

## 1 Scope

1.1 These general terms and conditions of delivery (the "Terms") are the terms on which Xantaro UK Limited, a company registered in England and Wales with company number 7656440 and whose registered address is at 4 Prince Albert Road, London, NW1 7SN ("Xantaro") supplies hardware, software (including firmware) and/or documentation to its customers.

These Terms shall apply to and are incorporated into any contract between Xantaro and its customer (the "Customer") for the supply of hardware, software (including firmware) and/or documentation in writing whether by email or otherwise, or by telephone, where a Contract for such supply has been formed in accordance with clause 2.2 below.

1.2 These Terms apply to the exclusion of and prevail over any terms or conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing, unless agreed otherwise and confirmed in writing by Xantaro.

## 2 Formation of Contract

2.1 Unless otherwise expressly stated in the quote provided by Xantaro to the customer in respect of the supply of Goods (as defined below) (the "Quote") or otherwise agreed in writing by Xantaro, any Quote shall not constitute an offer and is only valid for a period of 20 (twenty) Business Days from its date of issue ("Business Days" being defined as a calendar day (other than a Saturday, Sunday or public bank holiday) when banks in London are open for business). If the Customer wishes to purchase goods that are set out in the Quote, it will need to place an order in writing, whether by post or email, or by telephone.

2.2 By placing an order, the Customer submits an offer to purchase Goods (as defined below) in accordance with these Terms. Xantaro may freely choose whether or not to accept the Customer's offer. The offer will be deemed to be accepted when Xantaro issues written confirmation to the Customer that it has accepted the order ("Order Confirmation") or upon delivery of the Goods (whichever is earlier), at which point and on which date a contract shall come into existence, incorporating these Terms (the "Contract"). If Xantaro has not accepted the Customer's order within 14 calendar days of its receipt, the offer will be deemed rejected.

2.3 The Contract (which is comprised of the Customer's relevant order, the Order Confirmation and these Terms) constitutes the entire agreement between Xantaro and the Customer. If there is any conflict between the Customer's order and the Order Confirmation, the Order Confirmation shall prevail and the Customer shall be deemed to accept the Order Confirmation unless the Customer disputes its contents in writing to Xantaro within 3 working days of the date of the Order Confirmation. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Xantaro that is not set out in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

2.4 If the Customer cancels any Contract for any reason, the Customer shall bear all costs that result from any Goods ordered by Xantaro from a manufacturer or other third party supplier in order to fulfil the Contract and that cannot be cancelled at the time of the Customer's cancellation.

## 3 Goods

3.1 Unless otherwise agreed in writing by Xantaro, the hardware, software (including firmware) and/or documentation to be supplied by Xantaro to the Customer under the Contract ("Goods") shall be set out in the Order Confirmation and will be supplied in accordance with these Terms. Any amendments to the Order Confirmation must be agreed by Xantaro in writing.

3.2 Xantaro (and/or any third party manufacturer or supplier of the Goods (as applicable)) reserve the right to amend any specification of the Goods published in respect of the Goods or provided by Xantaro to the Customer.

## 4 Delivery

4.1 Unless otherwise agreed in writing between the parties, any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.2 If no delivery date is specified or agreed, Xantaro shall endeavour to deliver the Goods as soon as reasonably possible. Xantaro shall not be liable for any loss, liability or expense caused by any delay in any delivery or supply.

4.3 Unless otherwise agreed, Xantaro shall be entitled to deliver the Goods at one time or by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.4 Xantaro does not accept any responsibility for shortages or for Goods damaged in transit unless notified within five Business Days and reported by separate notice in writing to Xantaro within ten Business Days of receipt of the Goods by Customer.

4.5 Where physical delivery is required, Xantaro shall deliver the Goods to the address set out in the Order Confirmation or such other address within the United Kingdom informed by the Customer to Xantaro in writing. Where delivery is required by other means, such as electronically, such delivery arrangements will be set out in the Order Confirmation or otherwise confirmed by Xantaro in writing.

4.6 If Xantaro fails to deliver the Goods, its liability shall be limited to 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. Xantaro shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Xantaro with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept delivery of the Goods within three Business Days of Xantaro notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Xantaro'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 Xantaro notified the Customer that the Goods were ready; and
- (b) Xantaro shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If ten Business Days after the day on which Xantaro notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them (as applicable), Xantaro 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.

## 5 Price and Payment

5.1 Unless otherwise agreed in writing by Xantaro, the price for the Goods shall be the price set out in the Order Confirmation.

5.2 Xantaro may, by giving notice to the Customer at any time up to three Business Days 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 Xantaro's control (including, but not limited to, increases levied by the manufacturer or supplier of the Goods, 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) or quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Xantaro adequate or accurate information or instructions.

5.3 Xantaro shall invoice Customer for the Goods on delivery.

5.4 Each invoice is due and payable in full, without deduction or set off unless permitted by law, 30 calendar days from the date of the relevant invoice. Xantaro 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 Xantaro to the Customer. Payment shall be made to the bank account nominated in writing by Xantaro. Time for payment is of the essence.

5.5 Disputed invoices must be notified to Xantaro in writing within seven calendar days of date of invoice.

5.6 Unless otherwise agreed in writing by Xantaro, the price of the Goods:

- (a) excludes amounts in respect of VAT and any other imposed taxes or duties for which Customer shall be additionally liable to Xantaro at the prevailing rate; and

(b) includes the costs and charges of packaging, insurance and transport of the Goods.

5.7 If the Customer fails to pay any amounts to Xantaro when due, then without prejudice to Xantaro's other rights and remedies, Xantaro shall be entitled to:

- (a) suspend delivery of further Goods purchased by the Customer, if any; and
- (b) charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

## 6 Title and Risk

6.1 Risk in the Goods will pass to Customer when physically delivered or placed at the disposal of the Customer where delivered by other means in accordance with the Order Confirmation.

6.2 Title to the Goods (which are not software) shall not pass to the Customer until Xantaro receives payment in full (in cash or cleared funds) for the Goods. For the avoidance of doubt, any Goods which are software will only be licensed to the Customer and, unless otherwise agreed in writing by Xantaro, title to such software Goods will not pass to the Customer at any time.

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

- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (c) notify Xantaro immediately if it becomes subject to any of the events listed in clause 12.1; and
- (d) give Xantaro such information relating to the Goods as Xantaro may require from time to time.

## 7 Co-operation Obligations of the Customer

7.1 The Customer shall provide all reasonable assistance and co-operation to Xantaro in its performance of its obligations under the Contract, as and when required and appropriate. The Customer shall comply with the following obligations:

- (a) The Customer shall appoint a contact person who shall be available to liaise with, and to respond to queries from, Xantaro in relation to the supply of Goods;
- (b) The Customer shall promptly inform Xantaro of any matters which are likely to materially adversely affect the supply of Goods to Customer (including any proposed change to Customer's environment or in a Customer's infrastructure, or delay);
- (c) The Customer shall perform its obligations under this Agreement in accordance with all applicable laws;
- (d) Customer shall ensure that, in relation to a given Contract, it maintains at its own cost the continuous operation of Customer's environment. Customer acknowledges that whilst Xantaro may provide advice as to how the requirements for Customer's environment might be met, Xantaro shall have no responsibility or liability for the selection, implementation, operation, security, maintenance or suitability of Customer's environment;
- (e) If at any time Customer makes any claim whatsoever against Xantaro or otherwise requests Xantaro to investigate any problem that has arisen in connection with the supply of Goods, Customer shall, if required, provide Xantaro's personnel all reasonable support and assistance (and where applicable physical access) to work on and modify as required the Goods.

7.2 Customer shall indemnify and keep indemnified Xantaro from and against all actions, proceedings, claims, demands, losses or whatever nature, expenses, damages, costs (including legal costs of Xantaro) and other liabilities however arising directly or indirectly as a result of any breach or non-performance by Customer of any Customer's undertakings, covenants, warranties or obligations under the Contract.

## 8 Third Party Software

8.1 The Customer hereby acknowledges that, in respect of any third party software supplied pursuant to the Contract ("Software"), Xantaro is a licensee, distributor or agent only. Unless otherwise agreed in writing, Xantaro shall, depending on the relationship and terms agreed between

Xantaro and the relevant Software proprietor or licensor, pass on or grant a licence (as applicable) to the Customer (and/or other specified end user(s)) for the Software under terms and conditions as provided by the relevant Software proprietor or licensor. The Customer further acknowledges that such licence may take the form of a non-negotiable "click through" or "shrink wrap" licence between the Customer (and/or other specified end user) and the relevant Software proprietor or licensor.

8.2 Xantaro warrants that on delivery and for a period of 90 calendar days from dispatch of the Software ("Warranty Period"), with respect to each item of the Software, as delivered by Xantaro and properly installed and operated on the hardware products or other equipment for which it is originally licensed:

- (a) the media on which the Software is furnished will be free from material defects in design, material and workmanship under normal use; and
- (b) the Software will substantially conform to its published specifications.

8.3 If within the Warranty Period the Customer notifies Xantaro in writing of any defect or fault in the Software or the media on which the Software was provided in consequence of which it fails to meet the standard set out in clause 8.2(a) and/or 8.2(b), and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Xantaro, or it has not been loaded onto equipment specified by Xantaro or suitably configured equipment, Xantaro shall, at Xantaro's option, (i) refund the purchase price paid by the Customer for any defective Software, or (ii) replace any defective media with Software which substantially conforms to Xantaro's applicable published specifications, provided the Customer provides all the information that may be necessary to assist Xantaro in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Xantaro to re-create the defect or fault.

8.4 The Customer accepts responsibility for the selection of the appropriate application, programs and associated reference materials for use with the Software. Xantaro does not warrant that: (i) its Software will work in combination with any hardware or application software products provided by third parties; (ii) that the operation of the Software will be uninterrupted or error free; or (iii) that all defects in the Software will be corrected or capable of being corrected.

8.5 The Customer acknowledges that any Open-Source Software provided by Xantaro is provided "as is" and expressly subject to the disclaimer in clause 8.7 below.

8.6 For any third party products listed in the Contract or specifications as being compatible with the Goods, Xantaro will make reasonable efforts to provide compatibility, except where the non-compatibility is caused by a "bug" or defect in the third-party's product. Xantaro is not obligated to remedy any Software defect that cannot be reproduced with the latest Software release. The Customer shall be entitled to receive any maintenance releases (such as patches and fixes, but excluding feature releases) at no charge for the first 90 calendar days from dispatch of the Software. The Customer may optionally purchase support services under a separate agreement with Xantaro, where the Customer would be entitled to receive maintenance feature releases for the duration of the service term.

8.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## 9 Intellectual Property

9.1 The Customer acknowledges that all intellectual property rights of whatever nature in any software supplied by Xantaro to the Customer under the Contract (whether Software or otherwise), and any software releases, shall be owned by Xantaro (or its licensors) and the Contract does not transfer any intellectual property rights to the Customer.

9.2 The Customer acknowledges that to the extent that it may be required by Xantaro to use any third party software or intellectual property rights in order to use the Goods, then its use of such software or intellectual property rights is conditional upon the Customer obtaining and maintaining

a licence to use such rights, and complying with the terms of the relevant licence.

## 10 Compliance with Export Control Laws

The Customer acknowledges that delivered Goods and technical data relating to such Goods may be subject to export and import control laws and regulations of various countries, e.g. such as the Regulation (EC) No 1334/2000 of the Council of the European Union or US Export Administration Regulations. In case of the export, re-export, transfer, divert, release, import or disclosure of any such Goods or technical data, or any direct product thereof, to any other person or entity outside the United Kingdom, the Customer shall comply strictly with all applicable export and import laws and regulations.

## 11 Hardware Warranty

11.1 Xantaro warrants that on delivery and for a period of one (1) year from the date of delivery, the Goods purchased by Customer that are hardware ("Hardware") shall be:

- (a) free of material defects in design, material and workmanship under normal authorized use consistent with the product instructions;
- (b) conform in all material respects with their description and any applicable specification provided by Xantaro;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Xantaro.

11.2 This product warranty extends only to the Customer, being the original purchaser of the Hardware.

11.3 If:

- (a) during the warranty period set out in clause 11.1, Xantaro receives written notice from the Customer within a reasonable time of discovery that the Hardware does not comply with the warranty set out in clause 11.1;
- (b) Xantaro is given a reasonable opportunity of examining such Hardware; and
- (c) the Customer (if asked to do so by Xantaro) returns such Hardware to Xantaro's place of business at the Customer's cost, Xantaro shall at its option and cost, use reasonable endeavours to remedy the defect or fault within a reasonable period following receipt of such notice. Such remedy may be performed by written or electronic instruction to the Customer or by providing a workaround. Any subsequent return of Hardware to the Customer within the United Kingdom would be at Xantaro's cost.

11.4 If Xantaro provides a workaround to remedy a defect or fault with the Hardware, Xantaro may reasonably change the configuration of the Goods, if and insofar as it does not materially adversely affect the operation of such Goods (either collectively or on their own).

11.5 The Customer is not entitled to appoint any third party to remedy the defect or fault with the Hardware nor to charge Xantaro for the resulting costs, without the express prior written consent of Xantaro.

11.6 Xantaro shall not be liable for the Hardware's failure to comply with the warranty set out in clause 11.1 (above) to the extent that any failures result from:

- (a) the Customer having altered or repaired or caused any third party to alter or repair the Hardware without the prior written consent of Xantaro;
- (b) the Customer failing to inspect the Goods promptly and/ or failing to report and describe detected defects or defects that would have been apparent upon such prompt inspection;
- (c) the Customer making any further use of such Hardware after giving notice in accordance with clause 11.3(a);
- (d) the defect arising because the Customer failed to follow Xantaro's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Hardware or (if there are none) good trade practice regarding the same;
- (e) the defect arising as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Hardware differing from their description or specification (as applicable) as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

11.7 Except as provided in this clause 11, Xantaro shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 11.1.

11.8 Except as expressly stated, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into a Contract, whether by statute, common law or otherwise, are hereby excluded. For the avoidance of doubt, 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,

11.9 These Conditions shall apply to any repaired or replacement Hardware supplied by Xantaro.

## 12 Termination

12.1 Without limiting its other rights or remedies, Xantaro may terminate a Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 calendar days of the Customer being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Xantaro's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, Xantaro may suspend provision of the Goods under a Contract or any other contract between the Customer and Xantaro if the Customer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(d), or Xantaro reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, Xantaro may terminate a Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.4 On termination of a Contract for any reason the Customer shall immediately pay to Xantaro all of Xantaro's outstanding unpaid invoices and interest.

12.5 Termination of a Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 13 Limitation of Liability

13.1 This clause 13 is drafted in order to strike a fair and reasonable balance between the Customer and Xantaro and to allocate risk between the parties in a way that is fair and reasonable bearing in mind the parties' respective knowledge of their businesses, the availability of insurance to protect against risks and the value of the purchase price. Xantaro has carefully considered the basis upon which it can supply the Goods commercially bearing these things in mind and this clause 13 sets out the extent to which it considers that it is fair and reasonable for it to accept liability and where the Customer accepts risk for itself in the purchase of Goods.

13.2 Nothing in any Contract excludes liability for:

- (a) death or personal injury caused by the negligence of Xantaro, or its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any other liability which cannot be excluded by law.

13.3 Subject to clause 13.2 Xantaro shall under no circumstances whatsoever be liable to the Customer for any losses or damages which may be suffered by the Customer (or any person claiming through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort



(including negligence), breach of statutory duty, or otherwise, which fall within any of the following:

- (a) any special, indirect or consequential losses, costs, charges, expenses or damages;
- (b) punitive damages;
- (c) loss of profits or revenue;
- (d) loss of anticipated savings;
- (e) loss of business or sales;
- (f) loss of contracts;
- (g) loss of use;
- (h) loss of opportunity;
- (i) loss arising from any viruses in any deliverables or downloaded using the deliverables, or for any damage caused to any computer or other device on which a deliverable is downloaded on or used upon as a result of such viruses;
- (j) loss of or corruption to programming and any and all data including, but not limited to, the customer data;
- (k) loss or damage to reputation;
- (l) depletion of goodwill and/ or similar losses;
- (m) loss arising from any delay to the Customer's project(s) including any increased costs;
- (n) claims against the Customer by any third party; or
- (o) losses (regardless of their nature) for any delay or failure by Xantaro to perform its obligations under the Contract as a result of a force majeure event,

and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.

13.4 Xantaro shall in no circumstances be liable or responsible for (or for the consequences of)

- (a) any failure to meet its obligations under the Contract or in any way otherwise if such failure is caused by any breach of Contract by the Customer or by any act or omission of:
  - (1) the Customer or its employees, agents or representatives; or
  - (2) any third party (other than a subcontractor of Xantaro);
- (b) defects or errors resulting from any modifications of the Goods made by any person other than Xantaro without Xantaro's prior written consent;
- (c) use of the Goods other than strictly in accordance with any applicable documentation, or other instructions, provided by Xantaro, the manufacturer or any third party supplier (as the case may be);
- (d) installation of any Goods by the Customer other than strictly in accordance with the requirements of the manufacturer or third party supplier of such Goods;
- (e) any defect or error in any hardware or software used in conjunction with the Goods;
- (f) defects or errors caused by the malicious or negligent activities of the Customer or its employees, subcontractors or any other third parties;
- (g) any loss or damage arising out of any failure by the Customer to keep up to date security copies of customer data and any computer programs and data used, in accordance with the Goods in accordance with good computing practice; or
- (h) defects or errors caused by any failure to implement software updates or upgrades.

13.5 Xantaro may provide the Customer with guidance and recommendations in respect of the Goods, but the Customer accepts responsibility for the choice of Goods for which it places an order to achieve its intended results and Xantaro shall not be liable for ensuring that the Goods meet the Customer's requirements.

13.6 Subject to clause 13.2, Xantaro's liability to the Customer under or in connection with any Contract, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, through indemnification or otherwise, shall be for direct and reasonably foreseeable costs and damages only, and shall in no circumstances exceed:

- (a) for each and every claim, a sum equal to fifty percent (50%) of the purchase price payable by the Customer under the relevant Contract; and
- (b) in any event, a sum equal to € 2,000,000 (two million Euros) in the aggregate.

#### 14 Confidentiality and Data Protection

14.1 Each party shall, during the term of the Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than for the implementation of the Contract), nor without the prior written consent of the

other disclose to any third party (except its professional advisers or as may be required by any law or legal or regulatory authority) any information that is marked "confidential" or is reasonably understood by the receiving party to be of a confidential nature (including, without limitation, trade secrets and information of a commercial value) which may become known to such party from the other party during the performance of the Contract and which relates to the other party (or any of its associated or affiliated companies) ("Confidential Information"). When in doubt, each party shall request permission from the other party prior to disclosure or other use of Confidential Information.

14.2 Disclosed information shall not be considered Confidential Information if:

- (a) it has been developed by one party independently and without recourse to Confidential Information of the other party;
- (b) at the time of the disclosure, it is lawfully in the possession of the receiving party free of any restriction as to its use or disclosure, or any other restrictions as to its use or disclosure, prior to or after it being furnished by the other party (provided that the source of such information has the legal right to use and disclose it and is not subject to subject to any agreement or other duties of confidentiality in respect of it); or
- (c) at the time of the disclosure, it is in the public domain other than by breach of the Contract (or any other contract between Xantaro and the Customer).

14.3 Each party may disclose the other party's Confidential Information to its employees, officers, agents or sub-contractors ("Representatives") who need to know such information for the purposes of supplying the Goods. Each party shall ensure that all Representatives to whom it discloses the other party's Confidential Information complies with this clause 14 and enter into and observe individual confidentiality agreements on terms no less restrictive than those set out in this clause 14.

14.4 Each party shall comply with its obligations under data protection laws applicable in the United Kingdom in relation to the Goods.

#### 15 Force Majeure

Neither party shall be in breach of any Contract nor liable for any delay in performing, or failure to perform, any of its obligations under any Contract if such delay or failure results from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

#### 16 Third Party Rights

No one other than a party to the Contract shall have any right to enforce its terms.

#### 17 Independent Contractors

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, not constitute any party the agent of another party for any purpose. No party shall have authority to act as an agent for, or to bind, the other party in any way.

#### 18 Variation

Unless otherwise set out in these Terms, no variation of a Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Xantaro.

#### 19 Assignment and other Dealings:

19.1 The Customer shall not, without the prior written consent of Xantaro (such consent not to be unreasonably withheld) assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under a Contract.

19.2 Xantaro may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under a Contract and may subcontract or delegate in any manner any or all of its obligations under a Contract to any third party or agent.

#### 20 Severance

If any provisions or part-provision of a Contract is adjudged by a court of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provisions such that, as amended, it is valid, legal and enforceable and to the greatest extent possible, achieves the intended commercial result of the original provision. If such amendment is not possible, the relevant provision or part-provision

shall be deemed deleted. Any modification or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.

## **21 Notices**

21.1 Any notice or other communication given to a party under or in connection with a 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, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service, commercial courier, or fax.

21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the proper address, if sent by pre-paid first class post, at 9.00 am on the second Business Day after posting; if delivered by commercial courier or other next Business Day delivery service, on the date and at the time that the recorded by the delivery company; or, if sent by fax, one Business Day after transmission.

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

## **22 Waiver**

No failure or delay by a party to exercise any right or remedy provided under a Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **23 Governing Law, Jurisdiction**

23.1 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.

23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).