

VOCALITY INTERNATIONAL LIMITED

TERMS AND CONDITIONS OF SALE

The Buyer's attention is particularly drawn to the provisions of Condition 8.10.

1 INTERPRETATION

1.1 In these Conditions, the following words shall have the following meanings:

“Buyer”

the person, firm or company who purchases Goods from Vocality;

“Conditions”

the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Vocality;

“Contract”

any contract between Vocality and the Buyer for the purchase and sale of the Goods of which these Conditions form part;

“Delivery Point”

the place where delivery of the Goods is to take place under Condition 6;

“Goods”

the goods (including any instalment of the goods or any parts for them) which Vocality is to supply in accordance with the Contract;

“Intellectual Property”

all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered and including rights in semiconductor topographies), copyright, database rights, trade and service marks (both registered and unregistered) together with all applications for the same, right to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right;

“Software”

any software embedded in the Goods and any enhancement of or modification to it;

“Vocality”

Vocality International Limited (registered in England under number 03722749); and

“writing”

includes facsimile transmission, transmission by electronic mail and any comparable means of communication but not text messaging via mobile phone.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time and includes any subordinate legislation for the time being in force made under it.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Words in the singular include the plural and vice versa. A reference to one gender includes a reference to the other gender.

2 APPLICATION OF CONDITIONS

2.1 Subject to any variation under Condition 2.3, each Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of a Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all sales by Vocality. Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed and confirmed in writing and signed by a Director of Vocality. In entering into a Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so agreed and confirmed.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from Vocality shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by Vocality until a written acknowledgement of order is issued by Vocality or (if earlier) Vocality delivers the Goods to the Buyer.

2.6 Any quotation is given on the basis that no Contract shall come into existence until Vocality despatches an acknowledgement of order to the Buyer.

3 DESCRIPTION AND SPECIFICATION

3.1 Any advice or recommendation given by Vocality or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Vocality, is followed or acted upon entirely at the Buyer's own risk, and accordingly Vocality shall not be liable for any such advice or recommendation which is not so confirmed.

3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Vocality shall be subject to correction without any liability on the part of Vocality.

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

3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in Vocality's quotation or Vocality's written acknowledgement of order.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by Vocality in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Vocality against all loss, damages, costs and expenses awarded against or incurred by Vocality in connection with or paid or agreed to be paid by Vocality in settlement of any claim for infringement of any Intellectual Property of any third party which results from Vocality's use of the Buyer's specification.

3.6 Vocality reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or,

where the Goods are to be supplied to Vocality's specification, which do not materially affect their quality or performance.

- 3.7 All samples, drawings, descriptive matter, specifications and advertising issued by Vocality and any descriptions or illustrations contained in Vocality's catalogues or brochures or on its website are issued or published or made available for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of a Contract and any sale pursuant to a Contract shall not be a sale by sample.
- 3.8 No order which has been accepted by Vocality may be cancelled by the Buyer except with the agreement in writing of Vocality and on terms that the Buyer shall indemnify Vocality in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Vocality as a result of cancellation.

4 PRICE OF THE GOODS

- 4.1 The price of the Goods shall be Vocality's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Vocality's published price list current at the date of issue of the acknowledgement of order. Where the Goods are supplied for export from the United Kingdom, Vocality's published export price list shall apply. Any price quoted is valid for 60 days only from its date or until earlier acceptance by the Buyer (provided that Vocality has not previously withdrawn it), after which time it may be altered by Vocality without giving notice to the Buyer.
- 4.2 Vocality reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Vocality which is due to any factor beyond the control of Vocality (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, any delay caused by any instructions of the Buyer or any failure of the Buyer to give Vocality adequate information or instructions including, without limitation, any error, or incomplete or inaccurate information, in any specification submitted or supplied by the Buyer.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of Vocality, and unless otherwise agreed in writing between the Buyer and Vocality, all prices are given by Vocality on an ex works basis and are exclusive of any applicable value added tax or any other applicable sales tax or duty and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which the Buyer shall be liable to pay to Vocality in addition when it is due to pay for the Goods.

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and Vocality and to Condition 5.2 and Condition 9, Vocality shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Vocality shall be entitled to invoice the Buyer for the price at any time after Vocality has notified the Buyer that the Goods are ready for collection or (as the case may be) Vocality has tendered delivery of the Goods.
- 5.2 Vocality may require the Buyer to pay the price for the Goods before delivery to the Buyer by the Buyer or, in any case where the Goods are supplied for export from the United Kingdom, prior to shipment of such Goods. If this is required, Vocality shall notify the Buyer in writing and shall issue an invoice accordingly.
- 5.3 Subject to Condition 5.2, the Buyer shall pay in pounds sterling the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within

thirty (30) days of the date of Vocality's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. No payment shall be deemed to have been received until Vocality has received cleared funds.

- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Vocality, Vocality shall be entitled to:
- 5.4.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and Vocality) as Vocality may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent (4%) per annum above the base rate of National Westminster Bank Plc from time to time accruing on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counter-claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring such deduction to be paid by Vocality to the Buyer.
- 5.6 All payments payable to Vocality under a Contract shall become due immediately on its termination despite any other provision.

6 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Vocality's premises at any time after Vocality has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Vocality in writing, by Vocality delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate and estimates only and Vocality shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by Vocality in writing in advance of the quoted delivery date upon giving reasonable notice to the Buyer; nor shall time for delivery be made of the essence by notice. If no dates are specified for delivery, delivery shall be within a reasonable time.
- 6.3 Vocality may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Where the Goods are to be delivered in instalments, each such instalment shall constitute a separate Contract and failure by Vocality to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to cancel any other Contract or instalment.
- 6.4 If Vocality fails to deliver the Goods for any reason other than any cause beyond Vocality's reasonable control or the Buyer's fault, and Vocality is accordingly liable to the Buyer, Vocality's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give Vocality adequate delivery instructions, documents, licences or authorisations at the time stated for delivery then, without prejudice to any other right or remedy available to Vocality, Vocality may:

- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 6.7 Subject to the other provisions of these Conditions, Vocality shall not be liable for any 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 similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Vocality's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.8 The quantity of any consignment of Goods as recorded by Vocality upon despatch from Vocality's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.9 Vocality shall not be liable for any non-delivery of Goods (even if caused by Vocality's negligence) unless the Buyer gives written notice to Vocality of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been received.
- 6.10 Any liability of Vocality for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at Vocality's premises, at the time when Vocality notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at Vocality's premises, at the time of delivery; or
 - 7.1.3 in any case falling within Condition 6.5, when the Goods shall nonetheless be deemed to have been delivered and the risk assumed by the Buyer shall include loss or damage caused by Vocality's negligence.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in and ownership of the Goods shall not pass to the Buyer until Vocality has received in cash or cleared funds payment in full of the price of the Goods and all other sums which are then due by the Buyer to Vocality on any account.
- 7.3 Until such time as the property in and ownership of the Goods passes to the Buyer, the Buyer shall:-
- 7.3.1 hold the Goods as Vocality's fiduciary agent and bailee; and
 - 7.3.2 keep (at the Buyer's cost) the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Vocality's property; and

- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.

Until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business at full market value, but shall account to Vocality for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. Any such resale or use by the Buyer shall be a sale or use of Vocality's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale or use.

- 7.4 Until such time as the property in and ownership of the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Vocality shall be entitled at any time to require the Buyer to deliver up the Goods to Vocality and, if the Buyer fails to do so promptly, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. For this purpose, the Buyer grants Vocality, its agents and employees an irrevocable licence 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.
- 7.5 Without prejudice to Condition 7.6, the Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Vocality, but if the Buyer does so all moneys owing by the Buyer to Vocality shall (without prejudice to any other right or remedy of Vocality) immediately become due and payable.
- 7.6 The Buyer's right to possession of the Goods shall terminate immediately if:
- 7.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part of the same, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between Vocality and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.6.3 the Buyer encumbers or in any way charges any of the Goods; or
- 7.6.4 Vocality reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 7.7 Vocality shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Vocality.

7.8 Where Vocality is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by Vocality to the Buyer in the order in which they were invoiced to the Buyer.

7.9 On termination of the Contract, howsoever caused, Vocality's (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.

8 WARRANTIES, LIABILITY AND LIMITATION OF LIABILITY

8.1 Subject to the other provisions of these Conditions, Vocality warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.

8.2 The warranty in Condition 8.1 is given by Vocality subject to the following conditions:

8.2.1 Vocality shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 Vocality shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Vocality's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without Vocality's approval;

8.2.3 Vocality shall be under no liability under the warranty in Condition 8.1 (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4 the warranty in Condition 8.1 does not extend to parts, materials or equipment not manufactured by Vocality, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Vocality and which Vocality is able to transfer to the Buyer;

8.2.5 any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to Vocality within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Vocality accordingly, the Buyer shall not be entitled to reject the Goods and Vocality shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract; and

8.2.6 If Vocality so requests, the Buyer shall give Vocality a reasonable opportunity after receiving the notice pursuant to Condition 8.2.5 of examining the Goods or shall, at its expense, return the Goods or the part of such Goods which is defective to Vocality's place of business for the examination to take place there.

8.3 Subject to Condition 8.4, where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Vocality in accordance with these Conditions, Vocality shall be entitled to replace the Goods (or the part in question) free of charge or, at Vocality's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but Vocality shall have no further liability to the Buyer. If Vocality complies with this Condition 8.3, it shall have no further liability for a breach of the warranty in Condition 8.1 in respect of such Goods. Any Goods replaced shall belong to Vocality and any repaired

or replacement Goods shall have the benefit of the warranty in Condition 8.1 for the unexpired portion of the 12 months' period.

- 8.4 Vocality shall not be liable to the Buyer:
- 8.4.1 if the Buyer makes any further use of the Goods after giving notice pursuant to Condition 8.2.5; or
 - 8.4.2 the defect arises because the Buyer failed to follow Vocality's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 8.4.3 the Buyer alters or repairs the Goods without the consent in writing of Vocality.
- 8.5 Vocality reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Vocality including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or power failure or breakdown in machinery, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to Vocality to terminate the Contract.
- 8.6 Subject to Conditions 3 and 6 and to the other provisions of this Condition 8, the following provisions of this Condition 8 set out the entire financial liability of Vocality (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 8.6.1 any breach of these Conditions;
 - 8.6.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - 8.6.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.7 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.8 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976), the statutory rights of the Buyer are not affected by these Conditions.
- 8.9 Nothing in these Conditions excludes or limits the liability of Vocality:
- 8.9.1 for death or personal injury caused by Vocality's negligence; or
 - 8.9.2 under section 2(3), Consumer Protection Act 1987; or
 - 8.9.3 for any matter which it would be illegal for Vocality to exclude or attempt to exclude its liability; or
 - 8.9.4 for fraud or fraudulent misrepresentation.
- 8.10 Subject to Conditions 8.7, 8.8 and 8.9:

- 8.10.1 Vocality's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £2,000,000; and
- 8.10.2 Vocality shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, loss of life, loss of production, loss of or corruption to data, loss of anticipated savings, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) and whether or not in any such case Vocality had been advised of their possibility which arise out of or in connection with the Contract.

9 EXPORT TERMS

- 9.1 In these Conditions "**Incoterms**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 9.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 9 shall (subject to any special terms agreed in writing between the Buyer and Vocality) apply notwithstanding any other provision of these Conditions.
- 9.3 The Buyer shall be responsible for:-
- 9.3.1 complying with any legislation or regulations governing the importation of the Goods into the country of destination; and
- 9.3.2 the payment of any duties on or in respect of such Goods; and
- 9.3.3 obtaining all licences, permits, authorisations and other documents required in connection with the export of any Goods from the United Kingdom.
- 9.4 Unless otherwise agreed in writing between the Buyer and Vocality, the Goods shall be delivered from the air or sea port of shipment and Vocality shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 9.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Vocality's premises before shipment. Vocality shall have no liability for any claim in respect of any defect in the Goods which would be apparent on such inspection and which is made after shipment, or in respect of any damage during transit.
- 9.6 Payment of all amounts due to Vocality shall be made in cleared funds by wire transfer to such bank account as Vocality may nominate or, at Vocality's option, by irrevocable letter of credit opened by the Buyer in favour of Vocality and confirmed by a bank in a jurisdiction acceptable to Vocality or, if Vocality has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Vocality of a bill of exchange drawn on the Buyer payable sixty (60) days after signing to the order of Vocality at such branch of a bank in England as may be specified in the bill of exchange.
- 9.7 The Buyer undertakes not to offer the Goods for resale in any country notified by Vocality to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

10 **ASSIGNMENT**

- 10.1 Vocality may assign the Contract or any part of it to any person, firm or company.
- 10.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Vocality.

11 **INTELLECTUAL PROPERTY**

- 11.1 As between the Buyer and Vocality, all Intellectual Property protecting the Software shall be and remain the property of the Vocality. .
- 11.2 To the extent that any Goods supplied to the Buyer incorporates any Software, Vocality grants to the Buyer a non-exclusive, non-transferable licence to use the Software to the extent necessary for the ordinary and proper use of the Goods for the Buyer's own business purposes.
- 11.3 The Buyer shall be entitled to take back up copies of the Software to the extent such copies are necessary for the Buyer's lawful use in accordance with the terms of the Contract. On the Buyer's request, Vocality shall provide such information regarding any Software as is reasonably necessary to enable the Buyer to achieve interoperability between such Software and other software operated by the Buyer or which in future may be operated, provided that the Buyer shall not use such information for purposes other than achieving such interoperability. Except to the extent expressly permitted by this Condition 11.3, the Buyer shall not for any reason reproduce, modify, adapt, merge, translate, disassemble, reverse engineer, decompile or recompile the Software or create derivative works based on the whole or any part of the Software or incorporate the Software into any computer program not supplied by or on behalf of Vocality.
- 11.4 Save as expressly stated in the Contract, no licence of any Intellectual Property (including, without limitation, any rights protecting any software) is granted by Vocality to the Buyer, and, save as expressly set out in this Condition 11, the Buyer shall not be permitted to copy, share, transmit, sub-license, distribute or otherwise divulge or make available any Software or the Goods or any part of any such Software or Goods to or with any third party.
- 11.5 The Buyer shall not alter, modify, remove, obscure or cover any copyright notices or other legends or notices placed on or embedded by Vocality in the Goods.
- 11.6 The grant of the licence under this Condition 11 and the right to use the Software shall continue until either terminated in accordance with Condition 5.5 or if the Buyer is in breach of any of its obligations under the Contract.

12 **GENERAL**

- 12.1 Vocality is the holding company of a group of companies, and accordingly Vocality may perform any of its obligations or exercise any of its rights under these Conditions by itself or through any other member of its group. References in these Conditions to "Vocality" shall be construed accordingly.
- 12.2 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
 - 12.2.1 (in case of communications to Vocality) to its registered office or such changed address as shall be notified to the Buyer by Vocality; or
 - 12.2.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to Vocality by the Buyer.

- 12.3 Communications shall be deemed to have been received:
- 12.3.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 12.3.2 if delivered by hand, on the day of delivery; or
 - 12.3.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 12.4 Communications addressed to Vocality shall be marked for the attention of the Directors.
- 12.5 No waiver by Vocality of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision and shall in no way affect the other terms of the Contract.
- 12.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.7 Each right or remedy of Vocality under the Contract is without prejudice to any other right or remedy of Vocality whether under the Contract or not.
- 12.8 Failure or delay by Vocality in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.