

Terms and Conditions for the Provision of Products and Services

PaveTesting Limited is a company incorporated and registered in England with number 6989178 whose registered office is at Unit 2, ICENI Court, Letchworth Garden City, Hertfordshire SG6 1TN. VAT number is 642134175.

This page contains the legal terms and conditions on which we sell all and any of our Products and/or supply any of our services. These Conditions will apply to any Contract, however it may be formed and in any jurisdiction, between us and you (PaveTesting and the Customer) for the sale of Products and for the supply of any Services to you.

Please read these Terms carefully and make sure that you understand them. You should print a copy of these Terms or save them to your computer for future reference.

These Conditions and any Contract is only in the English language.

Your attention is particularly drawn to the provisions of Condition 6 (Title and Risk). You are specifically made aware of and accept that the ownership in the Product(s) does not pass to you until PaveTesting has received payment for the Product(s) in full.

Your attention is also drawn to Condition 13 (Limitation of Liability).

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in an Order and in accordance with Condition 2.2.

Condition(s): these terms and conditions as amended from time to time in accordance with Condition 18.7.

Contract: the contract between PaveTesting and the Customer for the supply of Products and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Products and/or Services from PaveTesting.

Deliverables: the deliverables set out in an Order.

Delivery Location: has the meaning set out in Condition 4.2.

Force Majeure Event: has the meaning given to it in Condition 15.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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 in or associated with the Products and any software provided with or ancillary to the Products or the Services.

Invoice: an invoice raised by PaveTesting in accordance with Condition 9.

List Prices: the prices for the Products as varied from time to time by PaveTesting, but excluding any expenses.

Net Selling Price: the List Prices of Products ordered by the Customer less any discounts granted to the Customer by PaveTesting in writing from time to time.

Order: the Customer's order for the supply of Products and/or Services, as set out in Customer's purchase order, or as attached to these Conditions; or the Customer's written acceptance of PaveTesting's quotation or; the Customer's purchase order form as the case may be and in to which these Conditions are expressly incorporated by reference therein.

Products: the Products (or any part of them) set out in the Order and shall include any software incorporated in the Products or provided with any of the Products namely PavePROF V.02, PaveCFT, PaveFWD, PaveView and/or PaveTRACK computer software and the data supplied with the software, and the associated media supplied under the Contract.

Products Specification: any specification for the Products, including any relevant plans or drawings that is agreed in writing by the Customer and PaveTesting.

Services: the services, including the Deliverables, supplied by PaveTesting to the Customer as set out in any Order or Service Specification in writing.

Service Specification: the description or specification for the Services provided in writing by the PaveTesting to the Customer.

PaveTesting Materials: has the meaning set out in Condition 8.1(g).

1.2 **Construction.** In these Conditions, the following rules 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 representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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) a reference to applicable law is a reference to the law, subject always to clauses 18.8 and 18.9 of these Conditions, that the Contract becomes subject to in a jurisdiction to which the Products and/or Services are to be supplied; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when PaveTesting issues written acceptance of the Order, or it commences with the supply of the Products and/or the Services at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire Contract between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the PaveTesting which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by PaveTesting and any descriptions of the Products or illustrations or descriptions of the Services contained in PaveTesting's 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 unless specifically stated in writing.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by PaveTesting shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Products and Services.

3. PRODUCTS

- 3.1 The Products are described in PaveTesting's catalogue as modified from time to time by any applicable Products Specification or by agreement.
- 3.2 To the extent that the Products are to be manufactured in accordance with a Products Specification supplied by the Customer, the Customer shall indemnify PaveTesting against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by PaveTesting in connection with any claim made against PaveTesting for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with PaveTesting's use of the Products Specification. This Condition 3.2 shall survive termination of the Contract.
- 3.3 PaveTesting reserves the right to amend the Products Specification if required by any applicable statutory or regulatory requirements or under any applicable law.

4. DELIVERY OF PRODUCTS

- 4.1 PaveTesting shall ensure that:
- (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and PaveTesting reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
 - (b) if PaveTesting requires the Customer to return any packaging material to PaveTesting, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as PaveTesting shall reasonably request. Returns of packaging materials shall be at PaveTesting's expense.
- 4.2 PaveTesting shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after PaveTesting notifies the Customer that the Products are ready.
- 4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. PaveTesting shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to

provide PaveTesting with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

- 4.5 If PaveTesting fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. PaveTesting shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide PaveTesting with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.6 If the Customer fails to accept or take delivery of the Products at the Delivery Location and PaveTesting notifies the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by PaveTesting's failure to comply with its obligations under the Contract in respect of the Products (if applicable) PaveTesting shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance for such storage or failure to take delivery).
- 4.7 If 7 Business Days after the PaveTesting notified the Customer that the Products were ready for delivery and the Customer fails to accept or take delivery of them, PaveTesting may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 4.8 PaveTesting may (if applicable) deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **QUALITY OF PRODUCTS**

- 5.1 PaveTesting warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Products shall:
- (a) conform in all material respects with their description and/or the Products Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the UK Sale of Products Act 1979); and
 - (d) be fit for any purpose held out by the PaveTesting.

- 5.2 Subject to Condition 5.3, if:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that the Products do not comply with the warranty set out in Condition 5.1;
 - (b) PaveTesting is given a reasonable opportunity of examining the Products; and
 - (c) the Customer (if asked to do so by PaveTesting and if applicable depending on the type of Products supplied) returns such Products to PaveTesting's place of business at the Customer's cost,

PaveTesting shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

- 5.3 PaveTesting shall not be liable for the Products' failure to comply with the warranty in Condition 5.1 if:

- (a) the Customer makes any further use of such Products after giving a notice in accordance with Condition 5.2;
- (b) the defect arises because the Customer failed to follow PaveTesting's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- (c) the defect arises as a result of PaveTesting following any drawing, design or Products Specification supplied by the Customer;
- (d) the Customer alters, adds to or repairs such Products without the written consent of PaveTesting;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Products differ from their description or the Products Specification, as the case may be, as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

- 5.4 Except as provided in this Condition 5, PaveTesting shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in Condition 5.1.

- 5.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by PaveTesting under Condition 5.2.

6. TITLE AND RISK: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

6.1 The risk in the Products shall pass to the Customer on completion of delivery in accordance with Condition 4.

6.2 Title and ownership of the Products shall not pass to the Customer until PaveTesting receives payment in full (in cash or cleared funds), including all instalments if the parties have agreed to accept payment in instalments, of all monies owed by the Customer to PaveTesting in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums, including all and any instalments.

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as PaveTesting's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the PaveTesting's behalf from the date of delivery;
- (d) notify PaveTesting immediately if it becomes subject to any of the events listed in Conditions 14.1(a) to 14.1(k);
- (e) give PaveTesting such information relating to the Products as PaveTesting may require from time to time; and
- (f) the Products shall be insured for an amount at least equal to its List Price and any proceeds of the insurance policy shall be held on trust for PaveTesting in a separate account in the joint names of PaveTesting and the Customer. The Customer shall not mix the insurance proceeds with any other money or pay the proceeds into an overdrawn bank account. The Customer shall account to PaveTesting for the proceeds accordingly and make good any shortfall in the amount due to PaveTesting.

6.4 The Customer may resell (but may not deal in any other way with) the Products to a third party and pass good title to that third party on the following terms:

- (a) the sale is in the ordinary course of the Customer's business; and
- (b) the Customer holds the proceeds of any resale on trust for PaveTesting in a separate account in the joint names of PaveTesting and the Customer and does not mix them with any other money or pay the proceeds into an overdrawn bank account;

and the Customer shall account to PaveTesting for the proceeds accordingly and shall make good any shortfall in the amount due to PaveTesting.

- 6.5 If before title to the Products passes to the Customer or the Customer becomes subject to any of the events listed in Conditions 14.1 (a) to 14.1(k) then, without limiting any other right or remedy PaveTesting may have:
- (a) the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
 - (b) PaveTesting may at any time:
 - (i) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored, even if they are on the premises of a customer of the Customer in order to recover them. The Customer agrees to provide appropriate assistance to PaveTesting, at its own cost (including any legal costs), in carrying out any such recovery action under any applicable law.
- 6.6 The Customer grants to PaveTesting an irrevocable licence for PaveTesting, its agents and/or employees to enter any premises where the Products are stored or used to ascertain whether any Products are stored there and to inspect, count and recover them.
- 6.7 The Customer shall register any necessary charge over money or Products and take such other steps as are necessary under applicable law to give effect to this Condition 6 at the request of PaveTesting.
- 6.4 The Customer shall make any prospective purchaser of the Products aware of this Condition 6, this retention of title provisions and its affects. If it has not done so, the Customer will do so immediately upon the written request of PaveTesting.

7. SUPPLY OF SERVICES

- 7.1 PaveTesting shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 PaveTesting shall use all reasonable endeavours to meet any performance dates for the Services specified in an Order or any agreed specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 PaveTesting 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 PaveTesting shall notify the Customer in any such event.

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

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Products Specification are complete and accurate;
- (b) co-operate with PaveTesting in all matters relating to the Services;
- (c) provide PaveTesting, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by PaveTesting to provide the Services;
- (d) provide PaveTesting with such information and materials as PaveTesting may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises and any machinery upon which the Services are to be provided for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of PaveTesting (**PaveTesting Materials**) at the Customer's premises in safe custody at its own risk, maintain PaveTesting Materials in good condition until returned to PaveTesting, and not dispose of or use the PaveTesting Materials other than in accordance with the PaveTesting's written instructions or authorisation.

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

- (a) PaveTesting shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays PaveTesting's performance of any of its obligations;
- (b) PaveTesting shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from PaveTesting's failure or delay to perform any of its obligations as set out in this Condition 8.2; and

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

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay PaveTesting for the Products in accordance with this Condition 9.
- 9.2 The List Prices may be varied from time to time by PaveTesting. The price applicable to each Order shall be the (unless agreed otherwise in the Order) latest version of the List Prices for the Products that has been notified to the Customer at least 30 days before the delivery date.
- 9.3 The Customer shall pay to PaveTesting the total amount of each Invoice in pounds sterling by telegraphic transfer (unless agreed otherwise) to the bank account as set out in an Order within 30 days after the date of the relevant Invoice, notwithstanding that delivery may not have taken place and that title in the Products has not passed to the Customer.
- 9.4 Unless agreed otherwise, in respect of Products, PaveTesting shall invoice the Customer for 50% of the price upon receipt of Order and 50% of the price upon delivery. PaveTesting will have no obligation to start any production process for the Products until the Customer has paid the 50% of the price in full. In respect of Services, PaveTesting shall invoice the Customer monthly in arrears
- 9.5 All amounts of money referred to in this Contract shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes under applicable law. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to PaveTesting, the Customer shall increase the sum it pays to PaveTesting by the amount necessary to leave PaveTesting with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 9.6 All amounts due to PaveTesting under the Contract shall become due immediately if the Contract is terminated or novated despite any other provision.
- 9.7 The time for payment shall be of the essence and no payment shall be deemed to have been made until PaveTesting has received payment in cleared funds.
- 9.8 If the Customer does not make payment on or before the date on which it is due, interest shall be payable on the overdue amount at the rate which is the greater of the

rate in force pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 or 6% above the Bank of England base rate from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.

- 9.9 The Customer shall make all payments due under this Contract without any deduction by way of set-off, counterclaim, discount or otherwise unless the Customer has a valid court order from a court in England requiring an amount equal to or more than such deduction to be paid to PaveTesting by the Customer, or unless such rights relied on cannot be excluded by the law of England or the insolvency laws of the jurisdiction in which the Customer is resident.
- 9.10 The price for Products shall be the price set out in the Order or, if no price is quoted, the List Prices set out in PaveTesting's published price list as at the date of delivery. The price of the Products is exclusive of all sales taxes, costs and charges of packaging, insurance and/or transport of the Products, which shall be paid by the Customer when it pays for the Products.
- 9.11 The Customer shall comply with all applicable laws and regulations of the country for which the Products are destined. PaveTesting will not be liable or responsible if the Customer breaks any such applicable law.
- 9.12 Unless otherwise agreed, the charges for Services shall be on a time and materials basis:
- (a) the charges shall be calculated in accordance with PaveTesting's standard daily fee rates, as set out in the PaveTesting's Schedule of Rates;
 - (b) PaveTesting's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.30 pm worked on Business Days;
 - (c) PaveTesting shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Condition 9.12(b); and
 - (d) PaveTesting shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom PaveTesting engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by PaveTesting for the performance of the Services, and for the cost of any materials.
- 9.13 PaveTesting reserves the right to:

- (a) increase its standard daily fee rates for the charges for the Services, and
- (b) increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to PaveTesting that is due to:
 - (i) any factor beyond the control of PaveTesting (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the PaveTesting adequate or accurate information or instructions in respect of the Products.

10. IMPORT AND EXPORT LICENCES

The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by PaveTesting, the Customer shall make those licences and consents available to PaveTesting prior to the relevant shipment.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Customer acknowledges that:

- (a) the Intellectual Property Rights are PaveTesting's (or its licensor's) property;
- (b) nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights. PaveTesting asserts its full rights to control the use of its trade marks throughout the World and the Customer shall assist PaveTesting as required in preventing parallel importers from diluting PaveTesting's rights; and
- (c) any reputation in any trade marks affixed or applied to the Products shall accrue to the sole benefit of PaveTesting or any other owner of the trade marks from time to time.

11.2 The Customer shall not repackage the Products and/or remove any copyright notices, confidential or proprietary legends or identification from the Products.

11.3 The Customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which

PaveTesting or any associated company of PaveTesting owns or claims rights in anywhere in the world.

- 11.4 If at any time it is alleged that the Products infringe the rights of any third party or if, in PaveTesting's reasonable opinion, such an allegation is likely to be made, PaveTesting may at its option and its own cost:
- (a) modify or replace the Products without reducing the overall performance of the Products in order to avoid the infringement; or
 - (b) procure for the Customer the right to continue using the Products; or
 - (c) repurchase the Products at the price paid by the Customer, less depreciation at the rate PaveTesting applies to its own equipment.
- 11.5 The Customer shall promptly and fully notify PaveTesting of:
- (a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Customer's notice; and
 - (b) any claim by any third party that comes to the Customer's notice that the sale or advertisement of the Products infringes the rights of any person.
- 11.6 The Customer agrees (at PaveTesting's request) to do all such things as may be reasonably required to assist PaveTesting in taking or resisting any proceedings in relation to any infringement or claim referred to in Condition 11.5.
- 11.7 In the event of any claim, proceeding or suit by a third party against the Customer alleging an infringement of any Intellectual Property Right connected with the Products, PaveTesting shall defend the Customer at PaveTesting's expense, subject to:
- (a) the Customer promptly notifying PaveTesting in writing of any such claim, proceeding or suit; and
 - (b) PaveTesting being given sole control of the defence of the claim, proceeding or suit,

and provided that PaveTesting shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Products made by anyone except PaveTesting or its authorised representative, or out of use or combination of the Products with goods or third party materials not specified or expressly approved in advance in writing by PaveTesting, or where the claim, proceeding or suit arises from PaveTesting's adherence to the Customer's requested changes to the Products Specification or from infringing items of the Customer's origin, design or selection.

- 11.8 PaveTesting shall reimburse the Customer with an amount equal to any cost, expense or legal fees incurred at PaveTesting's written request and authorisation and shall

indemnify the Customer against any liability assessed against the Customer by final judgement on account of an infringement described in Condition 11.7.

- 11.9 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by PaveTesting.
- 11.10 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on PaveTesting obtaining a written licence from the relevant licensor on such terms as will entitle the PaveTesting to license such rights to the Customer.
- 11.11 All PaveTesting Materials are the exclusive property of PaveTesting.

12. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Condition 12 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1 PaveTesting's total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to the Contract shall be limited to the List Price of the Products to which the claim relates.
- 13.2 PaveTesting shall not be liable to the Customer for:
 - (a) any indirect, special or consequential loss or damage; or
 - (b) loss of data or other equipment or property; or
 - (c) economic loss or damage; or

- (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
- (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if PaveTesting is advised in advance of the possibility of any such losses or damages.

13.3 PaveTesting shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Products including (without limitation):

- (a) fair wear and tear;
- (b) wilful damage;
- (c) the Customer's negligence, or that of its agents or employees, or any failure to follow PaveTesting's instructions as to use of the Products;
- (d) abnormal working conditions beyond those referred to in the Product Specification; and
- (e) any alteration or repair of the Products by any manufacturing process or otherwise, save for any latent defect which means that the Product did not comply with the Products Specification.

13.4 PaveTesting is not liable for a defect in the Products unless it is notified to PaveTesting within 30 days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within three months of the date of delivery.

13.5 PaveTesting is not liable for:

- (a) non-delivery, unless the Customer notifies PaveTesting of the claim within 7 working days of the date of scheduled date of delivery; or
- (b) damage to or loss of all or part of the Products in transit (where the Products are carried by PaveTesting's own transport or by a carrier on behalf of PaveTesting), unless the Customer notifies PaveTesting within 15 working days of receipt of the Products or the scheduled date of delivery, whichever is the earlier.

13.6 The Customer acknowledges and agrees that the List Prices reflect the limitations of liability contained in this Contract.

13.7 Nothing in these Conditions shall limit or exclude PaveTesting's liability for:

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

- (c) breach of the terms implied by section 2 of the UK Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the UK Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective Products under the UK Consumer Protection Act 1987.

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

13.9 This Condition 13 shall survive termination of the Contract.

14. TERMINATION

14.1 Either party may terminate the Contract by giving written notice to the other party if any of the following events occurs:

- (a) the other party commits a breach of this Contract which (in the case of a breach capable of remedy) has not been remedied within 30 days of the receipt by the other of a notice specifying the breach and requiring its remedy; or
- (b) the other party commits the same or substantially similar breaches of its obligations under this Contract more than 2 times within any period of 3 consecutive months; or
- (c) a winding-up order or bankruptcy order is made against the other party; or
- (d) the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
- (e) the other party has appointed to it an administrator or an administrative receiver; or
- (f) being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners; or
- (g) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
- (h) the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (i) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
- (j) the other party ceases, or threatens to cease, to carry on business; or

- (k) any event analogous to those described in Condition 14.1(c) to Condition 14.1(i) occurs in relation to the other party in any jurisdiction under applicable law in which that other party is incorporated, resident or carries on business.
- 14.2 Following the expiry of any term or the earlier termination of this Contract for any reason whatsoever, PaveTesting shall be entitled (at its option) to cancel any Orders which have not yet been delivered.
- 14.3 On termination or novation of the Contract for any reason and subject as otherwise provided in the Contract, the Order and these Conditions and to any rights or obligations that have accrued before termination, neither party shall have any further obligation to the other under the Contract.
- 14.4 Without limiting its other rights or remedies, PaveTesting may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under a Contract on the due date for payment.
- 14.5 Without limiting its other rights or remedies, PaveTesting may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and PaveTesting if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Condition 14.1(c) to Condition 14.1(k), or PaveTesting reasonably believes that the Customer is about to become subject to any of them.
- 14.6 On termination of the Contract for any reason:
 - (a) the Customer shall immediately pay to PaveTesting all of PaveTesting's outstanding unpaid Invoices and interest and, in respect of Services supplied but for which no Invoice has yet been submitted, PaveTesting shall submit an Invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of PaveTesting Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then PaveTesting 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;
 - (c) 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
 - (d) Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

15. FORCE MAJEURE

- 15.1 For the purposes of these Conditions and the Contract, **Force Majeure Event** means an event beyond the reasonable control of PaveTesting including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of PaveTesting or any other party), failure of a utility service or transport network, failure of any courier or delivery agent, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 PaveTesting shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents PaveTesting from providing any of the Services and/or Products for more than 4 weeks, PaveTesting shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

16. DISPUTES

- 16.1 Subject as may be provided elsewhere in these Conditions or in any Contract, all disputes, differences or questions arising in relation to these Conditions and any Contract shall be referred in the first instance to the sales director of PaveTesting and the equivalent person of the Customer, who shall attempt to settle the dispute between themselves (acting in good faith) within one calendar month.
- 16.2 If the sales director of PaveTesting and the equivalent person of the Customer fail to resolve the dispute, it shall be referred to the managing director of each of PaveTesting and the Customer, who shall meet together, via telephone or in person, and attempt to settle the dispute between themselves (acting in good faith) within one calendar month.
- 16.3 If the managing directors fail to resolve the matter within one calendar month, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediator rejects the case).
- 16.4 Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party.

The mediation shall be conducted in English at the offices of CEDR in London or as otherwise agreed by the parties. Mediation is without prejudice to the rights of the parties to the injunctive relief or to the rights of the parties in any future proceedings.

17. CUMULATIVE REMEDIES

Each right or remedy of the parties under these Conditions is without prejudice to any other right or remedy of the parties, whether or not such rights or remedies are set out in these Conditions.

18. GENERAL

18.1 Assignment and other dealings.

- (a) PaveTesting may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of PaveTesting, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in an Order or in writing in accordance with this Condition, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by airmail, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 18.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if by airmail on the fifth Business Day after posting; or, if sent by fax or e-mail, one Business Day after transmission evidenced by a delivery receipt report.
- (c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action

18.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.
 - (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

- 18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 18.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by PaveTesting.

- 18.8 **Governing law.** These Conditions, any 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 England and Wales.

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