

Version 1.4  
11<sup>rd</sup> May 2018

**The customer's attention is drawn in particular to the provisions of clause 10.**

## 1. Interpretation

### 1.1 Definitions:

<b>"Business Day"</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>"Conditions"</b>	means the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.
<b>"Contract"</b>	means the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions.
<b>"Customer"</b>	means the person or firm who purchases the Products from the Supplier.
<b>"Force Majeure Event"</b>	means an event or circumstance beyond a party's reasonable control.
<b>"Products"</b>	means the products (or any part of them) including Software and Hardware set out in the Order.
<b>"Hardware"</b>	means personal computer products, peripherals or other items of computer hardware.
<b>"Order"</b>	a request by the Customer to purchase those Products specified therein.
<b>"Software"</b>	means any products which contain in whole or in part a computer program or programs or instructions relating to any such program.
<b>"Specification"</b>	means any specification for the Products, including any related plans and drawings.
<b>"Supplier"</b>	means Virtuoso IT Limited (registered in England and Wales with company number 07598800).
<b>"Third Party Supplier"</b>	a third party manufacturer and/or licensor of a Product and/or Software.

**“Third Party Supplier Terms”** means the terms and conditions of a Third Party Supplier.

## 1.2 Interpretation:

1.2.1 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.

1.2.2 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.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

## 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 trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Products 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 a written acceptance or email acceptance of the Order or impliedly by fulfilling the Order, at which point the Contract shall come into existence.

2.4 Except as varied by the specific terms of any quotation by the Supplier these Conditions and Third Party Supplier Terms comprise the terms and conditions under which the Supplier is willing to supply Products to a Customer. Unless otherwise agreed in writing by the Supplier all Contracts are entered into on the basis of these Conditions to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by a Customer or in any other correspondence or implied by trade, custom or course of dealing (whether or not in conflict with these terms and conditions). 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 descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Products given by the Supplier shall not constitute an offer. Unless otherwise specified by Virtuoso a quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 The Customer shall provide, promptly and without charge, any assistance, information, facilities or other matters reasonably requested by Supplier to allow the Contract to be performed

### **3. Products**

3.1 The Products are described in the Supplier's catalogue.

3.2 The Supplier reserves the right to amend the specification of the Products if required by any applicable statutory or regulatory requirements.

### **4. Delivery**

4.1 The Products will be delivered by the Third Party Supplier in accordance with the Third Party Supplier Terms.

### **5. Licence Of Software**

5.1 All Software is owned by Third Party Suppliers, who determine the terms upon which Software is licensed. The Supplier hereby either (a) grants to the Customer with effect from the actual date of delivery a non-exclusive, non-transferable licence to use the Software for its own internal purposes only and in accordance with the Third Party Supplier's standard licensing terms, and for operation in an environment deemed suitable under the Third Party Supplier's standard licensing terms (which are available to the Customer on request), or (b) shall procure the grant of a licence directly from the Third Party Supplier to the Customer to enable the Customer to use the Software (on terms which shall be specified by the Third Party Supplier).

5.2 The Customer hereby indemnifies the Supplier in respect of any loss (of any kind) which the Supplier may suffer as a result of the breach by the Customer of a licence granted under or pursuant to this Clause 4.1

### **6. Warranties**

6.1 Each party warrants that it is entitled to enter into the Contract.

6.2 The Supplier shall procure for the Customer the benefit of any standard end-user warranties in respect of the Products from the Third Party Supplier(s) (whether by assignment from the Supplier or granted directly by the Third Party Supplier(s)). Details of these warranties are available upon request. Where a direct warranty is given to the

Customer by a Third Party Supplier, the Supplier does not give any express warranties except as set out in Clause 6.1.

6.3 The Customer shall promptly notify the Supplier in writing of any failure by the Supplier to comply with any of the warranties set out in Clause 6.1, or any failure of the Products to comply with the relevant Third Party Supplier's standard warranties, as soon as practicable after discovery of the failure, failing which the Supplier shall be entitled to reject the claim if the delay means that the Supplier is unable to make a corresponding claim against a Third Party Supplier, or is otherwise unable to establish the validity of the claim. The notice from the Customer to the Supplier shall identify and, where possible, substantiate the breach

6.4 Except for the express warranties and conditions contained or referred to in these Conditions, or in the Contract, the Supplier makes no other warranties or representations regarding the Products and all warranties, conditions and other terms express or implied statutory or otherwise in respect of compliance with descriptions, the satisfactory quality or the fitness for purpose of the Products which are not expressly set out in these terms or the Contract are excluded to the fullest extent permitted by law.

## **7. Title and risk**

7.1 The risk in the Products shall pass to the Customer on completion of delivery in accordance with Clause 4.

7.2 Title to the Products shall not pass to the Customer until the earlier of:

7.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Products and any other products that the Supplier has supplied to the Customer, in which case title to the Products shall pass at the time of payment of all such sums; or

7.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Products has passed to the Customer, the Customer shall:

7.3.1 store the Products separately from all other products held by the Customer so that they remain readily identifiable as the Supplier's property;

7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

7.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and

7.3.5 give the Supplier such information relating to the Products as the Supplier may require from time to time.

7.4 Subject to clause 7.5, the Customer may resell or use the Products in the ordinary course of its business at full market value (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

7.4.1 it does so as principal and not as the Supplier's agent; and

7.4.2 title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the Supplier may have:

7.5.1 the Customer's right to resell the Products or use them in the ordinary course of its business ceases immediately; and

7.5.2 the Supplier may at any time:

(a) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and

(b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

## **8. Price and payment**

8.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

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

8.2.1 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);

8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Products ordered or

8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Products:

8.3.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.3.2 excludes the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to the Customer.

8.4 The Supplier may invoice the Customer for the Products at the time of the acceptance of an Order.

8.5 Unless otherwise specified by Virtuoso the payment for the Products shall be due on the date of the invoice. Time for payment is of the essence.

8.6 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 on the overdue amount at the rate of 4% per annum above Bank of England's 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.7 Credit terms are subject to review by the Supplier from time to time and the Supplier shall at all times have the right to suspend or vary any credit terms granted. If demanded by the Supplier, the Customer shall pay for the Products on Order.

8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). 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.

## 9. Termination

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

9.1.1 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 20 days of that party being notified in writing to do so;

- 9.1.2 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.1.4 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.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4, or the Supplier 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.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 9.5 Termination of the 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 this Contract that existed at or before the date of termination.
- 9.6 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.

## **10. Limitation of liability**

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2 fraud or fraudulent misrepresentation;

10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

10.1.4 defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1:

10.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

10.2.2 the Supplier's total liability to the Customer in respect of all 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 the total value of the Contract concerned in respect the loss.

## 11. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Contract by giving five days written notice to the affected party.

## 12. General

### 12.1 Assignment and other dealings.

12.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Customer may not 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 the Contract without the prior written consent of the Supplier.

### 12.2 Confidentiality.

12.2.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.2.2. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.



12.2.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 12.3 **Entire agreement.**

12.3.1 This 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.

12.3.2 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 this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 **Waiver.** 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 prevent or restrict the 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.

12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## 12.7 **Notices.**

- 12.7.1 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 post or other next working day delivery service, commercial courier, fax or email.
- 12.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7.1; if sent by pre-paid first class post or other next working day delivery service, 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 fax or email, one Business Day after transmission.
- 12.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 12.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.10 **Jurisdiction.** Each party irrevocably agrees 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 this Contract or its subject matter or formation.