specifications in the Contract;
 - (v) comply with the appropriate British Standard or equivalent best industry standard;
- 3.2 All Services supplied shall be in full accordance with the terms of the Contract and shall be executed in a proper and skilful manner by properly qualified and experienced personnel and conform to the best industry standards.
- 3.4 Testing, inspection and acceptance by the Purchaser or user under clause 5 shall not be deemed a waiver of the Seller’s obligations under this clause 3.
- 3.5 This clause 3 shall include and apply to any replacement, repaired, substituted or remedial Products or substituted or remedial Services provided by the Seller.

4. STATUTORY OBLIGATIONS

- 4.1 The Seller shall comply with all relevant statutes, rules and regulations, bye-laws and EC directives affecting its obligations and the performance of the Contract.
- 4.2 While on Purchaser’s premises, the Seller shall abide by any written or verbal instructions in relation to safety and security issued by the Purchaser.

5. INSPECTION AND REJECTION

- 5.1 The Seller warrants that it has inspected and tested the Products for compliance with the Contract prior to delivery and shall, if requested, supply the Purchaser with certificate of origin testing. Such certificates must state the Purchaser’s order numbers together with any item numbers.
- 5.2 If the Products and/or Services do not comply with the Contract the Purchaser shall within a reasonable time give notice of rejection to the Seller and without prejudice to any of its other rights the Purchaser may at its discretion require the Seller to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Products and replacing or otherwise righting any rejected Services. The rejected Products shall be returned to the Seller at its own risk and expense.
- 5.3 Any reference to “Seller” in this clause includes any sub-contractor of the Seller permitted under Clause 21.2 Where the Seller repairs or replaces Products or Services under these clauses, the Conditions shall apply to the repaired or replaced Products or Services.
- 5.4 The Purchaser reserves the right at reasonable times to inspect or test the Products or the Services at any stage before delivery and the Seller shall give rights of access to premises and such facilities as the Purchaser may reasonably require for such inspection.

6. DELIVERY AND RISK

- 6.1 Products and Services shall be delivered on the dates and at the rates and at the places specified in the Contract. Delivery may be direct to the Purchaser’s end user if so specified on the Purchase Order. The Purchaser acting reasonably may delay or alter such dates, rates and places upon giving the Seller reasonable notice in writing of such alterations.
- 6.2 Time of delivery is of the essence of the Contract.
- 6.3 The Seller shall ensure that all Products are marked in accordance with the provisions of the Contract and instructions of the Purchaser. Products shall be packed so as to reach the places of delivery undamaged and in good condition. The Seller shall provide in respect of

each consignment of Products a packaging note detailing the Purchaser's order number, description, code number (if any) and the quantity of Products consigned. The Purchaser shall not be obliged to return to the Seller any packaging or packing materials used in relation to the Products.

- 6.4 If the Seller fails to deliver in accordance with the Contract, then the Purchaser may cancel the Contract or any part of it and reserves all rights in damages and otherwise arising, including but not limited to the right to purchase substitute Products or Services elsewhere and to hold the Seller liable for any loss, expense or additional cost incurred.
- 6.5 The Seller recognises that late delivery may cause the Purchaser direct, indirect and/or consequential loss and/or loss of profits, for which the Seller agrees to be liable under the Conditions.
- 6.6 Risk in the Products passes on delivery.
- 6.7 Any Seller's property brought onto Purchaser's premises will be at and will remain at the risk of the Seller.
- 6.8 Any Issued Material will be at the Seller's risk whilst in his possession.

7. MARKED PRODUCTS

- 7.1 Products marked with any mark used or owned by the Purchaser or its Customers shall not be disposed of to any third party without the prior written consent of the Purchaser.

8. TITLE

- 8.1 The Seller warrants that it has good title to the Products it is selling to the Purchaser. Title to Products shall pass to the Purchaser on delivery without prejudice to any right of rejection to which the Purchaser may be entitled under clauses 5 and 6. The Seller acknowledges that the Products or Services may be sold on to an end user by the Purchaser.
- 8.2 The Seller warrants that on the date of delivery, it will have the full and unrestricted right, power and authority to sell, transfer and deliver all the Products to the Purchaser.
- 8.3 Clause 8.1 is without prejudice to Clause 11 in respect of any Software.

9. PRICES

- 9.1 All prices shall be as stated in the Contract. The prices are fixed and include delivery and all other charges which shall not be adjusted save as provided for in these Conditions.
- 9.2 Prices do not include VAT which shall be added by the Seller at the rate and in the manner from time to time prescribed by law.

10. PAYMENT

- 10.1 The Seller shall send to the Purchaser a detailed invoice stating the Purchase Order and Products or Services reference number. Terms of payment are 60 days from the end of the month of the invoice or from the date of delivery of the Products or Services, whichever is the later, unless otherwise stated on the front of the Purchaser Order.

11. SOFTWARE

- 11.1 If Products and/or Services include Software the Seller acknowledges that the Purchaser may be selling the same on to end users and warrants that it has good title to license the Software.
- 11.2 The Seller permits the Purchaser to market and resell the Software and any accompanying hardware either alone or as part of a package.
- 11.3 The Seller undertakes to supply the Purchaser with all updates of the Software and to allow it to copy them to those of its customers who hold an original copy version.
- 11.4 The Seller shall provide the Purchaser with such technical advice, assistance, data and documentation, including source code where necessary, to enable the Purchaser to maintain the Software if it so wishes.
- 11.5 The Seller acknowledges that Software updates, technical advice, assistance, data and documentation will be supplied by the Seller without charge.

12. SUBSTITUTION & MUTUALITY

- 12.1 The Seller is not obliged to utilise any specific individual to undertake the Works and can utilise any individual it considers necessary. The Seller has the right to supply a substitute of equivalent knowledge and skill. Where substitution occurs, the Seller will remain responsible for its obligations under the Order and will be responsible for the payment of the replacement, so that there will be no further payments outside of the agreed terms to pay for any handover period between the original worker and the replacement.
- 12.2 Neither the Purchaser nor the Seller seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this Order for services or during any notice period. The Purchaser is not obliged to offer work to the Seller and the Seller is not obliged to accept work where offered or provide services. The Purchaser is not obliged to pay the Seller at any time that there is no work available during the course of this Order or for periods where no work is undertaken.

13. CONFIDENTIALITY

- 13.1 The Contract and any other information supplied by the Purchaser is confidential. Issued Material is also confidential. Use of information and Issued Material is permitted solely for the purpose of carrying out the Contract. The Seller shall not without the prior written consent of the Purchaser (such consent not to be unreasonably withheld) copy or disclose them to anyone other than those employees or agents of the Seller who need to know.
- 13.2 The Seller shall not without the Purchaser's written consent advertise or otherwise make known that the Seller supplies or has supplied Products or Services to the Purchaser.

14. EQUIPMENT AND OTHER FACILITIES

- 14.1 Issued Material shall be and remain the property of the Purchaser even if charged for. The Seller hereby undertakes to maintain Issued Material in good order and condition, to keep it separate from the Seller's property and to identify it as the property of the Purchaser. The Seller shall not use it except in respect of Contracts with the Purchaser and risk in Issued Material shall be with the Seller who shall effect comprehensive insurance against all risks of its loss or damage of an amount equal to its replacement cost and with the Purchaser's interest noted on the policy and with the Purchaser as loss payees.
- 14.2 The Seller shall not do or omit to do anything which might affect the Purchaser's property in the Issued Material and the Seller shall immediately deliver to the Purchaser the Issued Material upon request by the Purchaser or otherwise upon completion of the Contract.

15. VARIATION OF SERVICES/GOODS

- 15.1 If at any item during the course of the Contract, the Purchaser wishes to vary the Services and/or Products ordered, it shall notify the Seller and the Seller shall within 7 days provide a written statement of the amount by which such variation would increase or decrease;
 - (i) the dates, timescales or milestones, and;
 - (ii) the charges;

which have been agreed in the Contract, and such other information as the Purchaser may reasonably require.

15.2 The Purchaser may instruct any reasonable variation to the Services and/or Products and the Seller shall comply with such instruction.

16. WARRANTY

16.1 Without prejudice to the Purchaser's rights under the Contract and statute the Seller warrants the Products and Services against defects other than those arising from a design furnished by the Purchaser arising for a period of 12 months (or as may be otherwise stated in the Contract) from the date of delivery of any Products or the completion of any of the Services or from the date of delivery of any defective Products repaired or replaced under the provision of clause 5.

The Seller warrants to the Purchaser that the Products will be:

- (i) of satisfactory quality;
- (ii) free from defects in material and workmanship and to the extent that the specifications were not provided by the Purchaser;
- (iii) free from design defects and suitable for the purposes identified by the Purchaser or made known to the Seller in writing prior to or at the time the Purchase Order was placed;
- (iv) conform to any relevant specification or sample; and
- (v) comply with all statutory requirements and regulations relating to the sale of the relevant Products.

16.2 The Seller recognises that the Purchaser has placed the Purchase Order in reliance upon the skill and expertise of the Seller and any statements and representations made by it.

16.3 Breach of the warranty in Clause 16.1 & 16.2 shall, without prejudice to its other rights, allow the Purchaser to terminate this Contract and claim damages, costs and expenses from the Seller.

17. INDEMNITY

17.1 The Seller shall fully indemnify the Purchase against any claims, liabilities, damages, costs or expenses suffered or incurred in relation to the Contract for the following:

- (i) in respect of any alleged or actual infringement by any of the Products or Services of any intellectual property right including but not limited to patents, copyrights, trademarks, service marks, registered designs, design rights or other third party rights and the Seller shall at its own cost defend or settle all such claims or actions and proceedings brought or threatened to be brought against the purchaser. Furthermore, the Seller shall accept the Purchaser's right to be consulted at all times in the handling by the Seller of any claims; or
- (ii) sustained by the Purchaser or for which the Purchaser may be liable as a result of the Seller's failure to perform its obligations under the Contract; or
- (iii) resulting from death, injury, loss or damage to persons or property caused or contributed to by negligence of the Seller, its employees, sub-sellers (if permitted), or agents.

17.2 The Seller accepts liability for all other loss or damage incurred by the Purchaser and which is attributable to negligence on the part of the Seller, its employees, sub-sellers (if permitted) or agents or otherwise results from a breach of the Contract by the Seller, its employees, sub-sellers or agents.

17.3 If Software is held to be infringing third party intellectual property rights then the Seller undertakes at its own expense to replace or amend the Software expeditiously so that it is no longer infringing.

18. FORCE MAJEURE

18.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligation under the Contract being prevented, hindered or delayed by reasonable control including but not limited to acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, explosion, epidemic or government action.

19. LICENCES

19.1 If the Products or Services supplied under the Contract require the Purchaser to have any permit or licence from any governmental or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time. The Seller warrants that it has all necessary permits and licences to allow it to sell the Products and Service to the Purchaser.

20. TERMINATION

20.1 If the Seller is in material breach of any of the terms of the Order the Purchaser may, at its sole discretion, immediately terminate the Order by giving notice in writing to the Seller.

20.2 The Purchaser may by 7 days written notice immediately terminate for convenience or immediately suspend for convenience its services of all or any obligations under the Order without liability for compensation or damages.

20.3 On the termination of this Order (howsoever arising):-

- (i) The Seller's only rights to payment shall be as set out in clause 10.
- (ii) Without prejudice to any other right or remedy of the Purchaser, the Seller shall pay or allow to the Purchaser the amount of any loss, expense, or damage caused to the Purchaser by the termination.

20.4 Termination of this Contract shall not discharge the Seller from any existing obligation accrued due on or prior to the date of termination.

20.5 For the avoidance of doubt, any termination or cancellation of this Contract shall not affect the continuance in force of Software licences granted to the Purchaser or its customers.

21. MISCELLANEOUS

21.1 All Intellectual Property in the work carried out under the Contract is hereby assigned to and shall vest in the Purchaser absolutely. This included any copyright or design rights which will vest in and become the property of the Purchaser as and when such rights come into existence.

21.2 Without written consent from the Purchaser, the Seller must not sub-contract or assign the whole or any part of the Contract. If given Purchaser consent, the Seller is not relieved of any of its obligations under the Contract. The Purchaser may attach conditions to the giving of its consent. The Purchaser's consent shall not be withheld unreasonably.

21.3 If either party delays, forgets or chooses not to enforce their rights under the Contract It shall not affect their rights to do so at a later date.

21.4 The Contract is the entire agreement between the parties and may not be changed unless agreed in writing by properly authorised representatives of both parties.

21.5 All notices must be in writing and sent to the address or fax number set out in the Contract. They may be delivered by hand or by first

class post or by facsimile and shall be deemed to have been served:

- if by hand, at time of delivery,
- if by first class post, two working days after posting,
- if by facsimile, on the date printed on the facsimile advice note produced by the sender's machine.

21.6 Headings do not affect interpretation.

21.7 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

21.8 The failure by a party to enforce any provision of this Contract shall not be treated as a waiver of that provision, nor shall it affect the right of that party subsequently to enforce that provision.

21.9 Any provision of this Contract that is prohibited or becomes unenforceable under the laws of any jurisdiction which affects the performance or enforceability of this Contract shall, with respect to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability but without invalidating the remaining provisions of the Contract, nor shall it affect the validity or enforceability of that provision in any other jurisdiction.

21.10 This agreement represents the entire understanding and Contract between the parties and supersedes all previous negotiations and understandings between them with respect to its subject matter. Further, this Contract supersedes all previous agreements between the parties with regard to its subject matter and those agreements are now terminated and of no further effect.

20.8 The Contract shall be governed and construed in accordance the Laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

21.0 For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to the Contract.

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