



ACR Electronics Inc.

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SUPPLY OF SERVICES

September 14, 2012

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Buyer"	the person(s), firm or company whose order for the Goods is accepted by Supplier.
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in the country that Supplier is located.
"Confidential Information"	all information in respect of the business of Supplier including, without prejudice to the generality of the foregoing, any ideas, business methods, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by Supplier and information concerning Supplier's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Supplier and of such persons and any other information which, if disclosed, will be liable to cause harm to Supplier.
"Contract"	any contract between Supplier and the Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with clause 2.
"Delivery Point"	the place where delivery of the Goods is to take place under clause 7.1.
"Documentation"	in relation to any Goods or Services, any instructions or procedures, instruction manuals, user guides and other information which is or ought to be supplied by Supplier to the Buyer including information recorded or stored by any means whatsoever on any media whatsoever (including in writing or other visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made).
"Force Majeure"	any cause preventing Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Supplier including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of Supplier or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors.
"Goods"	any goods which Supplier supplies to the Buyer (including any of them or any part of them) under a Contract including the Software.
"Intellectual Property Rights"	all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United States and all other countries in the world and together with all renewals and extensions.
"Services"	any services which Supplier provides to the Buyer (including any part of them).
"Service Point"	the place at which the Services are to be performed.
"Software"	the Supplier's Software and the Third Party Software.
"Specification"	in relation to the Goods and Services, the technical specifications of those Goods or documents detailing the requirements of the Services; all preparatory, design and development materials which relate to the Goods or Services; all information of any description which explains the structure, design and development materials which relate to the Goods; all information of any description which explains the structure, design, operation, functionality of the Goods or how the Services will be performed; all information of any description which relates to the maintenance and/or support of the Goods or Services.
"Supplier's Software"	the Supplier's software either specified in a Contract or supplied with the Goods.
"Terms and Conditions"	the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and Supplier.
"Third Party Software"	software (other than the Supplier's Software) which is specified in a Contract or supplied with the Goods.

1.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.

2. FORMATION

- 2.1 Subject to any variation under clause 2.7, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by Supplier, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by Supplier.
- 2.3 Any quotation is valid for a period of thirty days only from its date, provided Supplier has not previously withdrawn it, but no Contract shall come in being by acceptance of such quotation, a Contract forming only on acknowledgement of order by Supplier as set out in Condition 2.2.
- 2.4 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions, even in cases where there has been no acknowledgement of order by Supplier in terms of Condition 2.2.
- 2.6 Subject to clauses 7.3, 10.3 and 11, the Buyer may not cancel the Contract.
- 2.7 Save as set out in the Contract, these Terms and Conditions may not be varied or amended except in writing and signed by a duly authorized officer of each Party.

3. THE GOODS

- 3.1 The quantity and description of the Goods or Services will be as set out in Supplier's acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 3.3 Supplier may make any changes to the Specification, design, materials or finishes of the Goods or provision of the Services which:
 - 3.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or
 - 3.3.2 do not materially affect their quality or performance.

4. PRICE

- 4.1 The price for the Goods and Services will be the price specified in the acknowledgement of order and is exclusive of:
 - 4.1.1 any costs of packaging and carriage of the Goods; and
 - 4.1.2 any value added tax or other applicable sales tax or duty which will be added to the sum in question.

- 4.2 The cost of any pallets and returnable packaging or containers will be paid for by the Buyer in addition to the price for the Goods when it is due to pay for the Goods.
- 4.3 Supplier will be entitled to increase the price of the Goods or Services following any changes in the Specification made at the request of the Buyer and agreed by Supplier or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in clause 3.3.1.
- 4.4 Notwithstanding anything contained in the Contract to the contrary, in the event that there are withholding taxes imposed by the tax authorities in respect of payments due pursuant to the Contract, Buyer shall be entitled to deduct and pay such withholding taxes to the said tax authorities on behalf of Supplier unless Supplier has previously provided Buyer with evidence satisfactory to the said tax authorities in the form of certification from its auditors/ tax authorities that Supplier is not subject to tax on the relevant income. If the evidence (if any) provided by Supplier is not satisfactory to the said tax authorities and as a result withholding taxes are deducted and paid to such tax authorities then Buyer will provide to Supplier the tax credit documentation necessary for Supplier to receive a tax credit equal to the withholding tax within thirty days from the date of Buyer's payment. Where Supplier has made reasonable efforts to reclaim the withholding tax but is unable to do so (in whole or in part), Buyer shall pay such an amount to Supplier such that the net amount, after deduction of the withholding taxes that Supplier has been unable to reclaim, is equal to the amount that Supplier would have received from Buyer had such withholding requirement not been applicable.
- 5. PAYMENT**
- 5.1 Supplier may invoice the Buyer for the Goods at such time as set out in the acknowledgement of order or at any time after delivery and for the Services on or at any time after performance commences and, subject to clause 5.3, payment is due in the currency stated in the written acknowledgement of order thirty days after date of such invoice.
- 5.2 No payment will be deemed to have been received until Supplier has received cleared funds.
- 5.3 All sums payable to Supplier under the Contract will become due immediately upon termination of the Contract.
- 5.4 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 5.5 Supplier may appropriate any payment made by the Buyer to Supplier to such of the invoices for the Goods or Services as Supplier thinks fit, despite any purported appropriation by the Buyer.
- 5.6 If any sum payable under the Contract is not paid when due then, without prejudice to Supplier's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over Lloyds TSB Bank plc. base rate from time to time and Supplier will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by Supplier from the Buyer.
- 6. INSTALMENTS**
- 6.1 Supplier may deliver the Goods by separate instalments or perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract.
- 6.2 Each instalment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment or stage will entitle the Buyer to repudiate or cancel any other Contract, instalment or stage.
- 7. DELIVERY**
- 7.1 Unless otherwise expressly specified in the written acknowledgement of order, delivery of the Goods will be made ex-works as defined in INCOTERMS 2000. The Services will be performed at the Service Point.
- 7.2 Delivery of the Goods or performance of the Services will be made during Supplier's usual business hours.
- 7.3 Supplier will use reasonable endeavors to deliver and perform each of the Buyer's orders for the Goods and Services within the time agreed when the Buyer places an order and Supplier provides the acknowledgement of order and, if no time is agreed, then within a reasonable time, but the time of delivery and performance will not be of the essence. If, despite those endeavors, Supplier is unable for any reason to fulfill any delivery or performance on the specified date, Supplier will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Supplier have any liability to the Buyer for 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) howsoever caused (including as a result of negligence) by any delay or failure in delivery or performance except as set out in this condition. Any delay in delivery or performance will not entitle the Buyer to cancel the Contract unless and until the Buyer has given one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to Supplier requiring the delivery or performance to be made and Supplier has not fulfilled the delivery or performance within that period. If the Buyer cancels the Contract in accordance with this clause 7.3 then:
- 7.3.1 Supplier will refund to the Buyer any sums which the Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and
- 7.3.2 the Buyer will be under no liability to make any further payments under clause 5.1 in respect of that Contract or part of the Contract which has been cancelled.
- 7.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labor for loading the Goods.
- 7.5 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licenses or authorizations required to enable the Goods to be delivered or Services to be performed on time (except solely on account of Supplier's default), the Goods or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) Supplier may:
- 7.5.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with clause 7.5.2 and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 7.5.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.
- 7.6 The Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfill its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.
- 8. RISK / OWNERSHIP**
- 8.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with clause 7.5).
- 8.2 Ownership of the Goods (excluding Software) will not pass to the Buyer until Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:
- 8.2.1 the Goods; and
- 8.2.2 all other sums which are or which become due to Supplier from the Buyer on any account.
- 8.3 Until ownership of the Goods (excluding Software) has passed to the Buyer, the Buyer must:
- 8.3.1 hold the Goods on a fiduciary basis as Supplier's bailed;
- 8.3.2 store the Goods (at no cost to Supplier) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as Supplier's property;
- 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 8.3.4 maintain the Goods in satisfactory condition insured on Supplier's behalf for their full price against all risks to the reasonable satisfaction of Supplier, and will whenever requested by Supplier produce a copy of the policy of insurance.
- 8.4 The Buyer may resell the Goods (or, in the case of the Software, sub-license the Software) before ownership has passed to it solely on the following conditions:
- 8.4.1 any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to Supplier accordingly; and
- 8.4.2 any such sale will be a sale of Supplier's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 8.5 The Buyer's right to possession of the Goods will terminate immediately if any of the circumstances set out in clause 11.1 occur.
- 8.6 Supplier will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Supplier.
- 8.7 The Buyer acknowledges and agrees that the Goods to be supplied hereunder shall remain subject to a purchase money security interest in favor of Supplier until the Goods are fully paid for by the Buyer, and the Buyer shall, upon request, execute any instrument reasonably requested by Supplier to evidence Supplier's interest, including, without limitation, a form UCC-1.
- 8.8 The Buyer grants Supplier, its agents and employees an irrevocable license and provision at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 8.9 Where Supplier is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by Supplier to the Buyer in the order in which they were invoiced to the Buyer.
- 8.10 On termination of the Contract, howsoever caused, Supplier's (but not the Buyer's) rights contained in this clause 8 will remain in effect.
- 9. WARRANTY, EXCLUSION AND LIMITATION OF LIABILITY AND INDEMNITY**
- Warranty**
- 9.1 Supplier will, at no cost to the Buyer, repair or (at the Supplier's sole discretion) replace such Goods or re-perform such Services that to the reasonable satisfaction of the Supplier do not conform to the Specification. Non-conformance can be due to defects in material, workmanship or design (unless such design was developed, furnished or specified by the Buyer). The Supplier's obligation to repair or replace such non-conforming Goods or Services under warranty shall be effective for a period of twelve (12) months from the date of delivery of new product, or other period specified for the product or repair at www.acrartex.com/products. This obligation will not apply where:
- 9.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorized repair;

- 9.1.2 the Goods have been improperly installed or connected;
- 9.1.3 any maintenance requirements relating to the Goods have not been complied with;
- 9.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or
- 9.1.5 the Buyer has failed to notify Supplier of any defect or suspected defect within fourteen days of the delivery where the defect should be apparent on reasonable inspection, or within fourteen days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than twelve months from the date of delivery or performance.
- 9.2 Supplier will refund to the Buyer the cost of carriage on the return of any such defective or damaged Goods, and will deliver any repaired or replacement Goods to the Buyer at Supplier's own expense.
- 9.3 Any Goods which have been replaced will belong to Supplier. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in **clause 9.1** for the unexpired portion of the twelve month period from the original date of delivery of the replaced Goods.
- Exclusion and Limitation of Liability**
- 9.4 In the event of any breach of Supplier's express obligations under **Clauses 7.3, 9.1, 9.2 or 9.3** the remedies of the Buyer will be limited to damages and other than any liability of Supplier arising under **clause 9.5**, which shall not be limited, and without prejudice to **clauses 9.6 to 9.8** inclusive, Supplier's aggregate liability under each Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss or damage howsoever caused, and including without prejudice to the generality of the foregoing any liability of Supplier arising under any indemnity, will be limited to an amount equal to the greater of 115% of the amount paid by the Buyer to Supplier under that Contract or \$15,000.00.
- 9.5 Supplier does not exclude or limit its liability (if any) to the Buyer:
- 9.5.1 for death or personal injury resulting from Supplier's negligence;
- 9.5.2 for any matter for which it would be illegal for Supplier to exclude or limit or to attempt to exclude or limit its liability; or
- 9.5.3 for fraud.
- 9.6 Except as provided in **Clauses 7.3 and 9.1 to 9.5**, Supplier will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or 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) howsoever caused arising out of or in connection with:
- 9.6.1 any of the Goods or Services, or the manufacture or sale or supply, or failure or delay in supply, of the Goods or Services by Supplier or on the part of Supplier's employees, agents or sub-contractors;
- 9.6.2 any breach by Supplier of any of the express or implied terms of the Contract;
- 9.6.3 any use made or resale by the Buyer of any of the Goods or Services, or of any product incorporating any of the Goods; or
- 9.6.4 any statement made or not made, or advice given or not given, by or on behalf of Supplier.
- 9.7 Except as set out in **clauses 7.3 and 9.1 to 9.5**, Supplier hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favor of the Buyer.
- 9.8 Each of Supplier's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in **clauses 7.3, 9.4, 9.6 and 9.7** in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Supplier wherever it appears in those clauses save for each reference in **clause 9.6.1**.
- 9.9 The Buyer acknowledges that the above provisions of this **clause 9** are reasonable and reflected in the price which would be higher without those provisions, and the Buyer will accept such risk and/or insure accordingly.
- 9.10 The Buyer agrees to indemnify, keep indemnified and hold harmless Supplier from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, 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 Supplier incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract.
- 9.11 Buyer shall indemnify and keep Supplier indemnified in respect of any claims by
- 9.11.1 third parties which are caused by or arise out of or in connection with (i) any act or omission of Supplier carried out pursuant to instructions of Buyer; or (ii) any breach by Buyer of any terms of this Agreement; and
- 9.11.2 Buyer's customers.
- 10. FORCE MAJEURE**
- 10.1 Supplier will be deemed not to be in breach of the Contract or otherwise liable to the Buyer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in **clause 10.2**.
- 10.2 If Supplier's performance of its obligations under the Contract is affected by Force Majeure:
- 10.2.1 it will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavors to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity, without being obliged to incur any expenditure;
- 10.2.2 subject to the provisions of **clause 10.3**, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and
- 10.2.3 it will not be entitled to payment from the Buyer in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 10.3 If the Force Majeure in question continues for more than three months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than thirty days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.
- 11. TERMINATION**
- 11.1 Supplier may by notice in writing served on the Buyer terminate the Contract immediately if the Buyer:
- 11.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within thirty days service of a written notice from Supplier, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with **clause 5.1** is a material breach of the terms of the Contract which is not for purposes of this Condition deemed capable of remedy;
- 11.1.2 is unable to pay its debts as they fall due; admits its insolvency; commences a case or has a case commenced against it under any applicable bankruptcy, insolvency, or reorganization laws now or hereinafter in effect (except in the case of the filing of an involuntary petition for bankruptcy, in which case such right to terminate shall not arise unless an order for relief is entered or such petition is not dismissed within ninety (90) days of filing); commences any other dissolution, liquidation, or similar proceeding under the laws of any jurisdiction now or hereafter in effect; makes an assignment for the benefit of its creditors; suffers the appointment of any receiver, custodian, or like officer for itself or any substantial portion of its property that is not discharged or stayed within sixty (60) days;
- 11.1.3 has any distraint, execution or other process levied or enforced on any of its property;
- 11.1.4 ceases to trade or is threatening to cease to trade or appears in the reasonable opinion of Supplier likely to cease to trade;
- 11.1.5 has a change in its senior management and/or control, such that the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Buyer, whether through the ownership of voting shares, by contract, or otherwise, is changed, including by: (i) the reorganization, consolidation, or merger of the Buyer with or into any other entity; or (ii) the sale, transfer, or other disposition of all or substantially all of the assets or stock of the Buyer;
- 11.1.6 the equivalent of any **clauses 11.1.2 to 11.1.5** occurs to the Buyer under the jurisdiction to which the Buyer is subject; or
- 11.1.7 the Buyer commences the manufacture of any goods which are similar to or may compete with the Goods.
- 11.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or Supplier accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 11.3 Supplier will be entitled to suspend any deliveries or performance otherwise due to occur following service of a notice specifying a breach under **clause 11.1.1**, until either the breach is remedied or the Contract terminates, whichever occurs first.
- 12. INTELLECTUAL PROPERTY**
- 12.1 No right or license is granted to the Buyer in respect of the Intellectual Property Rights of Supplier, except the right to use, or re-sell the Goods (or, in the case of the Software, sub-license the Software), or use the Services in each case in the Buyer's ordinary course of business and, in the case of the Software, solely for the purpose of the use of the Goods for the purpose for which they are manufactured.
- 12.2 The Buyer will not without Supplier's prior consent allow any trademarks of Supplier or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 12.3 The Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, except to the extent permitted by law.
- 13. CONFIDENTIALITY**
- 13.1 The Buyer will keep confidential any and all Confidential Information that it may acquire.
- 13.2 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this **clause 13**.

- 13.3 The obligations on the Buyer set out in clauses 13.1 and 13.2 will not apply to any information which:
13.3.1 is publicly available or becomes publicly available through no act or omission of the Buyer; or
13.3.2 the Buyer is required to disclose by order of a court of competent jurisdiction.
- 13.4 Each Party agrees to allow the other Party and its affiliates to store and use the other Party's business contact information, including names, business phone numbers, and business e-mail addresses (together referred to as "Contact Information"), in connection with this Agreement anywhere they do business. Such information will be processed and used only in connection with this Agreement and the marketing of Supplier's services, and may be provided to sub-contractors who promote, market and support certain Supplier goods and services, and to any assignees of either Party for uses consistent with this Agreement.
14. **GENERAL**
- 14.1 Time for performance of all obligations of the Buyer under the Contract is of the essence.
- 14.2 Time for performance of all obligations of Supplier under the Contract is not and may not be made by notice of the essence.
- 14.3 Each right or remedy of Supplier under any Contract is without prejudice to any other right or remedy of Supplier under this or any other Contract.
- 14.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 14.5 No failure or delay by Supplier to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 14.6 Supplier may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 14.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without Supplier's prior written consent.
- 14.8 Save as set out in clause 9.8, the parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it.
- 14.9 The Contract and the Specification contain all the terms which Supplier and the Buyer have agreed in relation to the Goods and Services and supersede any prior written or oral agreements, representations or understandings between the parties relating to such Goods or Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Supplier which is not set out in the Contract or Specification. Nothing in this clause 14.9 will exclude any liability which one party would otherwise have to the other party in respect of any statements, promises or representations made fraudulently.
15. **EXPORT/IMPORT**
- 15.1 The Goods and Services (including, without limitation, any third party software) may be subject to export control and import laws and regulations of:
15.1.1 the United States, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M), the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774, and other controls administered by the U.S. Department of Commerce, and the sanctions regulations administered by the U.S. Department of Treasury Office of Foreign Assets Control;
15.1.2 the European Union and its member states, including without limitation Council Regulation (EC) No. 1334/2000; and
15.1.3 other countries
(collectively, "Export/Import Law"). The Buyer agrees to comply with all Export/Import Law applicable to the Goods and Services and assumes sole responsibility for obtaining licenses and other authorisations that are required under Export/Import Law to deliver and use the Goods and Services. The Buyer acknowledges and agrees and shall procure that any person to whom the Goods or Services are re-sold shall acknowledge and agree that the Goods and Services shall not be exported, re-exported or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals or the U.S. Department of Commerce Denied Parties List or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. The Buyer represents and warrants that neither it nor any of the persons to whom the Goods or Services are resold is located in, a national or resident of, or under the control of an Embargoed Country or Designated National. Buyer specifically shall obtain all required authorizations from the U.S. Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16).
16. **CORRUPT PRACTICES**
- 16.1 The Buyer represents and warrants that it understands the provisions of any relevant laws relating to the prevention of corruption and agrees to comply with them to the extent that they apply.
- 16.2 The Buyer represents and warrants that none of its officers are government officials, police officers or civil servants.
17. **NOTICES**
- 17.1 Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand or registered mail, (but not by facsimile or e-mail), addressed to the recipient at its registered office and will be marked for the attention of the General Manager/Company Secretary (or such other address or person which the recipient has notified in writing to the sender in accordance with this clause 17, to be received by the sender not less than seven Business Days before the notice is dispatched).
- 17.2 Any notice, demand or communication sent by Buyer under clause 17 shall also be copied to the Vice President, Commercial and Compliance at *ACR Electronics, 5757 Ravenswood Road, Ft. Lauderdale, FL 33312 USA*
- 17.3 The notice, demand or communication will be deemed to have been duly served:
17.3.1 if delivered by hand, at the time of delivery; or
17.3.2 if delivered by registered mail, 48 hours after being posted or in the case of Airmail 10 days after being posted (excluding days other than Business Days) provided that, where in the case of delivery by hand such delivery occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
18. **LAW**
- The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by the laws of the State of Florida.
19. **DISPUTES**
- 19.1 **Resolving Disputes**
- The intent of the Parties is to identify and resolve disputes promptly. Each Party agrees to perform as follows:
19.1.1 to notify the other Party of any dispute in reasonable detail as soon as possible after any dispute arises;
19.1.2 to negotiate in good faith to seek to resolve the dispute; and
19.1.3 if a dispute is not resolved within thirty days of it arising, either Party shall be entitled to submit the dispute for final and binding arbitration. The Parties shall each pay their own respective arbitration expenses and share equally any third party costs of the arbitration. The arbitration shall be conducted under the rules (as in force as of the date of signature of this Agreement) of the American Arbitration Association ("AAA"), and the place of arbitration shall be Fort Lauderdale, Florida. The language of the arbitration shall be English. There shall be three arbitrators (the "Tribunal"); each Party shall appoint one arbitrator and the third arbitrator shall be appointed by the arbitrators appointed by each Party. Witnesses who are unable to speak English may give evidence through a translator. Unless the Parties agree to extend this period, the Tribunal will render its award in writing within thirty days of the close of the hearing. Judgment upon the award may be entered in any court having jurisdiction over this Agreement. In no event shall the Tribunal have any right or power to award punitive or exemplary damages. All and any awards of the Tribunal shall be final and binding upon the Parties who, for the avoidance of doubt, expressly exclude all and any rights of appeal from all and any awards to the extent that such exclusion may be validly made.
- 19.2 This clause 19 will not prevent a Party (the "affected Party") from:
19.2.1 seeking injunctive relief in the case of any breach or threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of the affected Party's intellectual property rights;
19.2.2 commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
19.2.3 commencing proceedings in the case of non-payment of an undisputed invoice.
20. **PERSONNEL**
- Without in any way restricting the right of an employee freely to change employment, if an employee of either Party is induced either directly or indirectly to enter the service of or commence an engagement (in any capacity whatsoever) with the other Party at any time during the Term of this Agreement or within 6 months after the termination of this Agreement, then that other Party will pay an amount equal to the annual cost of employing such employee (for the avoidance of doubt to include only the annual cost of such employee's net salary and net benefits based on the employee's salary at the date of termination of the employee's employment by either Party). Such payment is made in recognition only of the disruption that such inducements would cause to the efficient conduct of the former employer's business.