

# Hammer Distribution NL B.V.

## Supply of Goods and Services

### Terms & Conditions



June 2026

## Interpretation

### 1.1. Definitions

In these Conditions, the following definitions apply:

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Additional Microsoft Conditions | the conditions attached as Appendix 1 to these Conditions.                                                                                                                                                                                                                                                                                                                                                                                                            |
| Additional Software Conditions  | the conditions attached as Appendix 3 to these Conditions.                                                                                                                                                                                                                                                                                                                                                                                                            |
| Affiliate                       | any subsidiary of Hammer Consolidated Holdings Limited (registered in England and Wales with company number 05301368) and shall also mean any company, corporation or other entity, which controls, is controlled by or is under common control with a party and shall be considered an affiliate only so long as the ownership or control, directly or indirectly, meet the conditions of this definition (including but not limited to Hammer Distribution NL B.V.) |
| Appendix                        | an appendix to these Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Anti-Bribery Laws               | 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.                                                                                                                                                           |
| Automotive Applications         | has the meaning as detailed in Appendix 2 to these Conditions.                                                                                                                                                                                                                                                                                                                                                                                                        |
| Indemnity                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Backorder                       | an Order where the Goods are not available at time of Order placement and which are still to be acquired by the Supplier from its main supplier.                                                                                                                                                                                                                                                                                                                      |
| Business Day                    | a day (other than a Saturday, Sunday or public holiday in the Netherlands).                                                                                                                                                                                                                                                                                                                                                                                           |



|                       |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Conditions            | the terms and conditions set out in this document as amended from time to time in accordance with clause 25.6.                                                                                                                                                                                                                                                                                                  |
| Contract              | the contract between the Supplier and the Customer for the sale and purchase of the Goods and / or Services in accordance with these Conditions.                                                                                                                                                                                                                                                                |
| Critical Applications | has the meaning as detailed in Appendix 2 to this Contract including Automotive Applications Indemnity and Obligation to Notify.                                                                                                                                                                                                                                                                                |
| Customer or Buyer     | means the person, company or firm who purchases the Goods and / or Services from the Supplier or who is otherwise taken to be the party who, as buyer, principal, hirer or in any capacity whatsoever, engages in a transaction with Supplier or Seller.                                                                                                                                                        |
| Customer Materials    | all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services.                                                                                                                                                                                                                |
| Data                  | any information relating to a Data Subject.                                                                                                                                                                                                                                                                                                                                                                     |
| 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  | all applicable data protection and privacy legislation in force from time to time in the Netherlands including without limitation the EU GDPR and 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 Data.                                                                                                            |
| Data Subject          | an 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 4(1) of the EU GDPR. |
| Delivery Location     | has the meaning given in clause 4.2.                                                                                                                                                                                                                                                                                                                                                                            |



|                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| Deliverables        | any output of the Services to be provided by the Supplier to the Customer as specified in a Statement of Work and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| D.O.A.              | Dead on Arrival and applies to Goods which fail on installation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Exertis Cloud       | has the meaning defined in clause 25.10 and where applicable is provided by Hammer Consolidated Holdings Limited or an Affiliate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| EU GDPR             | the General Data Protection Regulation ((EU) 2016/679).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| EULA                | an end-user licence agreement (“EULA”). These are the terms and conditions of use that apply to the Customers use of the Software provided by the Software Provider under the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Faulty Goods        | Goods which fail after installation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Force Majeure Event | has the meaning given in clause 17.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Goods or Products   | Hammer Distribution distributed products, services, Software and/or technology (or any part of them) as set out in the Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Insolvency Event    | has the meaning given to it in clause 15.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| IPR                 | patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Order               | the Customer’s order for the Goods, Products 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.

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Order              | the Suppliers acceptance and acknowledgement of the Order.                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Acknowledgement    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Services           | the services provided by the Supplier to the Customer from time to time including the Deliverables supplied by the Supplier to the Customer as set out in the Specification and/or any customisation, implementation, installation or configuration services (or any part of them) relating to the Goods.                                                                                                                                                                   |
| Site               | the Supplier's online website at <a href="http://www.hammerdistribution.com">www.hammerdistribution.com</a>                                                                                                                                                                                                                                                                                                                                                                 |
| Software           | software products provided under the Contract, sourced by the Supplier from independent third party software providers.                                                                                                                                                                                                                                                                                                                                                     |
| Software Provider  | the independent third party software provider providing the Software under the Contract and in accordance with the applicable EULA.                                                                                                                                                                                                                                                                                                                                         |
| Specification      | any specification for the Goods or Services that is agreed in writing by the Customer and the Supplier.                                                                                                                                                                                                                                                                                                                                                                     |
| Statement of Work  | a detailed plan describing the Services to be provided by the Supplier, the timetable for their performance and any related matters.                                                                                                                                                                                                                                                                                                                                        |
| Supplier or Seller | Hammer Distribution NL B.V. a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ), with its corporate seat in Almere, and its business address at Wegalaan 44, 3 <sup>rd</sup> floor, 2132 JC Hoofddorp, registered in the Netherlands with the trade register of the Chamber of Commerce under number 23284749, the Netherlands, or, if different, the Affiliate which has entered into the Contract with the Customer. |
| VAT                | means Value Added Tax.                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

## 1.2. Construction

In these Conditions, the following rules shall apply:



- a. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal (duly authorized) representatives, successors or permitted assigns.
- c. 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.
- d. 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.
- e. Clause headings shall not affect the interpretation of these Conditions.
- f. Subject to clause 25.2, a reference to writing or written includes e-mails.
- g. In the event of conflict between the terms of these base Conditions and the Conditions included in an Appendix, the terms of the relevant Appendix shall prevail.

## 2. Basis of contract

- 2.1. Prior to placing an Order and as a pre-requisite to contracting with the Supplier, the Customer shall complete the Supplier's registration and screening process. The Customer shall review these Conditions, as amended from time to time, and by completing the Supplier's registration and screening process unconditionally agrees to be bound by these Conditions when contracting with the Supplier.
- 2.2. All quotations are made, and all Orders if accepted are accepted, by the Supplier subject only to these Conditions and any other terms issued by a director or other duly authorized representative of the Supplier, and to the exclusion of any other terms that the Customer seeks to impose or incorporate (including under any purchase order, confirmation of Order, specification or any other document), or which are implied by trade, custom, practice or course of dealing.
- 2.3. These Conditions and any other terms issued by a director or other duly authorized representative of the Supplier, apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (including under any purchase order, confirmation of Order, specification or any other document), or which are implied by trade, custom, practice or course of dealing.
- 2.4. In preparing any quotation or draft Statement of Work, the Supplier shall be entitled to ask the Customer for, and the Customer shall provide, such information as the Supplier may require in its absolute discretion. It shall be a condition of any quotation that the information provided by the Customer is correct, accurate, not misleading and a complete response to the Supplier's request(s) when provided and remains so for at least until the later of the date when the quotation lapses or the relevant Goods, Products and/or Services are delivered.
- 2.5. The Customer shall indemnify the Supplier in full against all losses, costs, damages, claims, charges and/or expenses (including without limiting effect any obligation to pay any



sum(s) to the relevant manufacturer(s) of relevant Goods , Products or the provider of relevant Services) incurred by the Supplier as a result (whether directly or indirectly) of information provided by the Customer in accordance with clause 2.4 being or subsequently becoming incorrect, inaccurate, misleading and/or incomplete or of the Customer acting other than in accordance with such information.

**2.6.** A quotation or draft Statement of Work for the Goods, Products or Services given by the Supplier shall not constitute an offer. Save where indicated to the contrary on the Supplier's quotation, the Supplier's quotation shall only be valid for a period of 7 days from its date of issue. Notwithstanding anything to the contrary in this clause, all quotations or draft Statements of Work are subject to change prior to acceptance by the Supplier to reflect any changes in price and / or availability of the Goods, Products or Services requested in accordance with clause 13.2 of these Conditions.

**2.7.** The Order constitutes an offer by the Customer to purchase the Goods, Products and/or Services in accordance with these Conditions. The Customer is solely responsible for ensuring that the terms of the Order and / or any applicable Specification or Statement of Work are complete and accurate.

**2.8.** The Order shall only be deemed to be accepted when the Supplier confirms acceptance of the Order by formal acknowledgment, by issuing an Order Acknowledgement to the Customer or by processing the Order for delivery and shipping (whichever is earlier), at which point the Contract shall come into existence. The Supplier shall be entitled to either accept or to reject the Customer's offer and shall for the avoidance of doubt be under no obligation to accept the Customer's offer, particularly where its supplier is unable or unwilling to supply the Goods or Products to the Supplier for onward supply to the Customer.

**2.9.** Once a draft Statement of Work is agreed, it shall be signed by both parties and form part of the Contract, in the absence of a Statement of Work, the Supplier shall provide the Customer with an Order Acknowledgement to confirm acceptance of the Order, such Order Acknowledgement shall form part of the Contract. No amendment may be made to it except in accordance with clause 25.6.

**2.10.** The Supplier's acceptance of all Backorders shall be subject to the Supplier's approval of the Customer's credit status.

**2.11.** Any samples, drawings, 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 Goods, Products and / or Services described in them. They shall not form part of the Contract or have any contractual force.

**2.12.** Any descriptions or illustrations on the Site are published for the sole purpose of giving an approximate idea of the services described in them and will not form part of the Contract or have any contractual force.

**2.13.** The Supplier reserves the right to vary the Specification and / or withdraw, modify or amend



any Goods, Products or Services without prior notice. Any such variation, withdrawal or modification shall not affect any Order that has already been accepted by the Supplier, save that the Supplier reserves the right to make any changes in the Specification which are required to conform with any applicable statutory requirements.

2.14. Notwithstanding anything contained in these Conditions, to the extent the Customer sells Microsoft products, the Additional Microsoft Conditions provided in Appendix 1 shall apply. To the extent of any conflict or inconsistency between the Conditions and the Additional Microsoft Conditions, the Additional Microsoft Conditions shall prevail.

### 3. Goods and Services

3.1. The Goods and Products will be as described on the quotation provided by the Supplier.

- a. The Customer shall not alter the technical representations of the Goods and Products provided by the Supplier to be with-out the written consent of the Supplier and / or Manufacturer as applicable.
- b. Unless notified to the contrary the Supplier's act of delivering the Product will confirm the Specification of the Product arising from any Order. The Supplier will notify the Customer prior to delivery of any amendments to the Specification stipulated in the quotation, at which point the Customer will have the right to terminate the Contract at no further cost to either party.
- c. Prior to delivery, if there is an amendment to the Specification the Supplier may confirm the amended Specification by email or by the reissuance of the quotation and/or invoice which shall replace any prior quotation and/or invoice issued in respect of the Specification.

3.2. The Services are described in the Specification, Statement of Work, quotation or Order Acknowledgement as applicable.

### 4. Delivery

4.1. The Supplier shall ensure that each delivery of the physical Goods (i.e. hardware) is accompanied by a delivery / dispatch note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).

4.2. Goods will be shipped or delivered to the address provided by the Customer as part of its customer account set up (Delivery Location) within a reasonable period following receipt of the Order or within such other period as shall be specifically agreed in writing by the Customer and the Supplier. Any request to amend or ship to an address other than the Customer's account address must be provided by the Customer to the Supplier in writing. The Supplier will not be liable for any loss, damages or delays arising out of or in connection with any such request.

4.3. Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered Incoterms®2020 DAP at the Delivery Location 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. Delivery of the Goods shall be completed:

- a. on their arrival at the Delivery Location; or
- b. on the completion of loading of the Goods at the Supplier's premises in circumstances where it has been agreed that the Customer will collect the Goods from the Supplier.

4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods howsoever caused.

4.5. If following receipt of the Order and any Order Acknowledgement, the Supplier is unable to deliver the Goods for reasons beyond its reasonable control (including without limitation any restriction or withholding of supply by any manufacturer), the Supplier shall be entitled to terminate the Contract and the Supplier shall have no liability for such termination.

4.6. If the Customer fails to take or (as appropriate) accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- a. delivery of the Goods shall be deemed to have been completed at the point of attempted delivery or on the date that the Supplier notified the Customer that the Goods were ready;
- b. risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
- c. the Supplier may store the Goods until the Customer takes delivery of the Goods, whereupon the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance);
- d. any discount or other allowance in respect of the Goods, which is or would otherwise be allowed to the Customer, shall be forfeited by the Customer.

4.7. If the Customer (including in the context of this clause any end user or consumer to whom the Supplier has delivered the Goods at the Customer's request) fails to take delivery or (as appropriate) accept delivery of the Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and issue a credit note to the Customer for the price of the Goods less any reasonable transport and re-stocking costs.

4.8. The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any defect in an instalment or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to cancel any other instalment and/or to treat the Contract as a whole as repudiated.

4.9. Where Goods are to be exported out of the United Kingdom by the Supplier to the



Customer or by the Supplier to the Customer's order the provisions of this clause 4.9 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 to the manufacturer's warranty and conditions of use and the Customer shall be solely responsible for ensuring that it fully understands and is aware of such warranty and other terms and conditions from the manufacturer of the Goods;
- b. the relevant tax legislation will be applied in accordance with the laws of the United Kingdom and any applicable laws required of the delivery county;
- c. the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination including, but not limited to, all applicable compliance requirements for placing the 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 4.9;
- 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.

## 5. Shortages or damage in transit

5.1. 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 e-mail to [returnsrequest@hammerdistribution.com](mailto:returnsrequest@hammerdistribution.com) in accordance with the returns policy available here:

<https://www.hammerdistribution.com/hubfs/hammer/Hammer-website/RMA%20Returns/Account%20Application%20Forms/Hammer%20Returns%20Policy.pdf?hsLang=en>, 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 representative has signed for the Goods as being received either unchecked or in good condition.

5.2. 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 invoice raised for such Goods. The Customer shall return to the Supplier, promptly upon request, and in accordance with the



Supplier's returns policy set out in clause 8, any Goods that have been incorrectly delivered.

## 6. Non-delivery

6.1. 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 services department of such non-delivery by e-mail to [returnsrequest@hammerdistribution.com](mailto:returnsrequest@hammerdistribution.com) or via <https://www.hammerdistribution.com/rmareturns> within 2 Business Days of the date when the Goods would in the ordinary course of events have been received.

6.2. 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 Contract rate against any invoice raised for such Goods.

## 7. Quality

7.1. The Supplier's D.O.A. returns procedure may vary depending on the manufacturer of the Goods and will be notified to the Customer upon the Customer notifying the Supplier that the Goods have apparently failed on installation.

7.2. In no circumstances may Faulty Goods or products be returned to the Supplier by the Customer without the prior written consent of the Supplier. The Customer must notify the Supplier of the fault becoming apparent and follow the instructions notified to it by the Supplier in relation to the fault.

7.3. The Supplier's liability (in contract, tort (including negligence), misrepresentation or otherwise) in respect of defects in the Goods shall be limited to the replacement or repair of faulty items or material, or issue of a credit note in respect thereof, or the granting of a refund or other such compensatory measures as the Supplier at its discretion considers appropriate in the circumstances, and shall be conditional upon the Customer complying with the conditions of the manufacturer's warranty (where applicable). Such measures shall relate only to the actual items or their value.

7.4. The following general provisions apply to D.O.A. and Faulty Goods:

- a. any returns shall be subject to, and the Customer shall comply with, the Supplier's returns authorisation procedures as set out in clause 8;
- b. the Customer shall be responsible for all transportation and insurance costs relating to returned Goods;
- c. the Supplier shall not be responsible for installation of returned Goods after repair or exchange; and
- d. any labour costs and expenses incurred in extracting defective parts and/or components shall be borne by the Customer and if incurred by the Supplier shall be paid for by the Customer at Supplier's then standard applicable rate.



7.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 8. Return of Goods

8.1. The Customer has no right to return Goods or Products which have been delivered in accordance with the Contract.

8.2. The Supplier will not accept any returns unless all of the following conditions are met:

- a. the Customer first notifies the Supplier of any D.O.A. returns within 14 days of the date of delivery, giving the reason for the return;
- b. the Customer first notifies the Supplier of any returns under clause 5.1 within 2 Business Days of the date of delivery;
- c. any returns notification gives the reason for the return;
- d. a returns authorisation number is obtained from the Supplier's customer service department by e-mailing [returnsrequest@hammerdistribution.com](mailto:returnsrequest@hammerdistribution.com) or via <https://www.hammerdistribution.com/rmareturns> ;
- e. the Goods are returned within 14 days of the date of issue of the returns authorisation number, at the Customer's cost;
- f. the Goods returned are in the original packaging and in a clean resalable condition (subject only to defects which have been notified to the Supplier in accordance with clause 8.2(a));
- g. the returns authorisation number is written on a label attached to the packaging.

8.3. Any returned Goods not meeting the criteria set out in clause 8.2 may, at the Supplier's discretion, be refused and returned to the Customer and/or, a handling charge (equal to a minimum of 15% of the Order value of the Goods involved) will be levied to the Customer's account to cover the additional costs involved (such as, without limitation, repackaging costs and/or the carriage and associated costs of returning the Goods to the Customer). In addition, the Customer will be charged for any damage caused to the Goods whilst they were in the Customer's custody or control.

8.4. If the Customer fails to make Goods ready for collection on the return date agreed with the Supplier, the Supplier reserves the right to charge the Customer a handling fee.

8.5. If, upon examination by the Supplier or the manufacturer, the returned Goods are found not to be defective, the Supplier reserves the right to return the Goods to the Customer or to dispose of the Goods and to charge the Customer a handling fee equal to a minimum of 15% of the Order value of the relevant Goods. In addition, the Customer shall be deemed to have purchased the replacement goods on these Conditions and the Supplier shall be entitled to invoice the Customer for the replacement goods.

8.6. The Supplier shall not be responsible for the loss in transit of any Goods where the



Customer makes its own arrangements to return the Goods to the Supplier.

## 9. Title and risk

9.1. The risk in the Goods shall pass to the Customer on completion of delivery unless otherwise stated in the Order Acknowledgement.

9.2. Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for: (a) the Goods; and (b) any other goods or services that the Supplier (or any associated company, subsidiary or holding company of the Supplier) has supplied to the Customer.

9.3. Until title to the Goods has passed to the Customer, the Customer shall:

- a. hold the Goods on a fiduciary basis as the Supplier's bailee;
- b. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- c. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- e. notify the Supplier immediately upon the occurrence of an Insolvency Event;
- f. give the Supplier such information relating to the Goods as the Supplier may require from time to time; and
- g. allow the Supplier access to its premises to verify that the Goods have been stored correctly.

9.4. Notwithstanding clause 9.3, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any Goods has not passed from the Supplier.

9.5. If, before title to the Goods passes to the Customer, the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that any Insolvency Event is about to happen and notifies the Customer accordingly, or if the Customer's right to possession of the Goods is terminated in accordance with clause 9.6, or if any sum due to the Supplier as referred to in clause 9.2 is not paid when due, then, provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

9.6. The Customer's right to possession of the Goods shall terminate immediately if the Customer becomes subject to an Insolvency Event. However, the Supplier, having been informed of the Customer becoming subject to an Insolvency Event, may consent in writing



(subject to such terms as the Supplier may in its sole discretion impose in respect of such consent) to the Customer's continued right of possession of the Goods.

## 10. Customer's property

**10.1.** The Customer's property supplied to the Supplier by or on behalf of the Customer shall, while it is in possession of the Supplier or in transit to or from the Customer, be deemed to be at the Customer's risk and the Customer shall insure accordingly.

**10.2.** The Supplier shall be entitled to make a reasonable charge for the storage of any of the Customer's property left with the Supplier before receipt of the Order or after notification to the Customer of completion of the Services.

## 11. Supply of Services

**11.1.** The Customer may raise an Order for Services that it wishes the Supplier to provide (either as stand-alone services and/or in connection with the Goods or Products). The Supplier shall, as soon as reasonably possible following its acceptance of any such Order, notify the Customer of the date by which it plans to commence the Services under the Order. Unless otherwise agreed by the parties in writing, the Customer shall not delay the agreed delivery date for the Services.

**11.2.** In preparation for the Services to be performed, the Customer shall if applicable:

- a. at its cost, prepare the Customer site and co-operate with the Supplier in accordance with the Supplier's instructions and timescales;
- b. provide an adequate environment and space for the safe operation of the Services;
- c. provide to the Supplier in a timely manner all Customer Materials reasonably required under a Statement of Work;
- d. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to use all of the Customer Materials in the provision of the Services.

**11.3.** The Supplier shall provide the Services using reasonable care and skill.

**11.4.** The Supplier shall be entitled to charge the Customer reasonable costs incurred in its delivery of the Services such as subsistence, travel and accommodation costs.

**11.5.** The Supplier shall be entitled to charge the Customer for any costs incurred by the Supplier as a result of any failure by the Customer to satisfy any requirements of clause 11.2.

**11.6.** The Customer hereby permits the Supplier to have access to the Customer site for the purpose of carrying out the Services at such times as may be agreed between the Supplier and the Customer, such access not to be unreasonably withheld or delayed.

**11.7.** The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.



**11.8.** If the Services include configuration services the Customer shall be solely responsible for the accuracy of its Order which includes any such configuration services, the specification of the components and their configuration and for ensuring that the configured Goods specified are satisfactory for the purpose for which they are required, including that they have sufficient overall functionality and will support and be compatible and inter-operable with any hardware, software and middleware with which they are intended to operate.

**11.9.** In relation to the Deliverables:

- a. the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;
- b. the Supplier grants 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 and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business;
- c. the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 11.9 (b).

**11.10.** In relation to the Customer Materials, the Customer:

- a. and its licensors shall retain ownership of all IPRs in the Customer Materials;
- b. grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer.

**11.11.** The Customer:

- a. warrants that the receipt and use in the performance of the Services by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any IPRs, of any third party; and
- b. shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's IPRs arising out of, or in connection with, the receipt or use in the performance of the Contract of the Customer Materials. This clause 11.11 shall survive termination of the Contract.

## **12. Credit account**

**12.1.** The Customer may apply to open a credit account with the Supplier via <https://www.hammerdistribution.com/become-a-customer> and requesting a credit application form or as provided in Appendix 4 to these Conditions.

**12.2.** Once the Customer has completed the trade application form and submitted all required



supporting documentation to the Supplier, the Supplier will review the trade application and using the information provided use its own and third party agency services to establish an acceptance criteria, The supplier will notify the Customer of its acceptance or rejection as soon as reasonably possible after receiving such trade application (Application Period).

**12.3.** The issue of the trade application form constitutes an acceptance by the Customer to process the customer data through credit, risk and compliance databases by the Suppliers third parties.

**12.4.** The Customer may request that the Application Period is expedited and the Supplier may expedite the Application Period at its sole discretion.

**12.5.** Following the opening of a credit account, the Supplier will issue a credit statement to the Customer on a monthly basis.

**12.6.** Credit accounts with overdue balances will be placed on credit hold. This means that no further Goods will be dispatched and all support and repair/warranty services withdrawn until the account is brought in to order. Repeated failure to adhere to the Supplier's credit terms will result in permanent loss of the credit account.

**12.7.** All accounts are reviewed periodically in line with the Supplier's insurance terms and conditions and limits may be reduced/removed 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.

### **13. Price and payment**

**13.1.** The price of the Goods and / or Services shall be the price at the date of dispatch or performance. The Supplier reserves the right to amend its quoted prices at any time prior to dispatch. In that event, the Supplier will notify the Customer prior to dispatch of any amendments to the price stipulated in the quotation, at which point the Customer will have the right to terminate the Contract at no further cost to either party. The Supplier shall take all reasonable care to ensure that the prices stated for the Goods and / or Services are correct at the time when the relevant information was entered into the system. However, please see clause 13.14 for what happens if the Supplier discovers an error in the price of the Goods and / or Services ordered by the Customer.

**13.2.** The Supplier may, by giving notice to the Customer at any time, increase the price of the Goods and / or Services to reflect any increase in the cost of the Goods and / or Services that is due to:

- a.** any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, compliance with statutory provisions from time to time in force, and increases in labour, materials and other manufacturing costs and increases in prices charged to the Supplier by any manufacturer);
- b.** any request by the Customer to change the delivery date(s), the Delivery Location,



quantities, capacity, form, content, style, description or types of Goods and / or Services ordered; or

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

**13.3.** Unless otherwise expressly agreed in writing the price of the Goods is exclusive of the costs and charges of packaging, insurance, transport of the Goods and any services, all of which will be charged at an extra cost. Any work or services carried out which is additional to that specified in the relevant quotation or the Order, whether experimentally or otherwise, shall be charged to the Customer.

**13.4.** The price of the Goods and / or Services is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and / or Services.

**13.5.** The Supplier may invoice the Customer for the Goods and Services on the date of dispatch of the Goods for delivery.

**13.6.** Unless otherwise agreed between the parties in writing, and except in the case of a cash sale which shall be paid for in accordance with clause 13.7, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice.

**13.7.** Where the Customer does not have a credit account with the Supplier, the Supplier may require immediate payment in full upon placing the Order.

**13.8.** Payment may be made by bank transfer or direct debit as agreed by the parties in writing.

**13.9.** The time of payment shall be of the essence of the Contract.

**13.10.** The Customer shall make all payments in euros unless otherwise agreed in writing by the Customer and the Supplier. Payments in an alternative currency must be authorised in writing by an authorised representative of the Supplier prior to the Contract being concluded.

**13.11.** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), then the Customer shall pay interest on the overdue amount at the rate of two percent (2%) per month. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount and an administration charge of 5% of the total amount due.

**13.12.** To the extent that the Customer has negotiated any rebate, discount or other concession directly with any manufacturer of the Goods, this shall be a matter between the Customer and such manufacturer and shall not bind or have any effect on the Supplier including without limitation the Customer's obligation to pay to the Supplier all amounts due under the Contract in full.



**13.13.** The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier (unless authorized to do so by law) in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it or an Affiliate by the Customer against any amount payable by the Supplier or an Affiliate to the Customer under the Contract or any other contract in force between the parties.

**13.14.** It is always possible that, despite the Supplier's reasonable efforts, some of the Goods, Products or Services on its website and public facing literature may be incorrectly priced. If the correct price for the Goods or Services is higher than the price stated on the Site, the Supplier will contact the Customer in writing as soon as possible to inform the Customer of this error and give the Customer the option of continuing to purchase the Goods, Products or Services at the correct price or cancelling the Order. The Supplier will not process an Order until the Customer's instructions have been received. If the Supplier is unable to contact the Customer using the contact details the Customer provided during the Order process, the Supplier will treat the Order as cancelled and notify the Customer in writing. However, if the Supplier mistakenly accepts and processes an Order where a pricing error is obvious and unmistakable and could reasonably have been recognised by the Customer as a mispricing, the Supplier may cancel supply of the Goods, Products or Services and refund the Customer any sums which have been paid.

**13.15.** In no case shall any dispute concerning:

- a. any item or separate part of the Goods, Products or Services; or
- b. any other contractual obligation or liability of the Supplier to the Customer,

affect the Customer's obligation in respect of payments to be made under these Conditions.

## **14. Cancellation, termination and suspension**

**14.1.** Subject to the provisions of clause 13.1 and 13.14, the Customer's Order once accepted by the Supplier may only be cancelled or suspended with the Supplier's written consent and the Customer acknowledges that the Supplier reserves the right to require the Customer to reimburse the Supplier in full for any loss suffered as a result of such cancellation or suspension (including, but not limited to, payment for Services already carried out, materials specifically ordered and other additional costs including storage, loss of profit, damages, charges and expenses). Without limiting its rights under the Contract in any way, the Supplier reserves the right to charge the Customer for lost profit should the Customer cancel the Order without prior written agreement of the Supplier.

**14.2.** Unless prohibited by law, the Supplier may, without limiting its other rights or remedies, and without liability to the Customer, suspend, cancel or terminate the Contract (and/or all



further deliveries and/or all support and repair/warranty services under the Contract or any other contract between the Customer and the Supplier) with immediate effect by giving written notice to the Customer, and may recover all losses resulting therefrom, if the Customer:

- a. commits a material breach of its obligations under the Contract;
- b. fails to pay any amount due under the Contract on the due date for payment;
- c. fails to pay any amount due under any contract referred to in clause 9.2;
- d. commits or is party to dishonest or fraudulent conduct in relation to the Contract; and/or
- e. becomes subject to an Insolvency Event.

**14.3. On termination or suspension of the Contract for any reason:**

- a. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b. the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises or any other location 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 the Contract;
- c. the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services;
- d. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- e. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**15. Insolvency events**

**15.1. For the purpose of these Conditions, the following events shall be deemed to be Insolvency Events:**

- a. the Customer becomes bankrupt;
- b. the Customer suspends, or threatens to suspend, payment of its debts, or requests suspension of payment, or is declared commercially incompetent by order of the court, or enters into liquidation, or is unable to pay its debts as they fall due or admits inability to pay its debts;
- c. 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, or is involved in any insolvency or reorganization proceedings supervised by a court;



- d. (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;
- e. (being an individual) the Customer is the subject of a bankruptcy petition or order;
- f. 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;
- g. 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;
- h. 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 clauses 15.1(a) to clause 15.1(g) (inclusive);
- i. the Customer encumbers or in any way charges any of the Goods;
- j. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- k. 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
- l. (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.

## 16. Limitation of liability

16.1. If the Supplier is liable, liability will be limited to the liability set forth in this clause 16.

16.2. The Supplier will never be liable for:

- deviations, damage, errors and defects that have gone unnoticed in the Goods approved by Customer;
- deviations, damage, errors and defects due to incorrect installation or use by the Customer or a third party;
- indirect losses, including consequential losses, lost profits, missed savings, loss of business opportunity, loss of goodwill and losses due to business interruption;
- losses resulting from unlawful, improper or unprofessional use by the Customer or a third party of the delivered items or failure to comply with the instructions for use.

16.3. If the Supplier is liable for losses, liability will be limited to a maximum of the amount of the payout from the Supplier's insurer, or at least to a maximum of the invoice amount, or at least that part of the invoice to which the liability relates.

16.4. The Supplier will never be liable for losses arising from any advice given. Advice is always given on the basis of the facts and circumstances known to the Supplier and in mutual consultation, with the Supplier always taking the Customer's intention as a guideline and starting point.

16.5. Any claims for losses must be submitted to the Supplier in writing without delay, but no later than



thirty (30) days after the loss occurs.

- 16.6. The limitations of liability for losses contained in this clause 16 do not apply if the loss is due to intentional or deliberate recklessness on the part of (employees belonging to the management of) the Supplier.
- 16.7. The Customer will indemnify the Supplier against all third-party claims for compensation for losses in connection with the performance of the contract.
- 16.8. Notwithstanding any right to return Faulty Goods as set out in clause 7, the Supplier makes no representations or warranties of any kind with respect to the Goods or Products. To the extent permitted by law, the Supplier disclaims all representations and warranties, express or implied, as to the Goods or otherwise, including but not limited to any implied warranty of merchantability, non-infringement or fitness for a particular purpose. In particular the Supplier does not warrant that software provided by the Supplier is (a) uninterrupted or error-free and (b) fit for a particular purpose.
- 16.9. All reference to 'the Supplier' in this clause 16 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

## 17. Force majeure

The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 18. Data protection

- 18.1. The Customer is the Data Controller of any Data which is transferred by the Customer to the Supplier in connection with the supply of the Goods and/or Services.
- 18.2. 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.

**18.3. The Supplier shall:**

- a. comply with the Data Protection Laws;
- b. process the Data as Data Processor in accordance with the Supplier's privacy policy set out in Appendix 5 to these Conditions save to the extent varied by the Customer's written instructions to the Supplier and confirmed in the Order Acknowledgement.

**18.4.** The Customer agrees to indemnify and keep indemnified and defend at its own expense the Supplier against 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.

## **19. Confidentiality**

**19.1.** Each party undertakes not at any time during the Contract and for a period of five years after termination of the Contract to disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 19.2.

**19.2.** Each party may disclose the other's confidential information:

- a. to such of its respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising its respective rights or carrying out its respective obligations under the Contract. Each party will ensure that such employees, officers, representatives, subcontractors or advisors comply with this clause 19; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**19.3.** Each party may only use the other's confidential information for the purpose of fulfilling its respective obligations under the Contract.

## **20. Records and audits**

**20.1.** The Customer will maintain legible, accurate and complete books and records (including any certifications and authorisations) relating to the Contract or the sale, distribution, licensing, 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.



**20.2.** 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 compliance with the Contract) and provide entry and access to the Customer's premises or other locations (during normal business hours) where such information and records are located.

## 21. Compliance with law

**21.1.** The Supplier takes a zero tolerance approach to bribery and corruption.

**21.2.** 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 and Products. The Customer shall procure that any third party engaged in connection with the Contract or the sale, distribution, or delivery of the Goods or Products 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 and business controls to ensure compliance with these laws, including having adequate procedures designed to ensure that any third party the Customer engages complies with 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 any business practices that may be perceived as deceptive, misleading, or otherwise improper or amount to a misrepresentation of the Supplier or the Goods and Products or their capabilities.

## 22. Anti-bribery laws

**22.1.** 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.

**22.2.** The Customer warrants and represents 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 the 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.

**22.3.** The Customer shall (i) maintain, throughout the duration of dealings 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.

**22.4.** 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.

## **23. Export control**

**23.1** The Customer agrees and undertakes to comply with all applicable export and re-export and in-country transfer control laws and regulations, and shall be responsible for obtaining any licences, registrations, permits or approvals necessary or advisable for the importation, promotion and sale of the Goods outside the EU, including but not limited to those imposed, administered or enforced from time to time by the U.S. government, the European Commission or the UK government (Export Control).

**23.2** 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.

**23.3** The Supplier's acceptance of any Order subject to an export licence is contingent on the issuance of 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 authorization.

**23.4** Neither the Customer nor any of its owners, affiliates, related parties or subsidiaries nor any of its directors or directors of its owners, affiliates, related parties or subsidiaries nor any of its administrators, officers, board of directors (supervisory and management), members or employees is the subject or target of any national government financial and economic sanctions or trade embargoes or otherwise identified on a list of prohibited, sanctioned, debarred, or denied parties (collectively Sanctions). Should this position change, the Customer will inform the Supplier within 48 hours of the Sanction being imposed.

**23.5** 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. The Customer will not supply, sell, export, re-export or transfer (in country or otherwise) the Goods directly or indirectly to any country, entity or person which is subject to Sanctions.

**23.6** In the event that the Customer provides any software to the Supplier, the Customer acknowledges that it remains responsible for export compliance requirements related to any such software and that all necessary export compliance information pertaining to such software will be provided in advance of any export or transfer to the Supplier.



**23.7** 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 the Contract.

**23.8** Nothing in the Contract is to be construed as authorization by the Supplier for the Customer to market or resell the Goods or Products in violation of the provisions of this clause 23.

## **24. Flow down terms**

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 in these Conditions:

- a. Data Protection (clause 18)
- b. Records and Audits (clause 20)
- c. Compliance with law (clause 21)
- d. Anti-Bribery Laws (clause 22)
- e. Export Control (clause 23).

## **25. General**

### **25.1. Assignment and subcontracting**

- a. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- b. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **25.2. Notices**

- a. Any notice 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, recorded delivery, commercial courier or fax. Notices will not be validly served if sent by e-mail.
- b. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.2(a); if sent by pre-paid first class post or recorded delivery, 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.
- c. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.



### 25.3. Severance

- a. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### 25.4. Waiver

A waiver by the Supplier of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by the Supplier shall preclude or restrict the further exercise of that or any other right or remedy.

### 25.5. Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it.

### 25.6. Variation

- a. 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.
- b. 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.

### 25.7. Authority to bind the Supplier

No representations or warranties made by members of the Supplier's sales team shall bind the Supplier unless they are set out in these Conditions.

### 25.8. Right to recover costs for overdue amounts

The Supplier shall have the right to recover from the Customer all sums which it incurs in recovering overdue amounts from the Customer including but not limited to the cost of using third party debt collectors.

### 25.9. Entire agreement

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made



or given by or on behalf of the Supplier which is not set out in the Contract. In entering into the Contract the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for, any such representations which are not so confirmed (unless such representations were fraudulently made).

#### 25.10. Exertis Cloud

Exertis Cloud is a self-serve online platform and pay monthly service offered by the Supplier. If the Customer uses Exertis Cloud, such use will be subject to these Conditions as well as any conditions which are on the Exertis Cloud platform at the point of purchase. All data on the Exertis Cloud platform is confidential, proprietary and the sole property of the Supplier or such third parties as licence the data to the Supplier. The Customer authorises the Supplier to accept on its behalf and on behalf of its end-user any end-use licence for Goods. The Customer accepts that any Goods sold on subscription will be subject to the third party vendor's refund policy.

#### 26. Governing law and jurisdiction

26.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of the Netherlands, and the parties irrevocably submit to the exclusive jurisdiction of the competent court in the district in which the Supplier has its seat, or, in case where the Customer is a consumer, the court having jurisdiction according to the law.

26.2. Quotations, offers, acceptances and agreements as well as the present Conditions are governed by the law of the Netherlands. The UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 (Dutch Treaty Series 1986, 61) does not apply and is hereby expressly excluded.



## APPENDIX 1

### Additional Microsoft Conditions

For the purposes of these Additional Microsoft Conditions, the following definitions shall apply:

#### 1. DEFINITIONS

**“Confidential Information”** means a party's non-public information, know-how, or trade secrets that (a) the party designates as being confidential; or (b) given the nature of the disclosure or circumstances surrounding the disclosure, the receiving party should treat as confidential.

**“End User Agreement”** means an agreement between a Qualified Customer and Microsoft, or a Microsoft Affiliate, and the associated Microsoft license terms that govern a Qualified Customer's use of a Product.

**“Guide(s)”** means a document delivered or made available to you by Supplier that specifies the execution and operational details, policies, and requirements applicable to the distribution of a Product.

**“Indirect Reseller”** means a company or other legal entity located in the Territory that is authorized by Supplier or Microsoft to further onward distribute Products to a Reseller or a Qualified Customer also located in the Territory.

**“Indirect Provisioner”** means a company or other legal entity located in the Territory that is authorized by Supplier or Microsoft to act as an agent to further onward distribute Products to a Provisioner or a Qualified Customer also located in the Territory.

**“Laws”** means all applicable international, national, and local laws (including regulations and binding judicial law) as amended, extended, repealed and replaced, or re-enacted.

**“Marketing Materials”** means any marketing materials provided or made available by Microsoft to promote and facilitate the sale of Products.

**“Marks”** means trademarks, trade names, trade dress, or logos.

**“Microsoft”** means the applicable Microsoft entity (including Microsoft Affiliate) that has authorized Supplier to distribute the Products under a Program.

**“Microsoft Affiliate”** means Microsoft Limited or Microsoft Ireland Operations Limited.

**“Product(s)”** means the online services, tools, software, hardware, currency stored value, subscription services, professional support or consulting services or other products that Microsoft may make available or incentivize under a Program.

**“Product Terms”** or **“Additional Terms”** means the additional terms, conditions, or restrictions that apply to specific Products in connection with a Program.

**“Program”** means an engagement between Microsoft and Supplier under which Microsoft may make available to Supplier certain rights, investments, or other benefits related to using, interoperating with, integrating, sublicensing, distributing, re-selling, promoting, or marketing Products.

**“Provisioner”** means an entity that is authorized to act as an agent to onward distribute Products directly to a Qualified Customer.

**“Qualified Customer”** means an End User within the Territory that acquires Product from a retail store or retail website. “End User” as used herein means a person, company, or other legal entity that acquires a Product for its end use rather than for resale.

**“Reseller”** means an entity that distributes Products directly to a Qualified Customer.

**“Street Date”** means the first date on which Product is made available for purchase and



receipt by Qualified Customers.

**“Sub-distributor”** means, as applicable, Indirect Reseller, Reseller, Indirect Provisioner or Provisioner.

**“Supplier”** means Hammer Distribution NL B.V.

**“Territory”** means Europe, Middle East and Africa (excluding Russia, Belarus and any other embargoed or sanctioned country).

These Additional Microsoft Conditions apply if you are a Sub-distributor of Products. In addition, if you onward distribute Products to another Sub-distributor, you must notify each such Sub-distributor that their right to distribute Products is also subject to their ongoing compliance with these Additional Microsoft Conditions. Compliance with these Additional Microsoft Conditions is a condition of distribution and failure to comply may result in the termination of your ability to distribute such Products without waiving any other rights or remedies that may be available to the Supplier.

## 2. DISTRIBUTION REQUIREMENTS

- a. Sub-distributor shall distribute Products only in the Territory and only as permitted by Supplier.
- b. Sub-distributor acknowledges and agrees that neither Microsoft or Supplier (i) will have any liability to Sub-distributor or any Qualified Customer arising from Product availability or any Product shortages; and (ii) may at any time discontinue a Product, limit order quantity, or impose other limitations or conditions on Products.
- c. Sub-distributor shall not distribute Products provided by any source other than Supplier or another Sub-distributor that acquires Products from Supplier unless such source is a Microsoft-approved distributor of the Products.
- d. If Microsoft or Supplier issues a notice of Product discontinuance, Sub-distributor shall comply with any related instructions, including to immediately return or destroy all Products to Supplier if applicable.
- e. Sub-distributor shall promptly report any damaged Products to Supplier and shall not further distribute any such damaged Products.
- f. Sub-distributor shall adhere to all Guides and Product Terms applicable to the Products, whether provided by Supplier or Microsoft.

## 3. MARKETING

Microsoft grants to Sub-distributor a non-exclusive, revocable, non-transferable and limited license to use the Marketing Materials and any Marks that correspond to the Products that Sub-distributor is authorized to distribute. Such use shall be solely in connection with the distribution of Products to Qualified Customers in the Territory and subject to these Additional Microsoft Conditions. All rights not expressly granted to Sub-distributor with respect to the Marketing Materials and Marks are reserved by Supplier. Sub-distributor shall not remove or modify any proprietary notices, licenses, Marks or copyright notices contained in any Marketing Materials. Sub-distributor shall at all times comply with the trademark and branding guidelines as per provided by Supplier from time to time. Sub-distributor shall promptly correct any misuse upon notice from Supplier or Microsoft.

Sub-distributor shall use only the most up-to-date Marketing Materials and Marks.

Following notification from Supplier or Microsoft that new Marketing Materials or Marks are available or that existing Marketing Materials or Marks have been modified, Sub-



distributor shall take reasonable efforts to promptly update its own use of any such Marketing Materials or Marks. Sub-distributor shall reasonably cooperate with all requests from Supplier or Microsoft to immediately cease use of Marketing Materials or Marks, including in response to any third party infringement claim or requirement under Laws. Sub-distributor shall not continue to use Marketing Materials or Marks after receiving notice from Supplier or Microsoft to cease such use, including in connection with a legal claim or to otherwise comply with Laws. Sub-distributor shall promptly comply with all reasonable instructions in the event of a cease marketing event. Sub-distributor shall not use any unauthorized, illegal, counterfeit, or modified hardware or software in connection with any Product.

Sub-distributor shall not repackage or otherwise hard bundle a Product with any other Product or product without Microsoft's prior written consent.

Sub-distributor shall not create a promotional bundle (i.e., a soft-bundle) that could reasonably create confusion as to the manufacturer origin of the Product or harm Microsoft's brand name or reputation.

If Sub-distributor is a Reseller or a Provisioner, it shall have sole responsibility for providing all aspects of customer support, customer service and billing for the purchase of Products except as may be set forth in the Product Terms. Such Sub-distributor understands and agrees that neither Supplier nor Microsoft shall have any responsibility for support with regard to the purchase and fulfilment process for Products.

#### 4. RESTRICTIONS

Sub-distributor shall not:

**(a)** (i) Change, decompile or reverse engineer any Product, in whole or in part, (except and only to the extent expressly required by Laws despite this limitation); (ii) lease, rent, sublicense, publish, change, adapt or translate any portion of any Product; (iii) make unauthorized copies of any Product; (iv) modify any accompanying End User Agreement; or (v) cause any Product, in whole or in part, to be governed by an excluded license. An "excluded license" is any license that requires, as a condition of use, modification or distribution of the Product, that the Product be: (A) disclosed or distributed in source code form; (B) licensed for the purpose of making derivative works; or (C) redistributable at no charge.

**(b)** Distribute Products with any terms that would alter Microsoft's obligations to the Qualified Customer as set forth in the applicable End User Agreement, Product Terms or such other Microsoft written documentation that may be included in any Product.

**(c)** Distribute any Product prior to the Street Date specified by Microsoft and communicated by Microsoft or Supplier or after the end-of-life date identified by Supplier or Microsoft, in either case, if applicable.

**(d)** Embed advertising in any Product or in any transaction involving a Product unless approved by Supplier or Microsoft.

**(e)** Distribute any Product after receiving notice from Supplier or Microsoft to cease distribution, including in connection with a legal claim, recall, error, or defect scenario involving a Product. Sub-distributor shall promptly comply with all reasonable instructions in the event of a cease distribution event.

**(f)** Distribute Products other than to: (i) a Reseller or Provisioner in the Territory, as applicable; (ii) another Sub-distributor in the Territory which then sells such Products to a Reseller or Provisioner in the Territory, as applicable; or (iii) a Qualified Customer in the Territory.

**(g)** Liquidate or retain a liquidator or other unauthorized third party to dispose of Product inventory, unless the Guides applicable to such Product expressly authorize such use.



## 5. TERMINATION OF STATUS

Sub-distributor acknowledges that Supplier or Microsoft may terminate or indefinitely suspend these Additional Microsoft Conditions and all rights granted hereunder or otherwise to distribute the Products at any time and for any reason immediately on written notice to Sub-distributor.

Sub-distributor must take the following actions upon termination of its rights to distribute Products unless otherwise directed in writing by Supplier or Microsoft: (i) immediately cease distribution of the Products; (ii) promptly remove any other advertising, marketing or branding, including but not limited to in-store and online merchandising, that include the Products, Marketing Materials or Marks; (iii) return to Supplier or Microsoft or destroy, at no expense to Supplier or Microsoft, all Products, Marketing Materials and Microsoft Confidential Information in Sub-distributor's possession or control in strict accordance with Microsoft's instructions; and (iv) provide any other cooperation, as reasonably requested, to Supplier and Microsoft.

## 6. GENERAL

**(a) Compliance with Laws.** Sub-distributor shall: (i) ensure that the distribution, sale and disposition of Products comply with all Laws; (ii) use its best efforts to prevent unauthorized distribution, duplication, or pirating of Products; and (iii) not knowingly distribute or aid in the distribution of any counterfeit product. Sub-distributor shall conduct its respective business activities in full compliance with all applicable import and export laws and regulations, including but not limited to, trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("trade laws"). Sub-distributor will not take any action that causes Microsoft or Supplier to violate U.S. or other applicable trade laws. Supplier may suspend or terminate these Additional Microsoft Conditions immediately to the extent that Microsoft or Supplier reasonably concludes that continued performance would violate trade laws or put them at risk of becoming subject to economic sanctions under trade laws.

**(b) Cooperation with Laws.** Sub-distributor shall cooperate with Supplier's and Microsoft's reasonable requests aimed at ensuring their compliance with Laws applicable to the Products. If Microsoft or Supplier is required to report to any governmental agency that regulates any matter related to the distribution of Products, Sub-distributor will reasonably cooperate and provide assistance as needed.

**(c) Records and Audits.** Sub-distributor shall keep and maintain complete and accurate records on its premises of all matters governed by these Additional Microsoft Conditions. During the term and for a period of 2 years following the termination of these Additional Microsoft Conditions, Sub-distributor agrees that Supplier, Microsoft or their designated representatives, may conduct audits of Sub-distributor's applicable books, records, systems and operations upon 24 hours' notice, to verify Sub-distributor's compliance with these Additional Microsoft Conditions. Unless otherwise requested by Microsoft, Sub-distributor will promptly correct any errors and omissions disclosed by such audit.

**(d) Microsoft Cloud Partner Program.** Where applicable, Sub-distributor agrees to abide by the relevant Microsoft Cloud Partner Program Agreement and any Product specific additional terms associated therewith as an ongoing condition of its being able to resell Products.

Supplier reserves the right to reject the partnership of a Sub-distributor in the distribution of Products if Supplier or Microsoft reasonably determines that the participation of such Sub-distributor creates additional risk of legal liability for Supplier or Microsoft, including as a result of alleged violations of anti-corruption laws. Notwithstanding anything otherwise provided in these Additional Microsoft Conditions, Supplier reserves the right



to reject any purchase order based on the participation of a Sub-distributor that Microsoft has rejected in accordance with this section. Sub-distributor may be required to meet additional eligibility and competency requirements in order to be eligible to resell certain Products.

**(e) Product Warranty.** Sub-distributor understands and agrees that the Products are provided with no warranty from Supplier or Microsoft except to Qualified Customers as may be set forth in the applicable End User Agreement or Product Terms accompanying a Product. Sub-distributor will ensure that any applicable End User Agreement or materials containing the warranty shall accompany the applicable Product that Sub-distributor distributes.

The limited warranties contained therein are in lieu of all other warranties, express or implied, or statutory, including implied warranties of fitness for a particular purpose, noninfringement of intellectual property or any other obligations or liabilities on Supplier's or Microsoft's part, and Sub-distributor shall waive and disclaim any such other warranties to the full extent permitted by Laws. Sub-distributor will not make any representations, warranties, guarantees or promises with respect to any Product that would alter Supplier's or Microsoft's obligations to Qualified Customers. Sub-distributor will be responsible for any extended manufacturer's warranty that it provides to Qualified Customers.

**(f) Privacy/Security.** Sub-distributor shall adhere to all applicable privacy Laws related to the storage, collection, use and processing of personal information and payment card data related to its distribution of Products. In addition to any other security measures required by Supplier, Sub-distributor shall implement and maintain commercially reasonable security procedures and measures in connection with the ecommerce systems used in distributing the Products (including physical lock/key security, computer and communications network security and data security) designed to prevent disclosure of Microsoft intellectual property and Confidential Information to any unauthorized persons or any damage to Products, Marketing Materials or Microsoft Confidential Information. Sub-distributor shall promptly notify Supplier and Microsoft in writing in the event of any material breach or failure to comply with these or any other security or data protection requirements or of any breach of its security affecting Products, Marketing Materials or Microsoft intellectual property or Microsoft Confidential Information and shall reasonably cooperate with Supplier and Microsoft with respect to investigating or mitigating such breach.

**(g) Modification.** Microsoft or Supplier may modify these Additional Microsoft Conditions from time to time. Supplier will notify Sub-distributor of any such modifications and Sub-distributor must comply with such modified terms according to the notice from Supplier.

**(h) Systems Integration Requirements.** Sub-distributor must satisfy any systems integration requirements provided by Supplier or Microsoft prior to and as an ongoing condition of distributing Products to Qualified Customers.

**(i) Maintaining and Reporting Eligible Status.** From time to time, Supplier or Microsoft may require Sub-distributor to provide such information as reasonably necessary to demonstrate that Sub-distributor meets all requirements to participate as a Sub-distributor and is in compliance with these Additional Microsoft Conditions. Sub-distributor shall promptly respond to any such request from Supplier.

## APPENDIX 2

### Restrictions



The following terms shall apply as and when identified in the Order Acknowledgement or as otherwise identified by the Supplier in writing in advance of delivery.

- 1. Critical Applications.** The Products are not authorized (a) for use as critical components in life support devices or systems or (b) for use in other critical applications without the express written approval of the Seller. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can reasonably be expected to result in an injury to the user. Critical components are those components whose failure to perform can reasonably be expected to cause failure of a life support device or system or affect its safety or effectiveness. Critical applications are those applications in which failure of the product could result, directly or indirectly in death, personal injury or severe property or environmental damage. Should Buyer purchase, use, or sell any Products for any such critical application or as critical components in any life support devices or systems, Buyer shall indemnify and hold harmless the Seller and its subsidiaries, subcontractors, and Affiliates and the directors, officers, and employees of each against all claims, costs, damages, and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury, or death arising in any way out of such critical application, whether or not Seller or its subsidiaries, subcontractors, or Affiliates were negligent in the design, manufacture, or warning of the Product.
- 2. Automotive Applications Indemnity and Obligation to Notify.** Products are not designed or intended for use in automotive applications unless specifically designated by Seller. Buyer shall assume the sole risk and liability for and shall indemnify and hold Seller harmless against all claims, costs, damages, and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury, death, or property damage resulting directly or indirectly from any use of non-automotive-grade products in automotive applications. Buyer shall ensure that the terms and conditions of sale between Buyer and any customer of Buyer (1) state that Products are not designed or intended for use in automotive applications unless specifically designated by Seller and (2) require such customer of Buyer to indemnify and hold Seller harmless against all claims, costs, damages, and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury resulting directly or indirectly from any use of non-automotive-grade Products in automotive applications.



## APPENDIX 3

### Software Terms and Conditions

The following terms shall apply as and when identified in the Order Acknowledgement or as otherwise identified by the Supplier in writing in advance of delivery of the Software.

1. **Third-Party Software:** The Customer acknowledges that all Software provided under this Contract is provided by an independent third-party Software provider ("Software Provider").
2. The Customer agrees that their resale to and their end customers' use of the Software is subject to an EULA or other relevant licence terms provided by the relevant Software provider and the Customer agrees to ensure their end customer is aware of and will be bound by the terms of the applicable EULA or other relevant licence terms. Copies of the relevant EULAs or license terms are available on request and / or as available on the Software Providers website.
3. On receipt of an Order from the Customer, the Software will be delivered to the Customer or their end customer in accordance with the method specified and agreed by the Software Provider (e.g. electronic download, license key activation or the addition of a license in a customer portal). Notwithstanding the above, the Customer is responsible for delivering the Software to their customers and ensuring that any registration, activation, or configuration steps required by the Software Provider is completed.
4. **Subscription Software:** Where Software is purchased as part of a subscription, the Customer agrees to pay the Supplier for the full committed term of the subscription, regardless of whether the Customer's end customer continues to use the Software or is unable to pay the Customer. This obligation remains in effect until the subscription term concludes or is renewed or terminated in accordance with the terms of the EULA or other relevant licence terms, or as otherwise stated in this Contract. For the avoidance of doubt, the Customer must notify the Supplier in writing in the event the Customer or the Customer's end customer intends to terminate the EULA or other relevant licence.
5. **Warranty Disclaimer:** The Customer acknowledges that the Software is provided "as-is" and "as-available" and any warranties relating to the Software, including but not limited to performance, functionality, or fitness for a particular purpose, are solely those provided by the Software Provider. The Supplier makes no representations or warranties regarding the provision of Software.
6. **Limitation of Liability:** The Supplier's liability for issues arising from the Software is limited to the extent permissible under applicable law. The Customer agrees to direct their end customers to seek resolution of any claims, disputes, or issues directly with the Software Provider directly in accordance with the Software Provider's support policies.
7. **Support and Updates:** The Supplier will assist the Customer in obtaining technical support or updates from the Software Provider where applicable but does not guarantee



the availability or timeliness of such support or updates. Any fees associated with support or updates may be charged by the Software Provider and are the responsibility of the Customer or their end customers, as applicable.

8. **Termination of Software License:** The Customer's rights to resell the Software will terminate if the Customer fails to comply with the terms of this Contract and/or the applicable EULA. Upon termination, the Customer must cease all resell of the Software and ensure that their end customers comply with the Software Provider's instructions for returning or destroying the Software and any associated materials.
9. **Indemnification:** The Customer agrees to indemnify and hold the Supplier harmless from any and all claims, damages, or liabilities arising from the Customer's breach of the Service Provider's licensing terms or misuse of the Software by the Customer or their end customers.
10. **Precedence:** In the event of a conflict between the Contract and the relevant EULA, the terms of the EULA shall prevail with respect to the Software and only to the extent of such conflict.



## Appendix 4 Credit Application Form

**hammer** enterprise cloud cybersecurity services

### Credit Application Form



Please complete the whole form and email to your account manager. Exertis Enterprise NL B.V (trading as "Hammer Distribution"), Wegalaan 44, 3rd Floor, 2132 JC Hoofddorp, Netherlands

#### Company Name Details

|               |                      |                         |                      |
|---------------|----------------------|-------------------------|----------------------|
| Company Name: | <input type="text"/> | Accounts Contact:       | <input type="text"/> |
| Contact Name: | <input type="text"/> | Accounts Contact Email: | <input type="text"/> |

#### Company Address

|                                                 |                      |          |                      |
|-------------------------------------------------|----------------------|----------|----------------------|
| Street Address:                                 | <input type="text"/> |          |                      |
| Town:                                           | <input type="text"/> | County:  | <input type="text"/> |
| Postcode:                                       | <input type="text"/> | Country: | <input type="text"/> |
| Telephone:                                      | <input type="text"/> | Fax:     | <input type="text"/> |
| Registered Office<br>(if different from above): | <input type="text"/> |          |                      |

#### Directors / Partners / Sole Proprietors Details

|           |                      |           |                      |
|-----------|----------------------|-----------|----------------------|
| Name:     | <input type="text"/> | Name:     | <input type="text"/> |
| Address:  | <input type="text"/> | Address:  | <input type="text"/> |
| Postcode: | <input type="text"/> | Postcode: | <input type="text"/> |

#### Trade References

|            |                      |            |                      |
|------------|----------------------|------------|----------------------|
| Name:      | <input type="text"/> | Name:      | <input type="text"/> |
| Address:   | <input type="text"/> | Address:   | <input type="text"/> |
| Postcode:  | <input type="text"/> | Postcode:  | <input type="text"/> |
| Telephone: | <input type="text"/> | Telephone: | <input type="text"/> |





### Limited Company Details

|                          |                           |                           |                                                     |
|--------------------------|---------------------------|---------------------------|-----------------------------------------------------|
| Date Business Started:   | <input type="text"/>      |                           |                                                     |
| Name of Bank:            | <input type="text"/>      | Account No.               | <input type="text"/>                                |
| Address:                 | <input type="text"/>      |                           |                                                     |
| Registration No.         | <input type="text"/>      |                           |                                                     |
| Nominal Capital:         | <input type="text"/>      | Issued Capital:           | <input type="text"/>                                |
| Maximum Credit Required: | <input type="text"/>      | Registered VAT No.        | <input type="text"/>                                |
| Currency:                | <input type="radio"/> GBP | <input type="radio"/> EUR | <input type="radio"/> USD <input type="radio"/> SEK |

### Agreement

I have read and accept your standard terms of trading, a copy of which is available on request.

|               |                      |                |                      |
|---------------|----------------------|----------------|----------------------|
| Signed:       | <input type="text"/> | Date:          | <input type="text"/> |
| Printed Name: | <input type="text"/> | Position Held: | <input type="text"/> |



Terms and Conditions



## Appendix 5

### Privacy Statement

#### GDPR Website Privacy Statement

#### This privacy statement sets out

- what information Hammer Distribution Limited collects from you and why;
- how Hammer Distribution Limited uses and protects any information that you give; and
- how you can access and manage your information.

Hammer Distribution Limited is committed to ensuring that your privacy is protected. Should we ask you to provide certain information by which you can be identified; you can be assured that it will only be used in accordance with this privacy statement.

Hammer Distribution Limited may change this statement from time to time by updating this page. We will make clear whenever any changes are made. This statement is effective from May 25 2021.

#### What we collect

We may collect the following information:

- name
- job title
- contact information including email address
- demographic information such as postcode, preferences and interests
- information relevant to specific customer offers and/or surveys which will be explained at the time.

#### What we do with the information we gather

We require this information to understand your needs and provide you with a better service. In particular, we will use it for the following legitimate interests of our business:

- monitoring, recording and storing telephone or email communications for the purpose of internal training, to improve the quality of our customer service and in order to meet any legal and regulatory requirements.
- improving our products and services.
- customising our website according to your interests.
- periodically sending you promotional mails, emails or SMS messages about new products, special offers or other information which we think you may find interesting using the contact details which you have provided
- use your information to contact you for market research purposes; and
- contact you by phone in relation to the above.



We will also use your information to manage our contractual relationship with you for:

- internal record keeping and account management purposes (e.g. verifying your identity and fulfilling orders you place); and
- contacting you by email, phone or mail for the purpose of account administration and/or processing and fulfilling orders.

If you contact us or we contact you, we may ask for certain information from you to confirm your identity, check our records and deal with your account efficiently and correctly.

Where we have asked for your consent to use your personal information for a particular purpose, this consent may be withdrawn by you at any time. Please see the section entitled 'Controlling your personal information' below.

## Security

The security of your information is very important to us. As part of our commitment to keeping your data safe, our technical experts maintain physical, electronic and managerial procedures to keep safe the information we collect online.

Only authorised employees and carefully checked agents, contractors and sub-contractors, who provide a particular data processing service for us, are permitted access to your data. These people will only be allowed access to your data for the purposes identified within this Privacy Policy, processing it on our behalf or for IT security and maintenance.

If a third party processing your data on our behalf is located in a non-EU country that does not have data protection laws equivalent to those in the EU, we will always take appropriate additional steps to ensure that your personal information is kept safe and secure by those processing your data on our behalf. This will generally involve ensuring that such third party agrees to sign up to a formal legal agreement committing such party to comply with standards equivalent to those that would apply where that party to be located within the EU.

We aim to protect all of our customers from fraud. As part of this, we may use your personal information to verify your identity to help prevent or detect fraud. These checks may involve your information being disclosed to credit reference agencies, who may keep a record of that information. This is not a credit check and your credit rating will be unaffected.

Sometimes, you might wish to disclose sensitive information to us, for example if you need a priority delivery because you are receiving medical treatment. We will only use sensitive data for the specific reason you disclosed it to us and we will take extra care to keep it secure. From time to time, we will check with you that we may continue to use that sensitive data for the specified purpose. We will re-check this consent on a periodic basis. In either case, you may withdraw your consent at any time.



## How long we hold your information for

The time period for which we keep information varies according to what we use the information for. Unless there is a specific legal requirement for us to keep information, we will keep your information for as long as it is relevant and useful for the purpose for which it was collected.

Where we are using your personal information to send you marketing information we will retain that for 12 months as we understand that you will not buy from us on every occasion but frequently we see repeat purchases from customers in this time period. We will retain your account information for 7 years in line with relevant tax and contract requirements.

You are entitled to request that we erase your personal information at any time, for example where you cease to be an active customer of ours. Whilst we will generally seek to comply with your request, there will be circumstances where we are entitled to retain such personal information (e.g. in respect of legal claims).

## Controlling your personal information

You may choose to restrict or control the collection or use of your personal information in the following circumstances:

- when you are asked to fill in a form on the website or elsewhere (ensure that you do not tick any box which consents to our use of your personal information if you do not want us to use your personal information for those purposes);
- if you have previously agreed to us using your personal information for specific purposes and wish to change your mind;
- if you wish for your personal information to be erased from our systems;
- if you wish for us to transfer your personal information to a third party (e.g. another service provider). In this case, we will provide you with certain personal information held by us for you to pass to that third party (or, in certain circumstances, we may be able to transfer that data to such third party directly if you wish for us to do so).

## You have the right to:

- know that information is being processed;
- access information that is being processed;
- rectification of information being processed;
- erasure of information held on you (commonly known as the right to be forgotten);
- restrict processing;
- be notified about what information has been rectified, erased and restricted;
- portability (that is, to request your data be handed over to someone else);
- object to the processing of your information.



It is important to note that this is not an absolute right to review all the information that is held about you, as there are various exceptions to this right. These include:

1. where personal data is kept for the purpose of preventing, detecting or investigating offences and related matters; and
2. where the data is given by another person in confidence.

If you want to remove a consent or request erasure or transfer of your personal information, you may do so at any time by writing to us at Hammer Distribution Limited Vision 27 1 Steward Road, Basingstoke, RG24 8NE, or email us at [GDPR@exertisenterprise.com](mailto:GDPR@exertisenterprise.com)

We will not sell, distribute or lease your personal information to third parties unless we have your permission or are required by law to do so. Where we do seek your permission we will name the relevant third party at the time we seek such permission from you and any such permission shall be limited to that third party.