

## 1. Interpretation

1.1 The word “**Business Day**” means a day other than a Saturday, Sunday or public holiday in England and Wales, when the banks in London are open for business.

1.2 The word “**Company**” means Insurgo Media Services Limited, registered in England and Wales with company number 07044710.

1.3 The word “**Conditions**” means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer.

1.4 The word “**Contract**” means the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

1.5 The word “**Customer**” means the person who accepts a quotation from the Company for the sale of Goods and/or Services or whose order for the Goods and/or Services is accepted by the Company.

1.6 The word “**Customer’s Agent**” means the person(s) acting on behalf of the Customer from time to time (including the Customer’s client, sub-contractors or representatives).

1.7 The word “**Goods**” means the goods (including any instalment of goods or any parts of them) which the Company is to supply in accordance with these Conditions being any goods which the Company may supply to the Customer from time to time in accordance with these Conditions.

1.8 The words “**Sale Confirmation**” means the document issued by the Company which stipulates and confirms the order for the Goods and/or Services and the price payable.

1.9 The word “**Services**” means the installation services carried out by the Company in respect of the Goods in accordance with these Conditions.

1.10 The word “**Writing**” includes letters, emails, facsimile transmission and other comparable means of communication or documentation.

1.11 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.12 The headings in these Conditions are for convenience sake and shall not affect their interpretation.

## 2. Basis of Sale

2.1 The Company shall supply to the Customer the Goods and/or Services in accordance with any written quotation of the Company, which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.2 No variation to these Conditions shall be binding unless expressly agreed in writing between the authorised representative of the Customer and a director of the Company.

## 3. Goods

3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company the necessary information relating to the Goods/Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods/Services shall be those set out in the Quotation provided by the Company (if accepted by the Customer) or the Customer’s order (if accepted by the Company).

3.3 The Company reserves the right to make any changes in the specification of the Goods/Services which are required to conform to any application statutory or requirements.

3.4 The price of the Goods/Services shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid, the price listed in the Company's Confirmation of Sale on the date of acceptance of the order. E&OE applies.

3.4 The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods/Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods/Services which is requested by the Customer, or any delay caused by any infrastructure of the Customer or failure of the Customer to give the Company adequate information or instructions.

3.5 Except as otherwise stated in the terms of any Quotation or Confirmation of Sale of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex works basis and where the Company agrees to deliver the Goods/Services otherwise, than at the Company's premises, the Customer shall be liable to pay the Company's costs for transport, packaging and insurance.

3.6 Unless otherwise expressly agreed the cost price shown in any Quotation or current price lists of the Company is exclusive of value added tax and the cost of packaging and carriage which will be changes at the Company's normal rates.

3.7 Unless otherwise expressly agreed, Goods supplied will be in accordance with the manufacturer's normal designs and specifications current at the date of manufacture or delivery and the supply by the Company of Goods differing from any contractual or pre-contractual specifications or descriptions shall not be a breach of the Agreement between the Company and the Customer insofar as the Goods are of approximately equivalent performance to the Goods referred to in such specifications or descriptions.

#### **4. Delivery of Goods**

4.1 The Company shall deliver the Goods to the location set out in the quotation or order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the Supply of Goods.

4.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event or the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.5 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a force majeure event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:

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

4.6 If ten Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.8 The Customer is required to inspect the Goods upon receipt and to notify the Company of any defects or complaints within 24 hours.

## 5. Title and Risk

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods.

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

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in clause 14(b) to 14(c); and

(e) give the Company such information relating to the Goods as the Company may require from time to time.

## 6. Installation of Goods

Where Goods are installed by the Company it is the Customer's responsibility to "make available" all necessary facilities required to undertake installation. The Customer is responsible for payment of all licenses, permits, way leaves, easements, mains electric power supply conducts sockets and such like as are necessary for the installation of the goods by the agreed date for the commencement of the installation and to provide all the necessary access, information and co-operation to enable the installation to proceed from that date.

## 7. Performance of Services

7.1 The Company shall supply the Services to the Customer in accordance with the quotation or order in all material respects.

7.2 The Company shall use all reasonable endeavours to meet any performance dates specified for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Company reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

7.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. Customer's obligations

1.1 The Customer shall:

(a) ensure that the terms of the order or quotation are complete and accurate;

(b) co-operate with the Company in all matters relating to the Services;

(c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

(d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(f) comply with all applicable laws, including health and safety laws; and

(g) keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

8.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

(b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8; and

(c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 9. Charges and Payment

9.1 The price for Goods:

(a) shall be the price set out in the order or quotation or, if no price is quoted, the price set out in the Company's published price list as at the date of the order; and

(b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

(a) the charges shall be calculated in accordance with the Company's daily fee rates, as set out in its current price list at the date of the Contract;

(b) the Company's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;

9.3 The Company reserves the right to:

(a) increase the charges for the Services on an annual basis in line with the percentage increase in the Retail Prices Index in the preceding 12-month period;

(b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:

- (i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s) or quantities or types of Goods ordered;
- or

- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on completion of the Services.

9.5 The Customer shall pay each invoice submitted by the Company:

(a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer; and

(b) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under the termination clause, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.9 The Company shall only be liable for the total accumulative cost of a confirmed purchase order, unless otherwise agreed in writing with a Director of the Company after the date of these terms signed. These terms supersede all previous agreements. Any future agreements will have a maximum of 30 days notice to any sale/contract. The Company no longer agree to rolling contracts, long term cancellations or other agreements designed to lock the Company into extra agreements outside of a purchase order value.

## 10. Intellectual Property Rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company.

10.2 The Company grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the deliverables set out in the quotation or order (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the deliverables.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or Company's of the other party, except as permitted by clause 11.2.

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

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 12. Force Majeure

The Company shall not be liable to the Customer for any failure to perform its obligations due to any circumstances beyond its control (including without limitations strikes, lock-outs, industrial disputes, failure or power supply delays caused by any other person, firm or company delays caused by manufactures of goods, riots, civil disturbances, war or war like activity, embargoes, fire, explosion, flood or natural causes) and in such event the Company may elect by written notice to cancel any agreement with the Customer or elect that the time for performance shall be extended until such time as the Company can reasonably effect performance.

## 13. Warranties and Liabilities

13.1 Subject to the Conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of one year (unless otherwise agreed in writing from a director of the Company) after the date shown on the specific invoice for the particular Goods. The Company further warrants that any Services performed shall be done so with reasonable skill and care.

13.2 The Company undertakes to credit the account of the Customer (if any) or to remedy free of charge by repair or replacement any defects in the goods covered under the manufacturers guarantee provided that the Customer notifies the Company promptly of such a defect and where the customer arranges for the prompt return to the Company of the defective goods at the Customers risk and expense.

13.3 The Company further warrants that any tape products supplied are free from defects in material and manufacture at time of purchase. If any defects appear during the life of the product, this will be referred to the said manufacturer and dealt with under their limited lifetime warranty clause. This warranty does not apply to product failing as a result of ordinary use, misuse, abuse, accident, neglect or mishandling, improperly adjusted or maintained drives or incorrect environments.

13.4 The Company will investigate tape product defects free of charge to determine issues. The product carries a 90 day money back guarantee from date of receipt continued with a lifetime replacement warranty if stock is readily available within 30 days; failing this a full refund will be given. If it is deemed that a "Restore tape product" supplied by the Company has caused damage to customer equipment, the Company will cover the costs within reason in its entirety providing reasonable steps were taken to limit the damage caused. This will not include the costs of re-creating data but a free of charge service of data recovery routines will be provided to support the Customer.

13.5 Save as herein specifically provided and save to the extent that the same cannot by statute be excluded all conditions and warranties and representations express or implied statutory or otherwise in relation to the goods are hereby excluded. Nothing in this clause of these conditions shall exclude the undertakings implied by section 12 of the Sales of Goods Act 1979.

13.6 The Company does not exclude liability in respect of:

(a) death or personal injury, which results from the negligence of the Company, its employees, agents and subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

(d) defective products under the Consumer Protection Act 1987.

13.7 The Company shall not be liable for any financial consequential of indirect loss suffered by the Customer or any third party whether such loss arises from breach of a duty in contract or tort or in any other way including without limitation to the generality of this exclusion, loss of profits, economic loss, loss of goodwill, loss of contract, loss of data, damage to the property of the Customer or anyone else (other than damage



caused by the negligence of the Company or any of its employees) and personal injury to the Customer or anyone else (except so far as such injury is attributable to the Company's negligence).

13.8 Subject to clause 12.5, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract shall be limited to the total charges paid under the Contract.

13.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.10 This clause shall survive termination of the Contract.

#### **14. Restore Tape Products**

14.1 The Company warrants that any tape products supplied are free from defects in material and manufacture at time of purchase. If any defects appear during the life of the product, this will be referred to the said manufacturer and dealt with under their limited lifetime warranty clause. This warranty does not apply to product failing as a result of ordinary use, misuse, abuse, accident, neglect or mishandling, improperly adjusted or maintained drives or incorrect environments.

14.2 Both the Company or the manufacturer shall not be liable for any indirect, special, incidental or consequential loss or damage (including without limitation damages for loss of profits, savings or recreating data) in any way related to the product.

14.3 The Company will take on the responsibility of investigating product defects free of charge to determine issues. The product carries a 90 day money back guarantee from date of receipt continued with a lifetime replacement warranty if stock is readily available within 30 days; failing this a full refund will be given. If it is deemed that a "Restore tape product" supplied by the Company has caused damage to customer equipment, we will cover the costs within reason in its entirety providing reasonable steps were taken to limit the damages caused. This will not include the costs of re-creating data but a free of charge service of data recovery routines will be provided to support the Customer.

14.4 The total cumulative liability of any sale arising out of the Company's connection with these Terms and Conditions, whether in breach of contract or in tort, will in no event exceed the amount to be paid to Customers by the Company under each individual/separate sales agreement herewith. This limit of liability will not apply to any fraudulent misrepresentation or for death or personal injury caused by negligence.

#### **15. Termination**

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one month's written notice.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

(b) the other party 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 other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3 Without affecting any other right or remedy available to it, the Company 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.

15.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2b to 15.2d, or the Company reasonably believes that the Customer is about to become subject to any of them.

## **16. Consequences of Termination**

16.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Company Materials and any deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2 Termination of the Contract shall not affect any rights, remedies, obligation and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **17. Waiver**

17.1 If the Customer shall be in breach of any of these Conditions then failure by the Company to require the Customer to rectify the same shall not create any assumption that such a breach has been waived by the Company.

## **18. Notices**

18.1 All demands, notices and other communications shall be in writing and be addressed to the Company at its address shown on invoices delivered by it and to the Customer at the address given by it for delivery and invoices (or as subsequently notified by one to the other in writing) and shall be deemed to be duly given or made by letter 48 hours after being posted by first class postage pre-paid or if delivered by hand at the time of delivery or if given or made by telex when the Sender shall receive the answer back of the person to whom it was sent.

## **19. Assignments and other dealings**

19.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

## **20. 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 part provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## **21. No partnership or agency**

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.



**22. Entire agreement**

(a) 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.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and 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.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

**23. Third parties rights**

The contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**24. Variation**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**25. 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.

**26. 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 the Contract or its subject matter or formation.

Signatures:

Signed by Gavin Griffiths for and on behalf of Insurgo Media Services	..... Director
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Signed by NAME OF DIRECTOR for and on behalf of [COMPANY]	..... Director
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