

## Tablet Technologies t/a Conker - Terms and Conditions of Business

### 1. Interpretation

- 1.1 These terms and conditions constitute the entire terms and conditions upon which the Customer agrees to contract for the purchase of Products and Services, and apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.2 These Conditions supersede any written or oral representations, statements, understandings or agreements, except where specifically varied by written agreement by Tablet Technologies.
- 1.3 By placing an order for the Services the Customer confirms acceptance of the terms of the Contract and these Conditions.
- 1.4 In the event of any conflict between the Conditions and any other document, the Conditions shall prevail.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 A reference to writing or written includes emails but not faxes.

### Definitions

In this Agreement:-

**“Conditions”** means these terms and conditions.

**“Charges”** means the prices for the Products and Services as set out in the Order Confirmation.

**“Confidential Information”** means the confidential information of a party disclosed or made available to the other party, including any such information concerning the business, affairs, customers, clients or suppliers of that party.

**“Contract”** means the contract between Tablet Technologies and the Customer for the supply of Products and/or Services in accordance with these Conditions, incorporating the Order Confirmation.

**“Contract Price”** means the prices for the Services as set out in the Order Confirmation.

**“Consultancy Services”** means provision of consulting services relevant to the Products and

Services deployed by Tablet Technologies including offering advice and recommendations, as set out in the Order Confirmation.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**“Delivery”** means when the Product is made available for unloading (or loading, in the case of ex works deliveries) at the Delivery Location.

**“Delivery Location”** means the address specified on the Order Confirmation or otherwise agreed in writing by the parties.

**“Design and Assembly Services”** means the designing and assembling of the Product.

**“Force Majeure Event”** means as defined in Clause 17.

**“Inspection”** means the process where the Product is assessed by Tablet Technologies to verify whether it complies with the Warranty (as defined in clause 10) and “Inspect” shall be construed accordingly.

**“Order Confirmation”** means the written confirmation sent to the Customer by Tablet Technologies of its acceptance of the Purchase Order and which sets out the Specification of the Service or Product to be provided, price, completion date (if any), the Product Approval Period (if any) and such other bespoke requirements (including any express written variations to these Conditions) as may be agreed.

**“Product or Products”** means the digital devices including Panel PC’s Tablets, PDA’s and accessories as set out in the Order Confirmation.

**“Product Approval Period”** means the period of 30 days from dispatch of a Product (or such other period as may be expressly stated in the Order Confirmation).

**“Purchase Order”** means the Customer’s instruction to Tablet Technologies to proceed with the supply of the Products and/or Services, by way of purchase order form or the Customer’s written acceptance of Tablet Technologies’ quotation.

**“Repair and Maintenance Services”** means the repair and maintenance of Products outside of the warranty period set out in clause 10.

**“Specification”** any specification for the Products and/or Services, including any relevant plans or drawings, that is agreed in writing by the parties.

**“Tablet Technologies”** means Tablet Technologies Ltd, a company registered in England (Company Number 06586547) and with its registered office at Suite 3, The Hamilton Centre, Rodney Way, Chelmsford, CM1 3BY, trading as “CONKER” and online as “weareconker.com”.

**“the Service(s)”** means the Design and Assembly Services, the Consultancy Services and the Repair and Maintenance Services as set out in the Order Confirmation.

**“the Customer”** means the company, firm, person, persons, corporation, public authority or

other entity identified in the Order Confirmation as contracting for the Products or Services and includes their successors or personal representatives.

**“Working Day”** means within the hours of 9.00am to 5.00pm, Monday to Friday only, not including public or bank holidays.

## **2. Basis of Contract**

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 The Order Confirmation constitutes an acceptance by Tablet Technologies of the Customer’s Purchase Order subject to the provisions in these Conditions at which point and on which date the Contract shall come into existence. The Customer shall not be entitled to cancel or amend the Purchase Order after the Order confirmation has been issued, without Tablet Technologies’ written consent.
- 2.3 Tablet Technologies reserves the right to accept, amend or reject any Purchase Order.
- 2.4 Tablet Technologies will use reasonable endeavours to provide the Products and Services as described in the Order Confirmation.
- 2.5 Tablet Technologies reserves the right to amend the Contract (including the Specification):
  - 2.5.1 if necessary to comply with any applicable law or regulatory requirement, or
  - 2.5.2 if the amendment will not materially affect the nature or quality of the Products or Services supplied,  
and in each case, Tablet Technologies shall notify the Customer of such amendments in writing.
- 2.6 Tablet Technologies may at their discretion subcontract some or all of the Services.
- 2.7 Tablet Technologies shall perform the Services in accordance with all applicable laws, enactments, orders, regulations, and other similar legally binding instruments (including but not limited to all applicable environmental and health and safety legislation).
- 2.8 Any quotation given by Tablet Technologies shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.9 Save where expressly agreed otherwise in the Order Confirmation, any samples, prototypes, drawings, descriptive matter or advertising issued by Tablet Technologies and any descriptions of the Products or illustrations or descriptions of the Services contained on Tablet Technologies’ website or in its catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.

## **3. Customer Obligations**

- 3.1 The Customer shall pay the Charges for the Products and Services in accordance with clauses 8 and 9 below.
- 3.2 The Customer shall ensure that the terms of the Purchase Order, any information provided in connection with the Specification, and any additional instructions provided to Tablet

Technologies are complete and accurate. The Customer shall comply with any obligations set out in the Specification or Order Confirmation.

- 3.3 The Customer is responsible for providing a satisfactory level of cooperation and for providing all necessary information and access to enable Tablet Technologies to deliver the Products and Services including but not limited to:
  - 3.3.1 (where applicable) provision of a purchase order number;
  - 3.3.2 prompt provision to Tablet Technologies of all information and documentation reasonably required by Tablet Technologies (ensuring that such information and documentation is complete and accurate);
  - 3.3.3 provision of the full billing and delivery address details including post code or zip code;
  - 3.3.4 where applicable 'backing up' all their own data, files and business and customer information;
  - 3.3.5 provision of suitable access and facilities for, and instructions relating to, delivery of the Products and provision of Services (including instructions relating to health and safety at the Customer's premises);
- 3.4 Without prejudice to Clause 15, Tablet Technologies is entitled to suspend or terminate the Contract if the Customer fails to comply with any of its obligations under this clause 3.
- 3.5 The Customer confirms that it has all the necessary authority to enter into the Contract with Tablet Technologies.
- 3.6 The Customer is responsible for obtaining and maintaining all necessary licences, permissions and consents which may be required in connection with the Products or Services, excluding any of the same that Tablet Technologies has agreed in writing to obtain or provide.
- 3.7 The Customer is responsible for backing up all data regards any Product requiring repair or submitted for inspection.
- 3.8 Consultancy Services are subject to the following additional terms and Conditions:
  - 3.8.1 the Consultancy Service will only cover services set out in the Order Confirmation, any other additional services are subject to the written agreement of Tablet Technologies.
  - 3.8.2 the Consultancy Services shall be provided with reasonable skill and care however the Customer acknowledges that such Services are of an advisory nature and the Customer is solely responsible for any decisions made in relation to its business relating to the Services and implementing any recommendations given by Tablet Technologies during the Consultancy Services.
  - 3.8.3 due to the nature of the Consultancy Service, no refund is offered by Tablet Technologies regarding any Charges paid for these Services.
- 3.9 If Tablet Technologies' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to

perform any relevant obligation (**Customer Default**):

- 3.9.1 without limiting or affecting any other right or remedy available to it, Tablet Technologies shall have the right to suspend performance of the Services or suspend delivery of the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Tablet Technologies' performance of any of its obligations;
- 3.9.2 Tablet Technologies shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Tablet Technologies failure or delay to perform any of its obligations as set out in this clause 3.9; and
- 3.9.3 the Customer shall reimburse Tablet Technologies on written demand for any costs or losses sustained or incurred by Tablet Technologies arising directly or indirectly from the Customer Default.

#### **4. Product Approval Period**

- 4.1 This clause 4 only applies where it has been expressly stated as doing so on the Order Confirmation.
- 4.2 If the Customer has paid for a Product in full in advance and the Product Approval Period has not expired and subject to the conditions in clause 4.3, the Customer shall be entitled to change their mind about a Product after Delivery and return it to Tablet Technologies for a refund.
- 4.3 The Customer's right to a refund in clause 4.2 is subject to the Customer:
  - 4.3.1 paying the cost of returning the Product to Tablet Technologies;
  - 4.3.2 returning the Product to Tablet Technologies in the same condition, as determined by Tablet Technologies at its sole discretion, as it was in as at Delivery and with all original packaging;
  - 4.3.3 paying a restocking fee of 20% of the Charges relevant to the Product which is being returned in accordance with clause 4.2 and which such fee shall be deducted from any refund owed by Tablet Technologies to the Customer.
- 4.4 The Customer's right to a refund in this clause 4 shall apply only to the price of the Product and shall not include delivery costs, any software licensing fees, any bespoke work however carried out or the costs of any of the Services.

#### **5. Delivery**

- 5.1 Tablet Technologies shall ensure each Delivery of the Products is accompanied by a delivery note which shows the date of the Order Confirmation, all relevant reference numbers and the type and quantity of the Products delivered.
- 5.2 Products will be sent to the Delivery Location. Tablet Technologies will not be held responsible if that Delivery Location is incorrect or incomplete. Please note that Tablet Technologies do not deliver to PO boxes.
- 5.3 Tablet Technologies shall have no liability for any failure to deliver the Product to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to

provide Tablet Technologies with adequate Delivery instructions for the Product or any relevant instruction related to the supply of the Products

- 5.4 Tablet Technologies' shall only effect Delivery on Working Days.
- 5.5 Tablet Technologies shall bear all risk in respect of consignments until completion of Delivery to the Delivery Location. Once the Products has been so delivered, all risk of damage to, or loss of, the Products shall pass to the Customer.
- 5.6 Title to the Products shall not pass to the Customer until Tablet Technologies receives payment in full for the Products and any other goods that Tablet Technologies has supplied to the Customer, in which case title to the Products shall pass at the time of payment of all such sums. Until title to the Products has passed to the Customer, the Customer shall:
  - 5.6.1 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Tablet Technologies' property, and give Tablet Technologies such information relating to the Products as Tablet Technologies may require from time to time;
  - 5.6.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - 5.6.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Tablet Technologies' behalf from the date of delivery;
  - 5.6.4 notify Tablet Technologies immediately if it becomes subject to any of the events listed in clause 15.1.
- 5.7 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1, then, without limiting any other right or remedy Tablet Technologies may have, Tablet Technologies may at any time require the Customer to deliver up all Products in its possession, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
- 5.8 Tablet Technologies shall be entitled to deliver Products in instalments and each instalment shall be deemed to constitute a separate contract
- 5.9 Delivery dates are approximate only and not of the essence. Tablet Technologies shall have no liability in respect of delay in Delivery to the Customer.
- 5.10 In the event that the Customer requests the Delivery of the Products ex works or door to port, the Customer takes full responsibility for the Products once Tablet Technologies has made the Delivery to the Delivery Location (which, in the case of ex works deliveries, shall be Tablet Technologies' premises).
- 5.11 Should Tablet Technologies:
  - 5.11.1 not receive adequate delivery instructions; or
  - 5.11.2 be unable through no fault of Tablet Technologies to effect delivery within 5 Working Days after notification to the Customer that items are ready for dispatch;

Delivery of the Product shall be deemed to have occurred on the date on which Tablet Technologies notified the Customer that the Products were ready for dispatch, and Tablet

Technologies shall be entitled to arrange storage either at their own premises or elsewhere on the Customer's behalf and at the Customer's risk and all charges for storage, for insurance or for demurrage shall be payable by the Customer. If 10 Working Days after the date of such notification the Products remain undelivered, Tablet Technologies may resell or otherwise dispose of part or all of the Products at the Customer's cost.

## **6. Shortages, Inspection and Return of damaged or incorrect Products**

- 6.1 Tablet Technologies do not accept returns or provide refunds except as set out in this clause 6 or otherwise in circumstances where the provisions of clauses 4 or 10 apply.
- 6.2 Notification of damage that is apparent on Delivery, incorrect Products, loss of Products in transit or of non-delivery must be given in writing to Tablet Technologies within 10 Working Days of Delivery (or, in the case of non-delivery, within 10 Working Days of notification of despatch of the Products).
- 6.3 Tablet Technologies shall not be liable in respect of any claim for the matters referred to in clause 6.2 unless the timescales for the notification of claims referred to in clause 6.2 have been complied with.
- 6.4 It is the Customer's responsibility to inspect and check the received Products or part thereof as soon as reasonably practicable after Delivery and in any event, not more than 5 Working Days after Delivery to ensure that the Products conform to the Order Confirmation or where damage has been suffered in transportation prior to Delivery. In either circumstance, it is the responsibility of the Customer to return the Products to Tablet Technologies in their original packaging, carriage being payable by the Customer. In addition to the foregoing:
  - 6.4.1 Within 5 Working Days from receipt of Products, Tablet Technologies will conduct a quality inspection and test of the Product(s) and if they are deemed to be faulty or damaged, will replace the Products and Tablet Technologies will then re-issue the Products in question and forward them to the Customer at no extra cost or at the election of Tablet Technologies' provide a refund to the Customer (including a refund of any delivery charges);
  - 6.4.2 where a refund is due Tablet Technologies will refund any monies to the Customer within a maximum of 25 Working Days of completing the inspection process, and
  - 6.4.3 where the inspection reveals no fault, damage or otherwise in connection with the Products, Tablet Technologies shall have no liability to the Customer in respect of such Products.
- 6.5 Due to the nature of Tablet Technologies' Products, the Customer must provide photographic evidence regarding the return of damaged Products.
- 6.6 Except as provided in this clause 6 and clause 10, Tablet Technologies shall have no liability to the Customer in respect of the Products' failure to comply with the Order Confirmation, Specification or the Contract.

## **7. Indemnification**

The Customer agrees to indemnify, keep indemnified and hold harmless Tablet Technologies from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), claims arising for death or personal injury, direct, indirect or consequential loss (all three

of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which Tablet Technologies incurs or suffers as a consequence of a direct or indirect breach of the Conditions or negligent performance or delay or failure in performance or wilful misconduct by Customer or its employees, agents or contractors.

## **8. Charges and payment**

8.1 The Charges for the Products:

8.1.1 shall be the price set out in the Order Confirmation

8.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport and (if applicable) certification of the Products, which shall be set out separately in the Order Confirmation and invoiced to the Customer.

8.2 The Charges for the Services shall be set out in the Order Confirmation and in respect of the Repair and Maintenance Services shall be calculated on the basis of the hourly rate set out in the Order Confirmation (unless otherwise agreed in writing between the parties). The Charges for the Consultancy Services may be calculated on a fixed fee or a time and materials basis, as set out in the Order Confirmation.

8.3 Subject to Clause 8.5 in respect of Products, Tablet Technologies shall invoice the Customer prior to, on or at any time after dispatch of the Product(s). In respect of Services, Tablet Technologies shall invoice the Customer any time after issuing the Order Confirmation.

8.4 The Customer shall pay each invoice submitted by Tablet Technologies:

8.4.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Tablet Technologies and confirmed in writing to the Customer; and

8.4.2 in full and in cleared funds to a bank account nominated in writing by Tablet Technologies or in accordance with any alternative term of payment agreed by Tablet Technologies, and time for payment shall be of the essence of the Contract.

8.5 With regard to Products to be supplied outside the UK, full payment shall be required prior to Delivery unless otherwise specified on the Order Confirmation.

8.6 Time for payment shall be of the essence of the Contract.

8.7 If the Customer fails to make payment within the period specified in clause 8.4 then, without prejudice to any other right or remedy available to Tablet Technologies, Tablet Technologies shall be entitled to:

8.7.1 suspend any further supply of Products to the Customer and/or suspend performance of the Services (in each case under any Contract with the Customer); and/or

8.7.2 cancel the Contract; and/or

8.7.3 charge the Customer interest on the amount unpaid, at the rate of 4% per annum above the Bank of England base rate from time to time, from the due date until payment is made, whether before or after judgment.

8.8 The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to Tablet Technologies. All

payments made are non-refundable.

- 8.9 If the Customer's cheque is returned by the bank as unpaid for any reason, Tablet Technologies reserves the right to levy a "returned cheque" charge.
- 8.10 If the Customer is a private limited company or partnership then, unless otherwise agreed with Tablet Technologies in advance, it is a condition of Tablet Technologies accepting the Customer's Purchase Order that the directors or the partners are jointly and severally guarantee the payment of any fees, outlays and other sums due to Tablet Technologies. That means that each individual director or partner are each individually liable for the whole amount under this Contract to Tablet Technologies.
- 8.11 Nothing in this clause shall prejudice any finance agreement entered into by the Customer, Tablet Technologies and/or any finance company in relation to the Customer's purchase of the Products.

## 9. Amendments to Contract

- 9.1 Should the Customer require a change to a Purchase Order or in regard to any other aspect of the Contract, such change shall be requested in writing. Tablet Technologies shall advise the Customer of the effects including any increase in the Charges which may result and, once expressly agreed in writing by the parties, the Contract shall be modified to reflect such changes.

## 10. Warranty

- 10.1 Subject to this clause 10, unless otherwise agreed in writing, Tablet Technologies warrants that for one (1) year (**warranty period**) from the date of dispatch of the relevant Product, the Product shall comply with the Order Confirmation in all material respects and shall be free from material defects in design or assembly (**Warranty**). If following Inspection of the Product, it is proven to the reasonable satisfaction of Tablet Technologies that the product does not comply with the Warranty, Tablet Technologies will repair the Product.
- 10.2 In the event that the Product or Products do not comply with the Warranty, the matter must be formally reported in writing during the warranty period by the Customer to Tablet Technologies whereby Tablet Technologies may request the right to Inspect the product. The Customer shall be responsible for the costs of returning the relevant Products to Tablet Technologies.
- 10.3 The Warranty shall not apply in respect of software installations or defects. The Customer shall enter into a separate software licence with the licensor of such software (and shall comply with the terms of such licence) and , save as set out below, Tablet Technologies shall have no liability for any defects or non-performance of such software. If there has been an error in the configuration of software which, on Inspection of the Product, is revealed in the opinion of Tablet Technologies to be due to an error on the part of Tablet Technologies, Tablet Technologies will complete a full system reset free of charge. Any other reset required of the software on the Products may be carried out by Tablet Technologies at the request of the Customer but shall be paid for by the Customer in an amount to be agreed between the Customer and Tablet Technologies prior to such reset.
- 10.4 The Warranty shall not apply in respect of a Product's battery unless there is a manufacturing defect in the battery. If on Inspection of the Product Tablet Technologies determines that there is a manufacturing defect in the battery, Tablet Technologies shall

not be liable under the Warranty if it is found that Customer has not followed Tablet Technologies' written and/or oral instructions for battery operation and care.

- 10.5 Tablet Technologies shall not be liable for the Product's failure to comply with the Warranty given in clause 10.1 or for any claim for damage under clause 6 if:
- 10.5.1 the Customer makes any further use of such Product after giving a notice in accordance with clause 10.2 (or clause 6.2, as applicable);
  - 10.5.2 the defect arises because the Customer failed to follow Tablet Technologies' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product or (if there are none) good trade practice;
  - 10.5.3 the defect arises as a result of Tablet Technologies following any drawing, design or Product specification supplied by the Customer;
  - 10.5.4 the defect arises as a result of the Customer failing to provide Tablet Technologies with full and accurate details relating to the specification of the Product, including in relation to operating requirements or the operational environment in which the Product is to be used;
  - 10.5.5 the Customer alters or repairs the Product without the written consent of the Tablet Technologies;
  - 10.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 10.5.7 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 10.6 Where applicable the Customer must provide all details to enable full access to the Product including user names and passwords. If the Customer is unable for any reason to provide such details, then Tablet Technologies shall not be liable to carry out any repair or replacement under the terms of this Warranty.
- 10.7 The Inspection of the Product under Warranty is free of charge to the Customer if the Product is found not to comply with the Warranty as set out in this clause. However should the Inspection reveal that the Product has been changed or altered in any way by the Customer or at their request, or if any of the other provisions of clause 10.5 apply, the Customer shall pay the cost of the Inspection at Tablet Technologies' standard rate of £50 (plus VAT).
- 10.8 For the avoidance of doubt, where the Customer has purchased an extended warranty from Tablet Technologies, the terms applicable to the extended warranty shall be set out in the separate written warranty service level agreement provided to the Customer at the time of purchase of the extended warranty.

## **11. Repair and Maintenance Services**

- 11.1 Where the Customer has contracted for Repair and Maintenance Services (as set out in the Order Confirmation, whether by way of a non-refundable pre-purchase of such services, subscription for such services or otherwise), Tablet Technologies will:
- 11.1.1 endeavour to acknowledge receipt of a request for Repair and Maintenance Services within 4 working hours unless otherwise agreed in the Order Confirmation (time not being of the essence). Repair and Maintenance Services will only be available on

Working Days; and

- 11.1.2 the fix time will depend upon the complexity of the issue with the Product, however Tablet Technologies will use reasonable endeavours to resolve the problem as soon as possible (time not being of the essence).
- 11.2 The Warranty shall not apply to Products which have been subject to the Repair and Maintenance Services. The Warranty shall only cover new products supplied by Tablet Technologies.
- 11.3 Tablet Technologies may (subject to availability) provide Repair and Maintenance Services on an adhoc basis at a standard rate per hour of £100 (plus VAT and outlays) or such other rate as may be implemented from time to time by Tablet Technologies or agreed in the Order Confirmation. Such adhoc Repair and Maintenance Services will only be available on Working Days.
- 11.4 Tablet Technologies reserves the right to refuse to carry out Repair and Maintenance Services in relation to Products not purchased directly from Tablet Technologies.
- 11.5 No refund is offered by Tablet Technologies in respect of the Charges for Repair and Maintenance Services.
- 11.6 The Customer is responsible for the costs of transportation and insurance of any Products that are the subject of the Repair and Maintenance Services (unless otherwise set out in the Order Confirmation).
- 11.7 The Customer must ensure it has backed up all data on Products prior to submitting them to Tablet Technologies for Repair and Maintenance Services and consequently Tablet Technologies is not liable for any loss of data on any Product submitted for Repair and Maintenance Services.

**12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 12.1 Nothing in these Conditions shall limit or exclude Tablet Technologies liability for:
  - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 12.1.2 fraud or fraudulent misrepresentation;
  - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - 12.1.5 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1, Tablet Technologies shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - 12.2.1 loss of profits;
  - 12.2.2 loss of sales or business;
  - 12.2.3 loss of agreements or contracts;

- 12.2.4 loss of anticipated savings;
- 12.2.5 loss of use or corruption of software, data or information;
- 12.2.6 loss of or damage to goodwill; and
- 12.2.7 any indirect or consequential loss.

12.3 Subject to clause 12.1, the Tablet Technologies total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the price paid under the Contract.

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

12.5 This clause 12 shall survive termination of the Contract.

12.6 Tablet Technologies shall have no liability for delay or for any affect upon the quality of the Service caused by external activities (including issues with regards to customs procedures or the Customer supplying incorrect information) or third party failures or problems suffered as a result of the Customer's internal communication or the lack of accessibility or cooperation of the Customer.

### 13. Privacy

13.1 In this clause, **controller, processor, data subject, personal data, personal data breach, processing** and **appropriate technical measures** shall have the meaning ascribed in the Data Protection Legislation.

13.2 The parties acknowledge that some Customer information or other information provided by the Customer or acquired by Tablet Technologies in connection with the provision of the Services may constitute personal data for the purpose of the Data Protection Legislation. In processing such personal data Tablet Technologies is a data processor and such processing is at the behest of and under the direction of the Customer. The Customer hereby acknowledges its obligations as a data controller pursuant to the Data Protection Legislation and warrants and represents to Tablet Technologies that it has discharged and shall discharge its obligations in terms thereof and the Customer shall hold Tablet Technologies harmless from any claims by any third party relating thereto.

13.3 Without prejudice to the generality of clause 13.2, Tablet Technologies shall, in relation to any personal data processed in connection with the performance by Tablet Technologies of its obligations under the Contract:

13.3.1 process that personal data only in accordance with the Contract and the written instructions of the Customer unless Tablet Technologies is required by applicable laws to otherwise process that personal data;

13.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological

development and the cost of implementing any measures;

- 13.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - 13.3.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the transfer is in accordance with Data Protection Legislation
  - 13.3.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 13.3.6 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 13.3.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by applicable law to store the personal data; and
  - 13.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow (at reasonable time, upon reasonable notice and with minimum disruption to Tablet Technologies' business) for audits by the Customer; and
  - 13.3.9 inform the Customer if, in the opinion of Tablet Technologies, an instruction infringes the Data Protection Legislation.
- 13.4 The Customer consents to Tablet Technologies transferring the personal data of the Customer outside of the European Economic Area where such data is transferred to an affiliate of the Customer based outside of such area.

#### **14. Confidentiality**

- 14.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third party except;
  - 14.1.1 to its agents, subcontractors, advisers or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Contract, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this clause; and
  - 14.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.2 This Clause 14 shall survive termination of the Contract.

#### **15. Termination**

- 15.1 Without prejudice to its other rights Tablet Technologies is entitled to suspend or terminate each or any of its Contracts immediately by notice in writing upon the

occurrence of any of the following:

- 15.1.1 the Customer fails to make payment of any sum owing on the due date; or
  - 15.1.2 the Customer, being a corporate body, having a receiver or administrative receiver appointed or any petition presented for an administration order or any petition presented or resolution passed for the winding up of the Customer (otherwise than for the purpose of a bona fide amalgamation or reconstruction) or compounding or entering into any arrangement with its creditors or becoming insolvent or taking any step (or any step being taken) in connection with the same or any court order being made upon or against any of the Customer's property or anything similar or analogous to the foregoing occurring in any jurisdiction other than England; or
  - 15.1.3 the Customer, being an individual, is the subject of a bankruptcy petition, application or order, or being a partnership, has any partner to whom any of the foregoing apply,
  - 15.1.4 the Customer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation;
  - 15.1.5 the Customer being unable to pay its debts as they fall due, or being a partnership, has any partner to whom the foregoing applies; or
  - 15.1.6 the Customer breaches of any of its obligations under any of its contracts with Tablet Technologies (including the Contract); or
  - 15.1.7 the Customer acts in a manner that is considered by Tablet Technologies to be duplicitous or deceitful with regards to the parties using the Service; or
  - 15.1.8 the Customer consistently, damages Products over a sustained period.
- 15.2 Tablet Technologies shall be entitled to terminate the Contract for convenience upon serving not less than 14 days' written notice of such termination upon the Customer.
- 15.3 Tablet Technologies reserve the right to cancel the Contract immediately upon written notice to the Customer if:
- 15.3.1 Tablet Technologies have insufficient stock to deliver the Products the Customer has ordered;
  - 15.3.2 Tablet Technologies or their external delivery agent are not able to deliver to the Customer's location; or
  - 15.3.3 one or more of the Products the Customer orders was listed at an incorrect price due to a typographical error or an error or change in the pricing information.

## **16. Consequences of Termination**

- 16.1 If Tablet Technologies terminates the Contract under the provisions of condition 15.2, Tablet Technologies will notify the Customer in writing and will re-credit to the Customer's account any sum received by Tablet Technologies as soon as reasonably practicable but in any event within 30 days of cancellation.

16.2 In the event of termination:

16.2.1 the Customer shall return all property belonging to Tablet Technologies. If the Customer fails to do so, then Tablet Technologies may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and

16.2.2 the Customer shall immediately pay to Tablet Technologies all of Tablet Technologies' outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, Tablet Technologies shall submit an invoice, which shall be payable by the Customer immediately on receipt. For the avoidance of doubt, the full Contract Price shall be payable by the Customer upon termination, to the extent not already paid, save as otherwise expressly provided for in these Conditions.

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

**17. Force Majeure**

17.1 Tablet Technologies shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was beyond its reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Tablet Technologies' reasonable control:

17.1.1 act of god, explosion, flood, tempest, fire or accident; weather.

17.1.2 war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition;

17.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;

17.1.4 import or export regulations or embargoes;

17.1.5 strikes, lock-outs or other industrial actions, power cuts or trade disputes (whether involving Tablet Technologies' employees or those of a third party); or

17.1.6 technical problems and any external circumstances preventing suppliers or subcontractors from delivering any goods or providing any services.

**18. Intellectual property rights**

18.1 All Intellectual Property Rights in or arising out of or in connection with the Products and the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Tablet Technologies or its licensors.

18.2 For the purpose of this clause **Intellectual Property Rights** shall mean all patents, rights to inventions, copyright and related rights, moral rights, trade marks and service 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 trade secrets), 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.

18.3 At its own expense, the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to these Conditions.

18.4 Nothing in the Contract shall be taken to prevent Tablet Technologies from using any expertise acquired or developed during the performance of the Contract in the provision of Products and Services to other parties.

## **19. Disputes**

19.1 Should any dispute arise in connection with these Conditions, the injured party shall inform the other party in writing of the dispute.

19.2 The parties shall then attempt to settle same by negotiation however should the dispute not be resolved within the first thirty (30) days of receipt of the written notice then the parties shall attempt to settle it by mediation, prior to court litigation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

## **20. Assignment**

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

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

## **21. Notices**

21.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by these Conditions shall be deemed to have been duly given and received;

21.1.1 if personally delivered, upon delivery at the address of the relevant party;

21.1.2 if sent by first class post, two business days after the date of posting;

21.1.3 if by email, when sent; provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

21.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation

## **22. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable,

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

### **23. Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **24. No partnership or agency**

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

### **25. Entire agreement**

25.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

25.3 Nothing in this clause shall limit or exclude any liability for fraud.

### **26. Third parties rights**

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

### **27. Governing law**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

### **28. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.