



## HYPERTEC LIMITED CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 Definitions:

**Affiliate:** means a subsidiary of Exertis (UK) Limited (Company number 01511931) as defined in section 1159 of the Companies Act 2006.

**Anti-Bribery Laws:** means the anti-corruption and/or anti-bribery laws in effect in jurisdictions where the Customer acts or markets, sells, distributes, or delivers the Goods, including but not limited to the Foreign Corrupt Practices Act of the United States and the UK Bribery Act 2010 and any local statutory legislation.

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

**Buyer:/Customer:** the person, customer or firm who purchases the Goods from the Company.

**Backorder:** means an Order where Goods are not available at time of Order placement and which are still to be acquired by the Supplier from its main supplier.

**CFA 2017:** means the Criminal Finances Act 2017.

**Conditions:** the terms and conditions set out in this document as amended from time to time.

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

**Company:** Hypertec Limited (registered in England and Wales with company number 03258927).

**Customer:** means the person, company or firm who purchases the Goods and/or Services from the Supplier.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or third party, which are provided by the Customer to the Supplier in connection with Services.

**Data:** means any information relating to an identified or identifiable natural person ('data subject'); and identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person in accordance with section 3(2) of the DPA Act 2018.

**Data Controller:** has the meaning given to it under the Data Protection Laws.

**Data Processor:** has the meaning given to it under the Data Protection Laws.

**Data Protection Laws:** means all applicable data protection and privacy legislation in force from time to time in the UK GDPR, DPA 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which either party is subject, which relates to the protection of personal data.

**DPA 2018:** means the Data Protection Act 2018 ( and regulations made thereunder)

**Goods:** the goods (or any part of them) stated in the Buyer's Order.

**Order:** means the Customer's order for the Goods and./or Services as set out in the Customer's purchase order form or in the Customer's written or verbal acceptance of the Supplier's quotation as the case may be.

**Price:** the price agreed between the Company and Buyer for the Goods.

**Specification:** any specification for the Goods, including any related plans and drawings, agreed in writing by the Buyer and the Company.

**Supplier:** Hypertec Limited (registered in England and Wales with company number 03258927) registered office address. Exertis (UK) Technology House, Magnesium Way, Hapton, Burnley, Lancashire, BB12 7BF.

**Validity Period:** the period during which a quotation given by the Company is valid may vary depending on the Buyer and the Goods. A quotation shall be valid for the period stated on it, and if no validity period is stated on the quotation it shall be treated as being valid for no more than 5 working days from the date of its issue.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

### 2. GENERAL

2.1 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.2 The Buyer may be asked to complete the Company's credit application form which will be subject to these Conditions.

2.3 The Buyer is responsible for ensuring that the terms of the Order, credit application form and any applicable Specification are complete and accurate.

- 2.4 These Conditions shall be deemed to be incorporated in all contracts of the Company to sell Goods and in the case of any inconsistency with any order, letter or form of contract sent by the Buyer to the Company, or any other communication between the Buyer and the Company whatever may be their respective dates including online and through the Company's website.
- 2.5 An order shall only be deemed to be accepted when the Company issues a written acceptance of the order, at which point the Contract shall come into existence.
- 2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for the Validity Period.

### **3. DESCRIPTION AND PRICE OF GOODS**

- 3.1 The description of the goods will be as shown on the Company's website and supplied via electronic feed, descriptions can be updated frequently should product modification take place, and it is the Buyer's responsibility to check product descriptions at the time of order.
- 3.2 Prices on the Company's website and pricing feeds are correct at the time of publishing, pricing is subject to change and the Company reserves the right to amend pricing, prices via quotation are only valid for the stated quotation period.
- 3.3 All goods are subject to availability. If on receipt of your order the goods you have ordered are not available in stock we may not accept your order. If after acceptance of order the Supplier discovers within [14 days] of our acceptance of your order that the goods are unavailable we may terminate the contract and refund or re-credit you for any sum that has been paid by you or debited from your credit card for the goods.
- 3.4 In addition to the price, you may be required to pay a delivery charge for the goods.
- 3.5 In the instances of Memory purchases a legacy technology module is any module that uses a non-current DRAM technology and typically a DRAM technology that is no longer in mainstream volume production. Examples of which, might be but not limited to: SDRAM, DDR1, DDR2 etc. As older technology memory becomes ever scarcer, Hypertec remains committed to providing as broad range of products as possible to enable the upgrade of legacy computing devices. Wherever possible, we utilise new components or modules, however, some may be built or sourced as New Old Stock. Given that many of these components are no longer available, there may be occasions, where we may need to utilise professionally reclaimed and re-purposed components, which are removed under full ESD environments, and then used to manufacture new modules, using new PCB and ancillary components. Within our "Legacy" range, we may on occasion, when driven by product scarcity, use complete reclaimed and requalified modules. In all cases, and with all sources of product, Hypertec fully test and warranty these products with a lifetime warranty and free technical support. To this end, there is no difference in the performance or reliability of products created from any of the above sources, as they undergo the same level of QA and customer service, and are covered by our no quibble lifetime warranty.

### **4. TERMS OF PAYMENT**

- 4.1 Subject to condition 4.3, the Price shall be set out in the Buyer's Order or the Order confirmation provided by the Company for the Goods.
- 4.2 The time of payment shall be of the essence of the Contract.
- 4.3 The Company may, by giving notice to the Buyer at any time up to 10 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 the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or
  - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.
- 4.4 Unless otherwise agreed by the Company in writing, payment shall be due 30 days from date of invoice.
- 4.5 If the Goods are delivered in instalments:
- (a) the Price shall (unless agreed otherwise) be invoiced in instalments;
  - (b) the Company shall be entitled to invoice each instalment as and when delivery thereof has been made, notwithstanding non-delivery of other instalments or other default on the part of the Company; or
  - (c) or if the Buyer has agreed to take specified quantities of goods at specified times, a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding, shall cause the whole of the balance of the Price to become due and payable immediately.
- 4.6 The Buyer 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 Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.
- 4.7 Without prejudice to any other rights it may have, the Company is entitled to charge interest at a rate of 4% above the current Base Rate of National Westminster Bank on any overdue payments in respect of the Goods, Price or instalment.

### **5. CREDIT ACCOUNT**

- 5.1 The Buyer/Customer may apply to open a credit account with the Supplier by obtaining a credit account application form from the Supplier or if available via completing an online trade application form.
- 5.2 Once the Buyer/Customer has returned the credit account application form to the Supplier, the Supplier will review the credit account application and notify the Buyer/Customer of its acceptance or rejection within 10 Business Days of receiving the credit account application (Application Period).

- 5.3 The Buyer/Customer may request that the Application Period is expedited and the Supplier may expedite the Application Period at its sole discretion.
- 5.4 Following the opening of credit account, the Supplier will issue a credit statement monthly to the Buyer/Customer on a monthly basis.
- 5.5 Credit accounts with overdue balances will be placed on credit holds. This means that no further goods will be despatched and all support and repair/warranty services withdrawn until the account is brought into order. Repeated failure to adhere to the Supplier's credit terms will result in permanent loss of credit account.
- 5.6 All accounts with reviewed periodically in line with the Supplier's insurance terms and conditions and limits may be reduced/increased at the Supplier's discretion with no notification to the Customer. The Supplier may grant and remove credit lines at its sole discretion and is under no obligation to provide reasons why credit limits are removed or reduced.

## 6. ADDITIONAL COSTS

The Buyer shall indemnify the Company against any loss, liability or additional costs incurred by the Company through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Buyer, its agents or employees.

## 7. DELIVERY

- 7.1 The Company shall deliver the Goods to the location agreed in the Order (or such other location as the parties may agree at any time after the Company notifies the Buyer that the Goods are ready), or where agreed between the parties the Buyer shall collect the Goods from the Company's premises (or such other location as may be advised by the Company) prior to delivery within five Business Days of the Company notifying the Buyer that the Goods are ready. It is the Customer's responsibility to ensure the correct delivery address is supplied.
- 7.2 All times or dates quoted for the delivery of the Goods are approximate only. Time of delivery shall not be of the essence of the Contract nor shall the Company be under any liability for any delay beyond the Company's control, a force majeure event under condition 14 or the Buyer's failure to provide the Company with adequate delivery instructions.
- 7.3 Where the Goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export, any such carrier shall be deemed to be an agent of the Company and not the Buyer for the purposes of Section 44, 45 and 46 of the Sale of Goods Act 1979.
- 7.4 Section 32 (3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- 7.5 No liability for non-delivery, loss of or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract, will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
- (a) within two days of delivery for loss, damage or non-compliance with the Contract; or
  - (b) within seven days of the date of the invoice for non-delivery.
- 7.6 In the event of a valid claim by the Buyer for non-delivery loss damage or non-compliance with the Contract notified in accordance with condition 7.5, the Company may at its own discretion either reprocess or replace the Goods at its expense but will not be under any further or other liability to any person other than the Buyer in connection with such non-delivery, loss, damage or non-compliance.
- 7.7 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.
- 7.8 Unless otherwise stated, prices are exclusive of carriage to the Buyer's premises and any necessary insurance and/or Tax and Duties related to Export control (clause 7.9).
- 7.9 Where Goods are exported out of the United Kingdom by the Supplier to the Customer or by the Customer to the Customer's order the provisions of this clause 7.9 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these conditions:
- (a) The terms of purchase will be subject only to the manufacturer's warranty and the Customer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;
  - (b) The relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the Contract;
  - (c) The Customer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination including, but not limited to, all applicable compliance requirements for placing Goods on to the relevant market and for the payment of any duties thereon;
  - (d) Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered Incoterms®2020 DAP at the Customer's premises save where it has been agreed that the Customer will collect the Goods from the Supplier in which case the Goods will be delivered Incoterms®2020 FCA at the Supplier's premises;
  - (e) the Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection, and which is made after shipment, or in respect of any damage during transit;
  - (f) the customer shall not be entitled to withhold payment of the price for the goods due to the Customer's failure to comply with the provisions of this clause 7.9;
  - (g) the Goods will be packaged in accordance with the Supplier's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.

## **8. DELIVERY**

- 8.1 The Customer shall examine the Goods immediately upon delivery. The Supplier shall have no liability in respect of claims in respect of shortages or picking errors or damage in transit unless the Customer informs the Supplier's customer services department of such shortages or picking errors or damage by email to [info@hypertec.co.uk](mailto:info@hypertec.co.uk) or to assigned account managers directly within 2 Business Days after delivery. The Supplier shall have no liability in respect of claims for shortages or damages in transit if the Customer or its representatives has signed for the Goods as being received either unchecked or in good condition.
- 8.2 Any liability of the Supplier for shortages or picking errors or damage in transit shall be limited to replacing the missing or wrongly picked or damaged Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoiced raised for such Goods. The Customer shall return to the Supplier, promptly upon request, in accordance with the Supplier's returns policy set out in clause 10, any Goods that have been incorrectly delivered.

## **9. NON DELIVERY**

- 9.1 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer informs the Supplier's customer service department of such non-delivery by email to [info@hypertec.co.uk](mailto:info@hypertec.co.uk) within 2 Business Days of the date when the Goods would in the ordinary course of event have been received.
- 9.2 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata rate against any invoice raised for such Goods.

## **10. RETURNS**

- Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation signed on behalf of the Company by a Director or the Company Secretary with the authority to bind the Company.
- 10.1 PRODUCTS CANNOT BE RETURNED WITHOUT A VALID RMA (Return Material Authority) number which should be used to externally identify the product.
- 10.2 Products should be returned in their original packaging and adequate measures taken to ensure that both the printed packaging and product are not damaged in transit. Do not mark any printed product specific packaging as this may affect your warranty claim. Please however, ensure that the RMA number is visible outside of the package.
- 10.3 If an advanced replacement is required, then this will take the form of a credit and reorder process, where the user/reseller places an order for the replacement product, which is then despatched as soon as stock is available, and then credited on receipt of the faulty product.
- 10.4 Products that are sold under NDA agreement or project orders sold under the Company's NCNR (Non-Cancellable, Non-Returnable) agreement by all parties cannot be returned or refunded.

## **11. PASSING OF TITLE AND RISK**

- 11.1 The Goods shall be at the Buyer's risk as from delivery.
- 11.2 In spite of delivery having been made title in the Goods shall not pass from the Company until:
- (a) the Buyer shall have paid the Price plus VAT in full; and
  - (b) no other sums whatever shall be due from the Buyer to the Company.
- 11.3 Until title in the Goods passes to the Buyer in accordance with condition 11.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.
- 11.4 Notwithstanding that the Goods (or any of them) remain the property of the Company, the Buyer may sell or use the Goods in the ordinary course of the Company's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until title in the Goods passes from the Company, the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.
- 11.5 Until such time as title in the Goods passes from the Company, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company. If the Buyer fails to do so, the Company may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request, the rights of the Buyer under the condition 11.4 shall cease.
- 11.6 The Buyer shall not pledge, or in any way charge by way of security, for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Buyer does so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.
- 11.7 The Buyer shall insure and keep insured with a reputable insurance provider the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Company until the date that title in the Goods passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if

the Buyer fails to do so all sums, whatever owing by the Buyer to the Company, shall forthwith become due and payable immediately on demand.

- 11.8 The items the Buyer purchases may only be sold, leased or otherwise transferred in accordance with applicable export controls and sanctions laws, including those that apply to restricted end-users or to restricted countries. In addition, these items may not be sold, leased or otherwise transferred to, or utilised by, and end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support missile projects or chemical biological weapons. Customer/Consignee/Buyer agrees to abide by those laws and regulations.

## 12. CONDITIONS AND WARRANTIES

- 12.1 The Contract shall not constitute a sale by description or sample.
- 12.2 Any conditions or warranties (whether express or implied by statute common law or arising from conduct or previous course of dealing or trade custom or usage) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as the correspondence of the Goods with any description or sample, are hereby expressly excluded (to the extent permitted by law).

## 13. DEFECTIVE GOODS

- 13.1 In substitution for all rights which the Buyer would or might have but for these Conditions, the Company undertakes in the case of Goods supplied by the Company, that if within the period of six months' from the date of despatch of the Goods by the Company, a latent and material defect in materials or workmanship appears in them it will, at its own discretion, repair them or supply a replacement of the Goods free of charge at the place of delivery specified by the Buyer for the original Goods, provided that in any case they have been accepted and paid for.
- 13.2 The Company's obligations contained in condition 13.1 above are subject to the following requirements:
- (a) The Buyer must notify the Company in writing of any latent defect within a reasonable time of discovery.
  - (b) The Goods having been used in an appropriate manner and/or prescribed in the operating instructions (if any).
  - (c) Faulty parts being returned to the Company at the Buyer's expense if so requested.
  - (d) The Goods not having been modified or repaired otherwise than by the Company or otherwise interfered with.
- 13.3 Where the Goods are for delivery by instalments, any latent defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall continue to be bound to accept delivery thereof.
- 13.4 No guarantee whatsoever is given in respect of items supplied by the Buyer or a contractor to the Buyer which are incorporated in Goods at the direction of the Buyer.
- 13.5 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Consumer Rights Act 2015), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.6 With the exception of Memory goods which come with a Lifetime warranty, direct replacement or reimbursement can be requested following the RMA process.
- 13.7 Any goods supplied by a third party/vendor to the Company are subject to that supplier's warranty terms.

## 14. INSOLVENCY EVENTS

- 14.1 For the purpose of these conditions, the following events shall be deemed to be Insolvency Events:
- (a) The Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) The customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - (d) (being an individual) the Customer is the subject of a bankruptcy petition order;

- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(a) to clause 12.1 (h) (inclusive);
- (j) the Customer encumbers or in any way charges any of the Goods;
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations, under the Contract has been placed in Jeopardy; and
- (m) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## 15. LIMITATION OF LIABILITY

15.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- (b) fraud or fraudulent misrepresentation.

15.2 Subject to condition 15.1:

- (a) the Company shall under no circumstances whatsoever be liable to the Buyer, 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
- (b) the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the relevant Goods.

## 16. TERMINATION

16.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Buyer 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 Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

16.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in condition 16.1(a) to condition 16.1(d), or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

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

16.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices, costs and interest. Where the Goods have been dispatched but an invoice has not been issued prior to termination, the Buyer accepts that the Company will be entitled to issue it with an invoice for the Goods supplied, costs and interest, the total of which shall be immediately due and payable by the Buyer.

16.5 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.

## 17. REPRESENTATIONS

No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the agents or employees of the Company shall be construed to enlarge vary or override in any way any of these Conditions.

## 18. FORCE MAJEURE

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract or in respect of supplying the Goods (or otherwise) if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the Company shall be entitled to a reasonable extension of the time for performing such obligations or cancel delivery by giving the Buyer notice in writing.

## 19. ASSIGNMENT AND OTHER DEALINGS

19.1 The Company 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.

19.2 The Buyer 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 Company.

## 20. DATA PROTECTION

20.1 The Customer is the Data Controller of any Data which is transferred by the Customer to the Supplier in connection with the supply of Goods and/or Services.

20.2 The Customer agrees and warrants that;

- (a) it shall at all times comply with the Data Protection Laws;
- (b) it has all necessary appropriate consents and/or notices in place to enable lawful transfer under a lawful basis of the Data to the Supplier for the duration and purposes of the Contract; and
- (c) it shall implement appropriate technical and organisational measures for the lawful transfer of the Data to the Supplier.

20.3 The Supplier shall:

- (a) Comply with Data Protection Laws;
- (b) Process the Data as Data Processor in accordance with the Supplier's privacy policy set out here <https://config.hypertec.co.uk/downloads/marketing/HypertecWebsite/PrivacyPolicy.pdf> save to the extent varied by the Customer's written instructions to the Supplier.

20.4 The Customer agrees to indemnify and keep indemnified and defend at its own expense the Supplier at all costs, claims, damages or expenses incurred by the Supplier or for which the Supplier may become liable due to any failure by the Customer or its employees or agents to comply with any of its obligations under the Data Protection Laws.

## 21. CONFIDENTIALITY

21.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 21.2.

21.2 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 the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 16; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **22. RECORDS & AUDITS**

- 22.1 The Customer will maintain legible, accurate and complete books and records (including any certifications and authorisations) relating to the Contract of sale, distribution, licencing, delivery, or end-use of the Goods for a period of 7 years from the date of creation or longer in accordance with (i) statutory requirements or (ii) any period during which a government or regulatory body may require access to that information. At the end of such retention period specified herein, the Customer must dispose of all records appropriately.
- 22.2 At the Supplier's request, the Customer must cooperate and assist the Supplier with any audit, review, or investigation (Audit) that relates to (i) these conditions or the Customer's compliance with the law (ii) the Customer's sale, distribution, licensing, or delivery of the Goods; (iii) any rebates, incentives, concessions, or other amounts paid or payable by the Supplier; or (iv) any amounts due to the Supplier. In connection with an Audit, the Customer will deliver all records, information, and documents reasonably requested by the Supplier. The Supplier has the right to conduct onsite Audits, and the Customer will grant the Supplier, its employees and representatives' reasonable access to information, records, personnel, and customers, (including customer agreements to verify the Customer's premises or other locations (during normal business hours) where such information and records are located.

## **23. COMPLIANCE WITH LAW**

- 23.1 The Supplier takes a zero-tolerance approach to bribery and corruption.
- 23.2 The Customer agrees to comply with all laws and regulations that apply to the Customer in regard to the Contract and any onward sale, distribution or delivery of the Goods. The Customer shall procure that any third party engaged in connection with the Contract or the sale, distribution, delivery of the Goods complies with all applicable laws and regulations. The Customer agrees to maintain, throughout the duration of dealings between the Customer and the Supplier, its own policies controls to ensure compliance with these laws, including having adequate procedures designed to ensure that any third party the Customer engages complies with the applicable laws and regulations. The Customer must provide a copy of such policies and procedures to the Supplier on request and agrees to monitor and enforce such policies and procedures as appropriate. The Customer agrees at all times to conduct its business in an ethical manner and avoid business practices that may be perceived as deceptive, misleading, or otherwise improper or amount to misrepresentation of the Supplier of the Goods or their capabilities.

## **24. ANTI-BRIBERY LAWS**

- 24.1 The Customer agrees to comply with the Anti-Bribery Laws. The Customer will not take or allow any third party to take any action or engage in any practice that would violate the Anti Bribery Laws.
- 24.2 The Customer warrants and represent that neither the Customer nor any of its officers or employees has been convicted of any offence involving bribery, corruption, fraud, or dishonesty or, to the best of its knowledge, has been or is subject of any investigation, inquiry or enforcement proceeding by any governmental, Administrative, or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws.
- 24.3 The Customer shall (i) maintain, throughout the duration of dealing between the customer and the Supplier, its own anti-corruption policies, and procedures, including without limitation, adequate procedures designed to ensure that the Customer and any third party the Customer engages in connection with the Contract comply with the Anti Bribery Laws; (ii) provide a copy of such policies and procedures to the supplier on request; and (iii) monitor and enforce such policies and procedures as appropriate.
- 24.4 The Customer shall provide information, documentation and reasonable assistance to the Supplier and its representatives for the purposes of ensuring the Customer's compliance with the Anti-Bribery Laws or to Support an inquiry or investigation of a suspected violation of those laws.
- 24.5 The Customer acknowledges, represents, and warrants its compliance with the provisions of Part 3 of CFA 2017 Specifically in relation to criminal tax evasion and/or facilitation.

## **25. EXPORT CONTROL**

- 25.1 The Customer agrees and undertakes to comply with all applicable export and re-export control laws and regulations, including but not limited to those imposed, administered or enforced from time to time by the U.S Government through the U.S. Department of Treasury, the U.S. Department of Commerce, or the U.S. Department of State, or the European Commission, the UK Export Control of Organisation, the UK Foreign and Commonwealth Office, or Her Majesty's Treasury of United Kingdom (Export Control).
- 25.2 At the time of Order, the Customer is required to inform the Supplier of any plans to export/re-export the Goods and will obtain an end-use statement from the end-customer regarding the end-use of the Goods in question.
- 25.3 The Supplier's acceptance of an Order subject to an export licence is contingent on the issuance of the applicable licence and the Supplier shall not be held liable for delays or failure to deliver as a result of not obtaining an applicable export authorisation.

- 25.4 Neither the Customer nor any of its subsidiaries nor any of its subsidiaries' directors. Administrators, officers, board of directors (supervisory and management), members or employees is the subject or target of any sanctions. Should this position change, the Customer will inform the Supplier within 48 hours of the sanction being imposed.
- 25.5 The Customer has adequate controls and systems in place to screen, and is fully responsible for screening transactions of customers, sub-contractors, suppliers, vendors and all other third parties who may assist, benefit from, or provide goods or services to, or receive goods or services from the Customer, and to ensure compliance with applicable laws pertaining to sanctions.
- 25.6 The Customer acknowledges that it remains responsible for export compliance requirements related to any software provided to the Supplier and that all necessary export compliance information pertaining to such software will be provided in advance of any export or transfer to the Supplier.
- 25.7 The Customer agrees to fully indemnify and hold harmless the Supplier and its representatives from any third-party claims, damages, costs, losses, and/or liabilities arising out of the Customer's non-compliance or alleged non-compliance with Export Control and sanctions regulations. This clause will survive termination of this Contract.
- 25.8 Nothing in the Contract is to be construed as authorisation by the Supplier for the Customer to market or resell the Goods in violation of the provisions of this clause 25.

## **26. FLOW DOWN TERMS**

- 26.1 The Customer shall use reasonable endeavours (a) to flow down the following terms to its customers and (b) to inform its customers (if applicable) to flow down such terms to their end-users, in a form substantially similar to the terms these conditions:
- (a) Data Protection
  - (b) Records and Audits
  - (c) Compliance with Law
  - (d) Anti-Bribery Laws
  - (e) Export Control

## **27. ENTIRE AGREEMENT**

- 27.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.2 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 27.3 The Supplier has the right to vary these conditions from time to time on giving the Customer at least 14 days notice in writing. Such variation shall be deemed accepted by the Customer placing an order on or after such 14 day notice period. Except as set out in these conditions, any purported variation to the Contract by the Customer, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

## **28. VARIATION**

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

## **29. 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.

## **30. 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 condition shall not affect the validity and enforceability of the rest of the Contract.

**31. NOTICES**

- 31.1 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 condition, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
- 31.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 31.1; 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 email and fax, one Business Day after transmission; or, if notice is given by telephone, Skype or MSN, at the time the notice is clearly communicated and acknowledged.
- 31.3 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

**32. 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.

**33. LAW AND JURISDICTION**

*This* Contract shall be governed by and considered in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under the Contract.

**34. AGREEMENT**

I have read and accept Hypertec Ltd Terms and Conditions of Sale detailed above/overleaf. All signed copies of this agreement shall be deemed originals.

On Behalf of Company: .....

Signed:..... Name:.....

Date:..... Title:.....