

The customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

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

Acknowledgement of Order: the written acknowledgement by the Supplier of the Customer's order for the Goods.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Ex Works: has the meaning given in the Incoterms 2020.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order.

Reseller Agreement: a product resale agreement between the Customer and the Supplier.

Supplier: Westbase Technology Limited t/a Westbase.io (Westbase) (registered in England and Wales with company number 02328219).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues an Acknowledgement of Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation or estimate for the Goods given by the Supplier shall not constitute an offer. A quotation or estimate shall only be valid for the period 30 shown on the quotation or estimate.

2.7 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

2.8 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

2.9 If there is a separate reseller agreement signed by the Customer and the Supplier governing the supply of the Goods, the terms and conditions under that reseller agreement control and prevail in the event of conflict or ambiguity with these Conditions.

3. GOODS

3.1 The Supplier will supply the Goods as set out in the Acknowledgement of Order.

3.2 The Supplier reserves the right to amend the description of the Goods set out in the Acknowledgement of Order if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Deliveries, except where noted, shall be shipped Ex Works, from the Supplier's facilities in the United Kingdom (Incoterms 2020). If the Customer requests the Supplier to make delivery arrangements, it shall be via the Supplier's nominated carrier. Risk of loss passes to the Customer as soon as the Goods are transferred at the Ex Works delivery location to either the Supplier's or the Customer's nominated carrier. **The Customer is responsible for providing insurance provisions to cover the risk of loss while the goods are in transit.**

4.3 Delivery of the Goods shall be completed when the Goods are available for collection or dispatch at the Ex Works Delivery Location. The Customer shall notify the Supplier of any shortages and/or of any external damage to the parcels within 3 Business Days following delivery by the carrier, or at the Ex Works location if collected by the Customer.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any failure or delay in delivery of the Goods to the extent that such failure or delay is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery and in any event within 10 Business Days of such discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option:

- (i) repair or replace the defective Goods; or
- (ii) refund the price of the defective Goods in full; or
- (iii) in the case of defective Goods or Goods which the Supplier cannot deliver due to them being unavailable, offer the Customer an alternative product which has the same functionality as the Goods, and if this is not acceptable to the Customer, pay the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods, the amount of such costs and expenses to be approved in advance by the Supplier.

In the event that any Goods returned to the Supplier pursuant to this clause 5.2 are found by the Supplier not to be defective, the Supplier shall be entitled to charge the Customer for any time and third party costs it incurs in connection with such returned Goods.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Goods differ from the description as set out in the Acknowledgement of Order as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier in so far as the original warranty period which will not be extended further to the repaired or replacement Goods.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer upon completion of delivery in accordance with clause 4.3.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Acknowledgement of Order, or, if no price is quoted, the Supplier's list price in force as at the date of delivery will be applied. All goods are supplied Ex Works at the Supplier's facilities, United Kingdom (Incoterms 2020) unless otherwise expressly noted in writing.

7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer if such provisions are requested.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 If the Customer has been granted a credit facility the Customer shall pay the invoice in full and in cleared funds in the invoiced currency without any deduction or set off within 30 days of the date of the invoice. Payment shall be made in full and cleared funds to the bank account nominated in writing by the Supplier. If the Customer does not have a credit facility, the payment for the Goods will be due upon receipt of the Supplier's invoice which shall be submitted to the Customer in advance of the Goods being delivered. Time of payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

- 7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.8 Without prejudice to any other right or remedy, the Supplier may suspend all further deliveries under any Contract with the Customer if any amount payable by the Customer is overdue, and may do so without incurring any liability to the Customer.

8. TERMINATION

8.1 If the Customer:

- (a) commits a material breach of any term of the Contract and (if such breach is remedial) fails to remedy that breach within ten days of being notified to do so;
- (b) fails to pay any amount due under the Contract on the due date for payment;
- (c) becomes subject to any of the events listed in clause 8.2; or
- (d) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.2,

and the Supplier notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 110% of the price of the Goods.

9.3 No claim may be brought by the Customer under or in connection with the Contract unless written notice of the claim is given to the Supplier within 12 months of the date on which the Customer became, or ought reasonably to have become, aware of the facts giving rise to the claim.

9.4 This clause 9 shall survive termination of the Contract.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, government-mandated lockdowns or restrictions, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors. The affected party shall notify the other in writing as soon as reasonably practicable after becoming aware of the Force Majeure Event, specifying its nature and likely duration. If the Force Majeure Event continues for more than 60 days, either party may terminate the Contract on written notice to the other without liability, save in respect of amounts already accrued at the date of termination.

11. GENERAL

11.1 Assignment and subcontracting.

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class recorded post, commercial courier, or sent by email to an email address notified in writing by the receiving party for the purposes of this clause.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class recorded post, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's

delivery receipt is signed; or, if sent by email, at the time of transmission, provided that no delivery failure notification is received by the sender and provided further that a copy is also sent by first class recorded post within two Business Days.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 11.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 11.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 11.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

12. DATA PROTECTION

- 12.1 Each party shall comply with its obligations under applicable data protection laws, including the UK General Data Protection Regulation, the Data Protection Act 2018 and (where applicable) the EU General Data Protection Regulation (together, Data Protection Laws). The parties acknowledge that, for the purposes of the Contract, each party acts as an independent controller in respect of personal data it processes in connection with the Contract (such as business contact details of the other party's personnel). Where the Supplier processes personal data on behalf of the Customer as a processor in connection with the Goods (including any associated services or embedded software), such processing shall be governed by the Supplier's data processing terms which incorporate the requirements of Article 28 of the UK GDPR and which form part of this Agreement by reference. For the avoidance of doubt, the Supplier is not obliged to enter into a separate data processing agreement with the Customer unless required by applicable law.

The Supplier has appropriate technical and organisational measures in place to protect personal data against unauthorised or unlawful processing and against accidental loss, destruction or damage. The Supplier's privacy notice is available at <https://www.westbase.io/privacy-policy>.

13. ANTI-BRIBERY AND ANTI-CORRUPTION

- 13.1 Each party shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010, and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of that Act. Each party shall have in place and maintain throughout the term of the Contract its own policies and procedures to ensure compliance with such laws.

14. MODERN SLAVERY

- 14.1 Each party warrants that it shall comply with the Modern Slavery Act 2015 and shall take reasonable steps to ensure that there is no modern slavery or human trafficking in its own business or its supply chains in connection with the Contract. Each party shall notify the other promptly in writing if it becomes aware of any actual or suspected breach of this clause.

15. EXPORT CONTROLS AND SANCTIONS

- 15.1 The Customer shall comply with all applicable export control, import control and economic sanctions laws and regulations, including those of the United Kingdom, the European Union and the United States, in connection with its acquisition, use, onward supply or re-export of the Goods. The Customer shall not, directly or indirectly, sell, supply, transfer, export or re-export the Goods (or any technology embedded in them) to any person, entity or jurisdiction where to do so would breach any such laws or regulations, or to any party on a restricted or denied-party list. The Customer shall indemnify the Supplier against all losses, costs, claims and expenses suffered or incurred by the Supplier as a result of the Customer's breach of this clause.

Ref: WBT 260421 Terms and Conditions of Sale