



# TERMS FOR SALE, DELIVERY AND LICENSE (United Kingdom)

IGEL Technology Limited, April 2013

## § 1 Scope of Application

(1) These Terms for Sale, Delivery and License ("Terms") shall be applicable to all sales and/or deliveries of hardware- and software-products ("Products") and services such as consultancy, training, repairs and support ("Services") and software licences of IGEL Technology Ltd ("IGEL") made or rendered to any natural persons or legal entities, including but not limited to corporations or other legally recognized entities ("Customer"). In these Terms, headings and bold type text are for convenience only and shall not affect interpretation.

(2) These Terms form the basis of all commercial contracts between IGEL and the Customer.

(3) IGEL does not accept any general terms of trade of the Customer. Any terms of trade of a Customer are hereby explicitly rejected and not made part of any contract between IGEL and the Customer, unless IGEL has approved the application of the Customer's terms explicitly and in writing prior to the commencement of any contract. These Terms apply exclusively when IGEL starts performance of a particular contract despite knowledge of a Customer's terms of trade, whether or not they are contradictory, conflicting or different from these Terms.

(4) These Terms will apply for all future transactions between IGEL and Customers, even if IGEL does not explicitly indicate on each occasion that these Terms shall apply. These Terms shall apply until IGEL publishes new terms and informs Customer thereof. The incorporation of any new or different terms into the business relationship between IGEL and the Customer becomes effective upon IGEL providing the Customer with the new Terms and specifying their applicability.

(5) No variation of these Terms will be accepted, unless approved by IGEL's Managing Director in writing and prior to any transaction involving different terms.

(6) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by IGEL shall be subject to correction without any liability on the part of IGEL.

(7) IGEL's employees or agents are not authorised to make any representations concerning Products or any system in which they will be incorporated or Services unless confirmed by IGEL in writing. In entering into a contract based on these Terms, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed. The

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provisions of this clause shall not apply in the case of fraud. Any advice or recommendation given by IGEL or its employees or agents to the Customer or its employees or agents as to the application or use of the Products and/or the system in which they will be incorporated which is not confirmed in writing by IGEL is followed or acted upon entirely at the Customer's own risk.

## **§ 2 Offers and Conclusion of Contracts**

(1) Communications in the form of offers by IGEL are always non-binding invitations to the Customer to make a binding offer (so-called "invitatio ad offerendum"), unless it is indicated in writing by IGEL that the communication by IGEL is to be considered a binding offer. A binding agreement may also be formed when IGEL confirms explicitly and in writing a specific order of a Customer or commences performance of a Service or delivery of a Product. Each Customer hereby confirms that each order/offer shall be binding and remain capable of acceptance by IGEL for two weeks, or such longer period as the parties may agree in writing.

(2) IGEL's written confirmation of a Customer's order/offer and the terms of such confirmation shall be conclusive as to the content of any contract between IGEL and a Customer, as far as the Products or Services to be delivered or provided and the specific terms of the contract are concerned. Collateral agreements must always be approved in the form provided in § 28, Sec.6 (final clauses) of these Terms.

(3) The Customer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving IGEL all necessary information in relation to the system, including its environment of use and intended usage, within a sufficient time to enable IGEL to perform the contract in accordance with its terms.

(4) The quantity, quality and description of and any specification for the products and services shall be those set out in IGEL's acknowledgement of order.

(5) IGEL reserves all rights, in particular the ownership and copyright, in any preliminary estimate of costs, designs, plans, specifications or specific technical documentation ("Confidential Information"), which IGEL provides to a Customer before or after the formation of a contract for the sale or delivery of Products or Services. Without prior written approval of IGEL a Customer is not allowed to provide, to copy, to duplicate, to deliver or otherwise to give any Confidential Information to third parties. All Confidential Information, together with all copies and extracts, must be returned to IGEL immediately upon request.

(6) No waiver of any of these Terms shall constitute a permanent waiver by IGEL of those Terms. In the event of special provisions, applicable to and agreed for a particular order, those special provisions shall have no application to subsequent or other orders.

(7) The Customer shall at its own expense supply IGEL with all necessary documents, data, materials or other information relating to the Services and its system, within sufficient time to enable IGEL to provide the Products and Services in accordance with the contract. The Customer shall ensure the accuracy of all such documents, data, materials or other information.

(8) IGEL may at any time without notifying the Customer make any changes to the Services which are necessary to comply with any statutory requirements, or which do not materially affect the nature or quality of the Services.

## **§ 3 Price**

(1) All prices announced and published by IGEL, including processing and printing expenses, unless otherwise agreed by the parties, are valid "net ex works" in terms of § 28 Sec. 2 (final clauses) of these Terms, excluding the expenses for packing, loading, insurance (in particular transport insur-

ance), duties and taxes, transport costs and value added tax, for which the Customer shall be liable in addition to the price. This provision also applies to § 4 of these Terms.

(2) All prices are stated and payable in Pound sterling (£) unless another currency is explicitly stated in IGEL's confirmation of the order.

(3) In cases of unforeseeable extraordinary increases of IGELs' costs due to currency fluctuations and increases in, including but not limited to, its suppliers' prices, raw material costs and its overheads IGEL reserves the right to increase its product prices accordingly.

#### **§ 4 Foreign Trade**

(1) In the event of deliveries to foreign countries these Terms shall be applicable together with the "International Commercial Terms" ("Incoterms") published by the International Chamber of Commerce in the then current version, provided that in the confirmation of the order, respectively in the binding offer, IGEL refers to one of the official Incoterms (e.g. by using "cif", "ex work", "fob", etc).

(2) Import duties, fees for consultation and any other or different levies/taxes/fees based on laws and regulations of the country of destination are generally not included in the published prices of IGEL (see the simultaneously applicable § 3 Sec. 1 of these Terms) but the Customer shall be liable for them. If excise taxes are explicitly included in the price, then any increase in such included taxes shall lead to an increase in the overall price accordingly.

(3) IGEL is only obliged to comply with foreign regulations for packing, weighing and duties, if the Customer provided IGEL with detailed information for that in advance.

#### **§ 5 Permission for Export and Import**

The delivered Products and technical know-how of IGEL are designated exclusively for use and physical presence in the country of destination as indicated by the Customer. The re-exportation of Products specified in the contract – individually or collectively – is governed exclusively by the regulations for foreign trade of the Federal Republic of Germany, and respectively, by the regulations of the country of destination agreed with the Customer. For the delivery of Products which are subject to a distribution restriction, the specific terms and regulations for export (for e.g. embargo) of the referred manufacturer shall be also applicable besides these Terms. The Customer is obliged to inform itself autonomously about the corresponding regulations and namely for the German terms by the Federal Office For Export, 65760 Eschborn/Taunus and the local terms by the Department for Business, Enterprise and Regulatory Reform (BERR), London. Irrespective of whether the Customer has indicated a definite place of destination for the Products, it is always incumbent upon the Customer to obtain the required permission from the competent authority for foreign trade before the exportation of the Products. The Customer is solely responsible for the compliance with the applicable regulations by the ultimate customer.

#### **§ 6 Payment, Delay**

(1) Payment is due to IGEL immediately on the delivery of the Products and/or performance of the Services and without deduction. The Customer is in default regarding payment when it fails to make payment during a period of 14 days after the due date and after the receipt of the invoice, but no longer than 30 days after delivery has commenced. Any earlier default based upon common law principles of anticipated breach of contract shall be unaffected. The time of payment shall be of the essence of this contract.

(2) Provided there is nothing agreed to the contrary, IGEL is not obliged to perform in advance or if the Customer is in default or delay with any payment obligations.

(3) The price of Goods shall only be considered as paid when IGEL has received the full price in cleared funds.

(4) If IGEL issues an invoice to a third party in relation to performance of the Contract and requested or agreed by the Customer in writing, it only represents IGEL's willingness to accept payment from such third party without releasing the Customer from its contractual obligation to pay. The Customer's obligation to pay IGEL shall only cease once IGEL has received payment in full from the third party invoiced.

(5) IGEL reserves the right to require payment in advance of delivery of the Products or performance of the Services.

(6) The Customer will be charged a reminder fee for overdue invoices in the amount of £7.50 per reminder. This does not affect the legal rights of IGEL by law or contract to seek additional relief.

(7) IGEL reserves the right to suspend deliveries or performance where payment is not received in accordance with the terms of payment.

(8) Where payment is not made in accordance with the terms of this clause the Customer shall pay interest on any unpaid amounts - except amounts in dispute - calculated at 5% above Lloyds TSB Bank Plc's base rate for the time being in force calculated on a daily basis from the due date until payment in full and IGEL reserves the right to suspend any further deliveries or performance under the contract and to terminate the contract by notice to the Customer, without prejudice to IGEL's other rights and remedies.

(9) In the event that there is any late or non-payment by the Customer in respect of any agreement by IGEL to extend credit or the original contractual date for payment, this shall be deemed to be a material breach in accordance with clause 13(3) entitling immediate termination by IGEL.

#### **§ 7 Set-off, Retention, Assignment**

(1) The Customer is only entitled to set off a claim or to retain payment due under this agreement when its claim is either not contested by IGEL or its claim against IGEL has been upheld as final and conclusive by the appropriate English court.

(2) The Customer is not entitled to assign claims under the contract to third parties without the prior written approval of IGEL.

#### **§ 8 Delivery**

(1) IGEL will perform delivery of the Products or Services as soon as possible. The stated period/date of delivery or performance is generally not binding or of the essence, unless IGEL confirms explicitly and in writing the stated period/date to be binding and of the essence. Where IGEL agrees time shall be of the essence, the time of the dispatch *ex works* or *ex stock*, or the notification for the readiness for dispatch, shall be authoritative in deciding adherence with the period for delivery. The period for delivery or performance shall be extended to another individually agreed point in time, if the Customer does not cooperate in good faith regarding the delivery or performance (see § 9 of these Terms).

(2) IGEL shall make delivery within a reasonable time through IGEL's suppliers. Time shall generally not be of the essence in relation to delivery timescales to be met by IGEL. IGEL shall only be held to be in breach for delayed performance where it has failed to meet a specific timescale and also fails to make the delivery within a reasonable period of extension granted by the Customer, which period of extension shall be no less than [28] days after the date of any specified delivery date.

(3) IGEL shall not be responsible for a delay of the delivery or of the performance as a result of force majeure or similar circumstances, which derive from circumstances which are beyond the reasonable control of IGEL after the conclusion of the contract, e.g. industrial action, official directive, natural disasters or political unrest or strikes, and also when these circumstances are in the sphere of control of IGEL's suppliers or sub-suppliers. In these cases performance shall be suspended and the period of delivery shall be extended until after the force majeure ceases to apply, including a reasonable period thereafter, but not longer than six (6) months. After expiration of a six (6) month delay caused by force majeure, both parties are entitled to terminate the contract without incurring any penalties or legal obligation or liability towards the other. The same applies if a party suffers significant economic harm or disadvantages by the delay or non-performance.

(4) IGEL is entitled to make partial delivery of Products and performance of Services as approved by the Customer in writing and shall be entitled to raise an invoice for such partial delivery or performance. In such cases IGEL is also entitled to issue partial invoices. Each delivery of an installment shall constitute a separate contract and failure by IGEL to deliver any one or more installment in accordance with these terms and conditions shall not entitle the Customer to treat the contract as a whole as breached.

(5) In case that the supply according to the request of a Customer is delayed as a result of such Customer's failure to cooperate reasonably and in good faith (for e.g. delivery of additional devices and parts for reconstruction), or the Customer does not accept the delivery item, or the delivery is not performed because the Customer fails to perform its obligation regarding payment, then IGEL is entitled to compensation for any additional expenses incurred, particularly any storage expenses. The expenses for storage can be charged from the beginning of one week after the notification of the readiness to dispatch, calculated, as a minimum, as 0.5% of the invoiced sum per month, unless Customer can show that actual expenses are lower. Notwithstanding the foregoing, IGEL reserves its rights to terminate the contract or claim compensation on contractual and common law grounds.

#### **§ 9 Duty and Obligation of the Customer to Cooperate**

(1) In the event that the effectiveness of the contract or the performance of the contract requires specific permissions or licences (for e.g. licences for import or export) or similar, these licences shall be obtained by the Customer, unless the parties expressly agree otherwise in writing.

(2) The Customer is furthermore obliged to cooperate timely in accordance with the contract and good faith, particularly with respect to obtaining the required permissions and providing the additional devices and parts for reconstruction.

(3) IGEL is entitled to fix a reasonable period for the Customer for the performance of the act of cooperation (for e.g. the request for a necessary permission). After the expiration of the period without the Customer having performed the required act, IGEL is entitled to terminate the contract by notice taking effect immediately. If the required licences or permissions are not provided until the expiration of three (3) months after the making of the contract, IGEL is entitled without further preconditions to terminate the contract by notice taking effect immediately.

#### **§ 10 Passage of the Risk of Loss**

(1) The risk of loss passes to the Customer when the Products are handed over to the first carrier for transmission to the Customer (for e.g. forwarding agent, carrier or similar) for loading. If transportation through IGEL is agreed the risk of loss passes to the Customer when loading begins, but at the latest when the Products leave the factory as the place of performance (comp. § 28, Sec. 2 of these Terms). The same applies even if IGEL has undertaken the expenses for the transport or has undertaken another performance such as the installation.

(2) If IGEL performs the dispatch of the Products later than the first possible date of delivery upon request of the Customer, then the risk of loss shall pass to the Customer at the moment of notification of the readiness for dispatch by IGEL.

(3) Any insurance coverage for the Products, (such as against theft, destruction, transport, fire or water damage or similar risks), will be provided by IGEL only upon expressed request of the Customer and will always be at the expense of the Customer.

(4) Any returns of Products to IGEL (where agreed to by IGEL in writing in advance) shall, unless otherwise agreed in writing, always be at the expense and risk of the Customer.

## **§ 11 Retention of Title**

(1) IGEL retains title to and ownership of all Products until full payment has been made of all accounts receivable which exist at the relevant time. If IGEL opens a credit account with the Customer all Products in which IGEL retains ownership shall be security to secure any claims for balances due on any account. If, at any time before full payment has been made, IGEL requires Customer to confirm that legal title remains with IGEL, Customer will confirm such status with IGEL in writing and do anything else which IGEL requires, in order to protect IGEL's ownership rights.

(2) In case of a breach of the contract by the Customer, in particular in the case of any payment being overdue or in case of an application for the Customer to be declared insolvent, IGEL is entitled to request from the Customer the return of the purchased Products without any grace period, or in the same case, to request the assignment of the claim for return of the Products against any third parties. A return of the Products to IGEL shall not be regarded as a termination or rescission of the contract or a release of Customer of its obligations to pay, unless expressly stated otherwise by IGEL in writing. The Customer shall be responsible for any costs and expenses of returning the Products to IGEL. IGEL is entitled to sell the returned Products after a single notice to Customer. The difference between the profits of sale of the Products to third parties and the sales price to Customer, plus the expenses for the sale shall be the damages to be paid by Customer.

(3) Until full payment has been received by IGEL, the Customer shall hold the Products in a fiduciary capacity for IGEL and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured in a manner which enables them to be identified as the property of IGEL and the Customer shall immediately return the Products to IGEL should its authorised representative so request.

(4) The Customer grants IGEL an irrevocable licence to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing or removing any Products, the property in which remains with IGEL.

(5) The Customer is entitled to resell the retained Products within the scope of an orderly business operation, as long as it is not in default regarding payments to IGEL, and/or there is a filed application for insolvency proceedings or to seize its property or assets or the Customer is obliged to apply for insolvency proceedings. In case of a resale of any Products which have not been fully paid for, the Customer is obliged to protect IGEL's rights on these Products by assigning any rights to any proceeds of sale to IGEL. Any encumbrance or lien on Products not yet fully paid for, including but not limited to granting charges to third parties, is only permitted with the prior written approval of IGEL.

(6) If the Customer resells Products in which IGEL has reserved title, the Customer hereby automatically assigns to IGEL the rights in the proceeds from such sale together with all other rights in the event of an installment sale, in order to protect any claims of IGEL in or to the Products. The Customer is authorized to collect any funds from a resale, until otherwise notified by IGEL. However, IGEL may request that Customer notify its debtors of the assignment of the claim for the proceeds from a resale to IGEL. With the revocation of the authorization for the collection the Customer has

to notify IGEL about all necessary data for the collection of the proceeds of a resale and to support and cooperate with IGEL in such collection of accounts receivables.

(7) The Customer is obliged to keep and maintain, diligently and at its expense, all Products in its custody and for the benefit of IGEL, including but not limited to insuring them against theft, destruction, fire, water or similar damage and to show proof of such insurance and expiration dates upon IGEL's request.

(8) The Customer has the further duty, during the time of possession of any Products still belonging to IGEL or not paid for, to keep the Products in proper condition and to arrange any necessary repairs immediately to be performed in one of the IGEL's authorized qualified workshops.

(9) Any seizures or attachments of Products by and through third parties must be notified by the Customer to IGEL immediately after the Customer obtains knowledge thereof. In such a case the Customer shall transfer all the necessary information and documents for each intervention to IGEL. The Customer is liable for the expenses which arise in connection with such seizure or attachment and the release of the Products, particularly by way of court intervention as a third party in the seizure proceedings, as long as these expenses cannot be recovered from the persons responsible for the seizure or attachment.

(10) In the event that Products are combined, connected or merged into other goods or products, IGEL shall retain its ownership on such combined or connected or merged Products. The percentage ownership in any new products shall be defined according to the proportion of the value of the Products title in which remains with IGEL bears towards the invoice value of the newly created combined products.

(11) If for any reason, legal or factual, the Customer acquires the sole ownership over any new product pursuant to the preceding paragraph, the Customer hereby agrees that IGEL will keep its ownership status in the new product in the same proportion as provided in the preceding paragraph. The Customer shall keep the new products in its custody for IGEL free of charge.

## **§ 12 Defects and Rights**

(1) IGEL warrants that the delivered Products and Services rendered shall be free from material defects in materials and workmanship at the passage of the risk in them.

(2) Any representations concerning the manner of delivery, the appearance measurement and weight of the Products, as well as their capacity made at the time of contract formation constitutes no warranty and is only descriptive in nature. Any representation can only be relied on if such representation is made in writing by IGEL at the time of contract formation. This provision shall not apply in the case of fraud.

(3) If, after contract formation, any changes or modifications are made to Products ordered, such modifications or alterations in size, weight, measurement or appearance shall not constitute material deviations from the ordered Products nor failure in performance by IGEL, as long as their value and functionality is not materially affected.

(4) IGEL does not accept responsibility for any false representations concerning Products or Services by third parties. This provision shall not apply in the case of fraud.

(5) Any warranty for defects and resulting loss and damage is excluded, if they arise

- because a specific manner of manufacture or a specific material for the purchased Product was chosen under the instruction of the Customer,

- because the Customer has shipped or installed the purchased Product or placed it in operation incorrectly,
- because the Customer operates the purchased Product incorrectly or fails to use appropriate operating instruments,
- because the Customer has not considered and applied the manual or the requirements for maintenance,
- because the Customer does not use the purchased Product competently or properly,
- because the Customer has attached external parts or components (products of other manufacturers), not approved by IGEL,
- because the Customer has altered, adjusted modified or disassembled the purchased Product without prior approval of IGEL,
- because of the repair, modification or installation of options or parts by anyone other than IGEL or an approved contractor;
- because the Customer has mis-used, neglected or used the purchased Product in an improper environment, including but not limited to excessive or inadequate heating or air conditioning or electrical power failures, surges or other irregularities;
- because the Customer has incorrectly installed the purchased Product into another item.

(6) The Customer waives any right to claim breach of warranty of the Product, if the Customer fails to give notice to IGEL of the kind and nature of the breach of warranty in accordance with the following rules:

- Defects/breaches of warranty, which at the inspection of the Product was apparent and obvious, must be notified in writing to IGEL within at latest five (5) working days after the delivery of the Product and before further manufacturing/processing/usage (if possible under the dispatch of the provided printed forms by IGEL),
- Any hidden defect or breach of warranty, which at the inspection of the Product was not apparent or reasonably discoverable, must be notified in writing to IGEL within five (5) working days after the discovery of the defect.

Compliance with the notice requirement herein is given, if the proper notification has been mailed or otherwise dispatched to the recipient in a reasonable time.

(7) Warranty claims by the Customer do not cancel or suspend its duty to accept and pay for the Products, unless the defectiveness of the Products is indisputable or judicially established.

(8) If there is an existing defect or breach of warranty in the purchased Products, IGEL may, in its own discretion, remove or remedy the defect, by means of additional work, repair or improvement of the Products, replacement of the non-conforming parts or delivery of substitute conforming Products. IGEL reserves the right to install as spare parts either new parts or used parts which are as good as new, including reconditioned parts.

(9) In the event IGEL decides to remedy a defect under warranty through repair or substitution, IGEL shall bear all associated expenses, particularly the costs of labour, materials and freight. Any replaced parts become the property of IGEL.



(10) With respect to warranties for foreign Customers IGEL does not generally assume the expenses, as referred to in the preceding paragraph, which are connected with the place of usage, or the exporting country of the purchased Products.

(11) If, in relation to an accepted warranty claim, IGEL does not take any steps to remedy the breach within a reasonable period of acceptance of the claim (being a minimum of two weeks), the Customer may give notice requiring the breach to be remedied within a further reasonable period or requesting a reduction in the purchase price. If IGEL neither remedies the breach nor agrees a reduction, the Customer may give notice to terminate the contract.

(12) If the result of an inspection of the Products confirms that a defect in the purchased Products does not exist or does not amount to a breach of warranty, the Customer is responsible for the payment of any inspection expenses at then applicable general hourly rates of IGEL.

(13) No claim for breach of warranty may be brought after one (1) year (or such other period as IGEL may decide from time to time) from the date of delivery. The limitation period applicable to the replaced part applies also to the installed spare part.

(14) In relation to repair services, the limitation period for any claim relating to them shall be one year from the date of performance.

### **§ 13 Termination**

(1) This Agreement may be terminated:

- immediately by IGEL if the Customer fails to pay any sum due within 30 [thirty] days after the receipt of the second written reminder;
- immediately by either party if the other commits a material breach of any term of this agreement (other than one falling within § 13 (1).1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 [thirty] days of a written request to remedy the same;
- immediately by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

(2) Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party not the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

### **§ 14 Liability**

(1) Each party accepts liability for direct loss and damage and loss of or damage to the tangible property of the other caused directly by its breach or negligence up to a limit of £5,000,000 per claim, provided that this cap shall not apply to any sums owing by the Customer in relation to the purchase of Products.

(2) Except in respect of death or personal injury caused by the negligence of the other party, (in respect of which liability shall be unlimited) and except in the case of fraudulent misrepresentation, neither party shall be liable to the other, by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under these terms and conditions or any contract for any loss of profits, loss or corruption of data, economic loss, lost savings, the costs or expense of obtaining alternative goods or services or any indirect special or consequential loss or damage (whether for loss of contracts, goodwill, profit or otherwise) costs or expenses or other claims for compensation whatsoever (whether caused by the negligence of the party in breach, its employees, agents or otherwise and whether reasonably foreseeable or not and whether the party in breach had been advised of the possibility of the other party incurring or suffering the same) which arise out of or in connection with the supply or non-supply of the Products, any Services or any other goods or otherwise in connection with performance or non performance pursuant to these terms and conditions or any contract.

### **§ 15 Duty of the Customer to Indemnify for Damages**

Subject to clause 14, the Customer shall indemnify IGEL in respect of all costs, expenses, loss, damages and liability suffered or incurred by IGEL as a result of any breach by the Customer of the terms and conditions of IGEL or any contract made between the parties.

### **§ 16 Software Products**

#### **(1) Type of licenses**

(a) IGEL grants the Customer a non-exclusive, non-transferable license to use the software only in connection with the hardware manufactured and distributed by IGEL, particularly terminals, Thin Clients, Thin Client Cards and Thin Client Upgrade Kits. The customer is not entitled to copy or load this software onto a third party's hardware products in total or in parts.

(b) If the customer buys IGEL software on an IGEL data carrier (e.g. an USB stick), the right of usage of this software only includes the right to copy and load the software on third party's hardware which is officially approved by IGEL.

#### **(2) Scope of the usage**

(a) The right of use contains every permanent and temporary, whole or partial, duplicating (copying) through loading, display, run down, transmission or storage for the purpose of execution of the software. The execution of appointed actions for the purpose of observation, examination or test of the specified software is also included in the usage.

(b) The software should not be processed, altered, adapted, modified or reverse engineered. The company names, trademarks, notes for copyrights or different notes for reserved rights contained in the software should not be altered and should not be removed from modified and/or processed versions of the software.

(c) A decompilation of the software code is admitted only under compliance with the limitations in the Copyright, Designs and Patents Act 1988.

(d) The Customer shall follow all reasonable instructions given by IGEL from time to time in connection with the use of the software. The Customer shall permit IGEL at reasonable times and at IGEL's expense, to verify that the use of the software is within the use permitted by these terms and conditions.

### **(3) IP Rights**

The Customer acknowledges that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with the software, including all documentation and manuals relating thereto, are and shall remain the sole property of IGEL. The Customer shall not during or at any time after the expiry or termination of these Terms in any way question or dispute the ownership by IGEL thereof. In the event that new inventions, designs or processes evolve in performance of or as a result of these Terms the Customer acknowledges that the same shall be the property of IGEL unless otherwise agreed in writing by IGEL.

### **§ 17 Guarantee/ Liability**

(1) The following provisions under (2) to (7) are applicable supplementary to § 12 and 14.

(2) The Customer understands that it is not possible to develop any software to the extent that for all conditions of application the software is always free of errors. IGEL undertakes no guarantee that the software in all areas and applications will function without interruption or insignificant errors. The Customer acknowledges that the existence of such errors shall not constitute a breach of these Terms.

(3) IGEL guarantees that the software has the particular functions which are indicated in the general product descriptions and catalogues. IGEL undertakes no guarantee that the software will correspond to individual requests or requirements of the Customer. The Customer bears the sole responsibility for the selection and usage of the software as well as for any thereby intended results. There is also no guarantee for altered or processed versions of the software unless the Customer proves (beyond reasonable doubt) that the available defects have absolutely no connection with the alteration or the processing.

(4) Each and every liability of IGEL is excluded as far and as long as the Customer does not use or run the software with or in connection with IGEL-Hardware (namely terminal, thin client, thin client cards, and thin client upgrade kits). This exclusion shall neither apply to death or personal injury caused by IGEL's negligence, nor to liability for fraud or unless the use of third party hardware has been approved in advance by IGEL in writing.

(5) IGEL delivers the software "as is" and undertakes in particular no guarantee, namely neither explicit, nor implied.

(6) IGEL is not liable for the loss of data or its restoration, unless the Customer proves that a specific loss of data could not be avoided through appropriate measures for securing the data on the part of the Customer, or the minimum daily preparation of security copies of all data and software. Any such liability shall be subject to the limits and exclusions of liability in § 14.

(7) IGEL is not liable for defective economic result, lost profits, indirect or consequential loss or damage, damages as result of defects and claims of third parties.

### **§ 18 Intellectual Property rights and Copyrights of Third Parties**

(1) IGEL shall, at its own expense, defend or support the Customer in its defence or, at IGEL's option, settle any claim brought against the Customer alleging infringement of any intellectual property rights registered in or subsisting in the United Kingdom by the Products (a "Claim") and where the Product is manufactured in IGEL's own facilities. In such a case, IGEL shall:

- at IGEL's option, either support the Customer in any legal proceedings or settlement negotiations with the Claimant or take over control of any legal proceedings or settlement negotiations relating to a Claim; and

- indemnify the Customer against all reasonable expenses and costs incurred in relation to legal proceedings or settlement negotiations relating to a Claim; and
- indemnify the Customer against any final judgment of the competent UK court relating to a Claim.

(2) The indemnity from IGEL is subject to the Customer:

- promptly notifying IGEL in writing of a Claim immediately on becoming aware of it;
- if requested, granting IGEL sole control of the defence and/or any settlement negotiations relating to a Claim;
- giving IGEL complete and accurate information and full assistance to enable IGEL to settle or defend a Claim;
- making no admissions as to liability without written permission from IGEL; and
- in relation to Products supplied by third parties, the indemnity is limited in accordance with clause 18(6) below.

(3) In the event of any Claim arising, or if a court judgement is made that the Products do infringe third party UK intellectual property rights, or if the use of any part of the Product is restricted in the UK, IGEL at its option and expense may:

- obtain for the Customer the right to continue to use the Products; or
- replace or modify the Products so that they become non-infringing; or
- if the use of the Products is prevented by permanent injunction, accept return of them and refund an amount equal to the sum paid by the Customer for the Products, subject to straight line depreciation over a five year period.

(4) IGEL will have no liability under this clause for:

- any infringement caused by a combination of the Products with any other Product not supplied by or approved in writing by IGEL; or
- any infringement caused by a modification of the Products unless the modification was made or approved expressly by IGEL; or
- supplying the Customer with any information, data, advice, service or assistance; or
- any loss, damage or liability in excess of the limits and exclusions of liability set out in clause 14.

(5) In no circumstances will IGEL be liable for any costs or expenses incurred by the Customer without IGEL's written authorisation and clauses 18(1) to (4) state the exclusive remedy of the Customer in respect of any UK intellectual property rights infringement by the Products.

(6) In the case of Products supplied by third parties or which are not wholly manufactured in IGEL's own facilities, the liability of IGEL is limited to assigning IGEL's claim against its suppliers to the Customer.

(7) Insofar as Products were manufactured, adapted or configured in accordance with or based on specifications, designs or other requirements of the Customer, the Customer hereby indemnifies IGEL against all claims and liabilities arising from any breach of intellectual property rights caused by such requirements.

(8) Nothing in this clause shall limit the Customer's general obligation at law to mitigate any loss it may suffer as the result of a Claim under this clause.

### **§ 19 Spare parts**

(1) For the delivery of spare parts and accessories in exchange for old parts at a special spare part price (so called "spare part delivery"), the following specific provisions shall be applicable.

(2) The old parts shall be supplied to IGEL completely freight paid and free of charge.

(3) If the spare part is delivered by IGEL before the Customer has delivered the old part, then IGEL, instead of the spare part price, shall, in the interim, charge the valid price of a new spare part. After the arrival of the old parts IGEL will credit the difference between the new price and the price for replacement to the Customer.

(4) The old parts become property of IGEL upon delivery. Through performance of delivery of such old parts the Customer declares implicitly that the Customer was owner of the old part, respectively that the Customer is authorized to pass over the ownership of this old part to IGEL, and that there are no existing rights of third parties over this old part.

### **§ 20 Orders for Printing and Stamping**

(1) The Customer shall inspect galleys and imprints for mistakes and shall return them to IGEL cleared and ready for press. IGEL is not liable for mistakes made by the Customer. Telephonically transmitted texts or alterations require prior written approval of the Customer.

(2) Liability is excluded for documents and items handed over by the Customer for the performance of the order, such as, in particular, films, printing plates, data carriers etc ("patterns"). After the expiration of a term of two (2) years IGEL is authorized to dispose of the archived patterns without notification to the Customer.

(3) Through the placing of the order the Customer shall not acquire ownership of the tools and dies needed for the creation of the copies and stamps, and similar needed tools and dies. The erasing or disposal of these tools and dies by IGEL shall follow after the completion of the order, without liability to the Customer.

(4) In case of orders for stamps or copies IGEL reserves the right to make excess or reduced delivery of up to 10%.

### **§ 21 Force majeure**

(1) Neither party hereto shall be liable for any breach of its obligations hereunder resulting from beyond its reasonable control including but not limited to fires strikes (or its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure").

(2) Each of the parties hereto agrees to give notice to the other immediately upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

(3) If a default due to an Event of Force Majeure shall continue for more than 6 months then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure, except in respect of accrued liabilities and obligations to pay.

## **§ 22 Telecommunications**

If the Customer intends to use the products in conjunction with a telecommunications network, it shall be responsible for obtaining the consent of the owner of the network for such connection, paying all charges from time to time levied by the owner for such connection to the network and at all times complying with such technical and other regulations as the owner shall impose as condition of connection to the network. IGEL shall not be liable for any loss or damage resulting from the acts of omissions of the owner of the network or the breach by the Customer of its obligations under this clause.

## **§ 23 Waiver**

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **§ 24 Notices**

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile upon transmission, provided a transmission report to a then current number of this recipient can be produced.

## **§ 25 Assignment**

(1) Neither party shall be entitled to assign the contract nor all or any of their rights and obligations hereunder without the prior written consent of the other.

(2) IGEL may sub-contract the provision of any product or any part.

## **§ 26 Entire Agreement**

These Terms, together with the Value Added Sales Agreement between the same parties, constitutes the entire agreement and understanding of the parties relating to its subject matter (except in the case of fraud) and supersedes all prior written or oral agreements, representations, understandings or arrangements between them relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, representation, understanding or arrangement which is not expressed in this Agreement. This provision shall not apply in the case of fraud.

## **§ 27 VAT**

All sums payable under this Agreement are expressed exclusive of VAT at the applicable rate, for which the Customer shall also be liable.

## **§ 28 Miscellaneous Provisions**

(1) These Terms are governed by the Laws of England and Wales. The application of the Convention on the International Sale of Goods (CISG) is excluded.

(2) The place of performance for all obligations in connection with these Terms is the factory as stated by IGEL in the confirmation of the order (industrial premises). When the parties agree that the

dispatch shall be performed from the factory of a third party, this factory shall be the place of performance.

(3) The Customer shall not return Products or cancel any order without IGEL's previous written consent. Such consent will not be given where Products have been specially purchased or configured by IGEL to meet the Customer's requirements or where IGEL has commenced performance of any Services (including but not limited to the acquisition of any materials required for the performance of such Services). If IGEL gives such consent, it reserves the right to make a cancellation charge.

(4) IGEL reserves their right to invoice confirmed bookings for Services which are subsequently cancelled by the Customer. Notice of cancellation must be made in writing or e-mailed to info@igel.com. The amount invoiced shall be determined by the notice period given for cancellation; 1-7 days @ 100% of the charge for Services, 7-14 days @ 50% of the charge for Services, 4-28 days @ 25% of the charge for Services. No charge will be made where a cancellation notice of 29 days or more is given.

(5) The parties agree that the English courts shall have exclusive jurisdiction for all litigation resulting from this Agreement and/or business relationship and/or any contract between IGEL and the Customer. IGEL is entitled also on its part to sue at the place of the registered office of the Customer.

(6) Alterations of these Terms, supplements and representations must be in writing and signed by both parties to the contract (in the case of IGEL, being a Director) in order to be valid. The same is also valid and in particular for annulment or alteration of these written clauses. As far as adherence to the written form is required, the transmission by facsimile is sufficient also.

(7) If one or more provisions of these Terms is declared invalid by a court of law or if these Terms have to include a blank provision, the validity of the remaining provisions shall be unaffected. The ineffective or incomplete provision will be replaced through a similar rule, which meets closest the intent and the purpose of the desired provision efficiently.

**Read and accepted by the Customer**

\_\_\_\_\_

**Name**

\_\_\_\_\_

**Name**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Signature**

**Customer Company stamp**

**IGEL Technology Ltd**