



# XJTAG Terms and Conditions for the sale of Products and Services

## 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms, the following definitions shall apply:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
<b>Applicable Law</b>	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local, national or international in any relevant jurisdiction;
<b>Bespoke Consultancy Services</b>	means specific consultancy Services Ordered by the Client as set out in the Specification;
<b>Client</b>	means the firm or company purchasing Products or Services from the Seller;
<b>Client Insolvency Event</b>	means any one of the following events which entitles the Seller to terminate if the Client: <ul style="list-style-type: none"><li>a) stops carrying on all or a material part of its business, or indicates in any way that it intends to do so;</li><li>b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986, or any equivalent Applicable Law in the jurisdiction in which the Client is based or if the Seller reasonably believes that to be the case;</li><li>c) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986 or any equivalent Applicable Law in the jurisdiction in which the Client is based;</li><li>d) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986 or any equivalent Applicable Law in the jurisdiction in which the Client is based;</li><li>e) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006 or any equivalent Applicable Law in the jurisdiction in which the Client is based;</li><li>f) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006 or any equivalent Applicable Law in the jurisdiction in which the Client is based;</li><li>g) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;</li><li>h) has a resolution passed for its winding up;</li><li>i) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;</li><li>j) is subject to any procedure for the taking control of its Products that is not withdrawn or discharged within seven days of that procedure being commenced;</li><li>k) has a freezing order made against it;</li><li>l) is subject to any events or circumstances analogous to those listed in (a) to (k) above in any jurisdiction; or</li><li>m) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures listed in (a) to (k) above including, for the avoidance of doubt, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.</li></ul>

<b>Client Personnel</b>	means all employees, officers, staff, other workers, agents and consultants of the Client, its Affiliates and any of its sub-contractors who use the Products from time to time;
<b>Confidential Information</b>	means all information of a confidential nature (in any form) which is imparted or disclosed to, or otherwise obtained by either party (whether directly or indirectly) including know-how, trade secrets, financial, commercial, technical, tactical, strategic, marketing or customer information, employee information, any information agreed to be or marked as confidential, any other information a party knows, or could be reasonably expected to know, is confidential and any other such information related to or concerning either party or its business;
<b>Contract</b>	means the agreement between the Seller and the Client for the sale and purchase of the Deliverables, incorporating these Terms, the Order and any or statements of work;
<b>Control</b>	means the beneficial ownership or the legal power to direct or cause the direction of the management of the company and the expressions <b>Controls, Controlled, under common Control and change of Control</b> shall be construed accordingly;
<b>Deliverables</b>	means the Products or Services or both as the context requires;
<b>Documentation</b>	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
<b>Force Majeure Event</b>	means any event beyond the Seller's reasonable control including, but not limited to, acts of God, acts of any governmental authority (including delay or failure to act), war (declared or undeclared), riot, revolution, acts of a public enemy, fires, strikes or labour disputes, default of suppliers or subcontractors, floods, storms, earthquakes, sabotage, epidemics, Pandemic Event, quarantine restrictions, freight embargoes, breakdown of plant or machinery, or severe/adverse weather;
<b>Intellectual Property Rights ("IPR")</b>	means copyright, , patents, rights in inventions, rights to use and protect the confidentiality of confidential information (including, but not limited to know-how and trade secrets), trade marks, geographical indications, service marks, trade names, design rights, rights in get-up and trade dress, database rights, databases, domain names, business names, rights in computer software the right to sue for infringement, unfair competition and passing off, all similar rights of whatever nature wherever in the world arising, in each case: whether registered or not, including any applications to protect or register such rights, including all renewals and extensions of such rights or applications, whether vested, contingent or future, and wherever existing;
<b>Location</b>	means Seller's business premises (or such other address or addresses as agreed between the parties from time to time);
<b>Order</b>	means the Client's order for the Products made by email or telephone communication as specified in clause 2.4 and the term <b>Ordered</b> shall be construed accordingly;
<b>Pandemic Event</b>	means any virus or disease officially declared as a pandemic by the World Health Organisation (and any linked or communicable disease having official WHO pandemic status);
<b>Price</b>	means the price for the Deliverables as set out in the Quotation;
<b>Products</b>	means the hardware or Software products (or, where relevant, any part of them) which the Seller sells to the Client;
<b>Quotation</b>	means a written statement provided by the Seller to the Client detailing the Price of the Products and/or Services;

<b>Sanctions and Trade Controls</b>	means all sanctions, export control, and anti-boycott laws, regulations, orders, directives, designations, licences, and decisions of any other country with jurisdiction over activities undertaken in connection with this Agreement;
<b>Seller</b>	means XJTAG Limited or XJTAG Technical Services Limited;
<b>Services</b>	means the services set out in the Order and to be supplied by the Seller to the Client in accordance with the Contract;
<b>Software</b>	means the computer programs provided by the Seller with and as part of the Products (whether on CD ROM or any other media or downloaded from any of the Seller's authorised environment or embedded in the Products) and in any modification which is supplied by the Seller (or its authorised distributors of the same) and acquired by the Client subject to the terms of the End User Licence Agreement and to any special conditions contained therein;
<b>Specification</b>	means the description or Documentation provided for the Deliverables set out or referred to in the Contract;
<b>Suitably Qualified</b>	means a person who has professional qualifications, who has been appropriately trained and has high levels of skills and experience relevant to the use of the Product for the purposes for which it is designed;
<b>Taxes</b>	means value added tax under the Value Added Tax Act 1994, any other similar sale or fiscal tax or import or export duties levied and applying to the sale of the Deliverables; and
<b>Terms</b>	means the Seller's terms and conditions of sale, set out in this document.

1.2. In these Terms:

1.2.1. the clause headings are included for convenience only and shall have no effect on the interpretation of these Terms;

1.3. a reference to:

1.3.1.1. a party includes that party's personal representatives, successors and permitted assigns;

1.3.1.2. a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.3.1.3. words in the singular include the plural and vice versa;

1.3.1.4. writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.3.1.5. legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time, except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under these Terms;

1.3.1.6. legislation includes all subordinate legislation made from time to time under that legislation;

1.3.2. any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction; and

1.3.3. any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and

1.3.4. general words are not limited by example.

## **2. ORDER ACCEPTANCE**

- 2.1. The Client may directly place an Order with the Seller, or request for a Quotation to be provided by the Seller for the Deliverables.
- 2.2. Prior to acceptance, Quotations may be withdrawn at any time by the Seller and will lapse automatically 30 days after issue to the Client unless otherwise agreed in writing by the Seller.
- 2.3. Each Order from the Client, or acceptance by the Client of a Quotation for the Deliverables, shall be deemed to be an offer by the Client to purchase Deliverables subject to these Terms.
- 2.4. By ordering Deliverables from the Seller, whether in writing (which includes email) or by telephone, the Client is deemed to have accepted these Terms. These Terms apply to and form part of the Contract between the Seller and the Client. These Terms supersede any previously issued terms and conditions of purchase or supply. Nothing in this clause shall affect the validity and/or enforceability of any non-disclosure and/or confidentiality agreement that has been entered into between the parties.
- 2.5. The Contract is formed when the Seller provides a confirmation e-mail to the Client either expressly accepting the Client's Order or when the Seller provides a confirmation e-mail following the Client's written acceptance of a Quotation.
- 2.6. The Seller (at its sole and absolute discretion and without having to give any reasons) reserves the right to decline to accept and reject any Order for Deliverables submitted to it by the Client.
- 2.7. The Client is responsible for ensuring that the content of the Order and any applicable Specification is complete and accurate. The Client shall ensure that the Seller is given any necessary instructions and/or information relating to the Products within a sufficient time to enable the Seller to perform the Contract in accordance with these Terms.
- 2.8. No other terms and conditions (whether contained in any document issued by the Client or in any written (including by email) or oral communication between the parties) shall be implied into the Contract whether by virtue of any usage or course of dealing or otherwise (including any term or condition implied into the Contract by statute or common law, to the extent that the law allows the implied term or condition to be excluded) except as expressly set out in the Contract.
- 2.9. Orders will be accepted subject to the Client's credit being and remaining to the satisfaction of the Seller and the Seller is entitled to cancel the Contract without liability should the Client's credit subsequently become inadequate for whatever reason.

## **3. DESCRIPTION**

- 3.1. The quantity of Products and the description of the Deliverables shall be as set out in the Seller's confirmation email pursuant to clause 2.5.
- 3.2. All samples, drawings, descriptive matter, Specifications and advertising issued by the Seller and any descriptions or photographs contained on the Seller's website are published for the sole purpose of giving an approximate idea of the Deliverables. They shall not form part of the Contract or have any contractual force and this is not (and shall not be construed as) a sale by sample.
- 3.3. The Seller reserves the right to amend the Specification at any time prior to delivery of the Products or performance of the Services, if required by any applicable statutory or regulatory requirements. Any amendments will be limited to reasonable adjustments and the Products received will be of equal (or enhanced) performance and condition to that of the original Specification.
- 3.4. Any oral advice or recommendation given by the Seller, or its employees, agents or subcontractors, to the Client as to the storage, installation, application or use of the Products is followed entirely at the Client's own risk. The Seller shall not be liable for any such advice or recommendation, or any other representation or assurance concerning Deliverables which is not set out in writing and signed by a Director of the Seller.

## 4. DELIVERY

- 4.1. The Seller shall deliver the Products and/or perform the Services within a reasonable time. Although the Seller will endeavour to deliver the Products and/or perform the Services within the delivery time specified (if any), that time is an estimate and not a term of the Contract. Time is not of the essence in relation to the performance or delivery of the Deliverables. Late delivery or performance does not entitle the Client to terminate the Contract, save as per clause 4.3.
- 4.2. The Client acknowledges that certain information may be required from the Client before the final version of the Products can be delivered. Any time specified for delivery, will be automatically extended by (and the Seller shall have no liability to the Client in respect of) any period during which the delivery of the Products and/or the performance of the Services by the Seller in connection with the Contract is delayed due to a Force Majeure Event or the Client's failure to provide the Seller with adequate delivery instructions and/or any other instructions or information that is relevant to the supply of the Products and/or the performance of the Services (as set out in clause 2.7).
- 4.3. If any such delivery time is extended by more than 6 weeks as a result of a Force Majeure Event then the Client may give written notice to the Seller requiring the Products to be delivered and/or the Services to be performed within 28 days of the date of such notice, failing which the Client may give further written notice terminating the Contract immediately.
- 4.4. The Seller is entitled to deliver the Products or perform the Services in instalments. Each delivery will be a separate Contract and failure by the Seller to deliver an instalment in accordance with the Contract or any claim by the Client in respect of any one or more instalments will not entitle the Client to treat the Contract as a whole as repudiated or to cancel any other instalment.
- 4.5. The delivery by the Seller of a greater or lesser quantity of the Products than the quantity provided for in the Contract, or the delivery of Products only some of which are defective or of the wrong type, will not entitle the Client to reject all of the Products delivered. The Client's remedy in such circumstances is set out in clause 4.12.
- 4.6. All Products and electronics belonging to the Client which are returned to the Client by the Seller shall, unless otherwise agreed in writing, be supplied Ex Works and all terms of delivery are defined in accordance with the International Chamber of Commerce Standards "INCOTERMS 2020".
- 4.7. Subject always to clause 4.6, the Seller may arrange for the delivery of the Products to the Client or return the Client's electronics to the Client.
- 4.8. The Services shall be:
  - 4.8.1. performed by the Seller at the Location on the date(s) specified in the Order; and
  - 4.8.2. deemed delivered by the Seller only on completion of the performance of the Services at the Location.
- 4.9. If the Client refuses or fails to take delivery of the Products or fails to give the Seller adequate delivery instructions (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of the Seller's fault) then, without prejudice to any other rights or remedies available to the Seller, the Seller may:
  - 4.9.1. store the Products until actual delivery and charge the Client for the reasonable costs (including insurance) of storage; or
  - 4.9.2. sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the Price under the Contract or charge the Client for any shortfall below the Price under the Contract.
- 4.10. The Client shall inspect the Products within 7 days of delivery and, in any event, prior to installation/use. Any claim alleging an error in the type or quantity of Products delivered must be made in writing by the Client to the Seller within 7 days of the date of delivery of the Products, and in any event before installation or use of the Products.
- 4.11. Unless a claim is made in accordance with clause 4.10, the Client will be deemed to have accepted the Products and waived all claims relating to error in quantity or type of the Products delivered and/or damage to the Products in transit.

#### 4.12. Any liability of the Seller:

- 4.12.1. for failure to deliver the Products within a reasonable time or non-delivery of the Products shall be limited to issuing a credit note against any invoice raised for the Products which have not been delivered. This clause 4.12 shall not apply where the Client fails to accept delivery of any of the Products when they are made available for delivery, or the Seller is unable to deliver the Products on time because the Client has not provided sufficient and appropriate instructions, documents, licences or authorisations; and
- 4.12.2. in relation to the type or quantity of Products Ordered shall be limited to supplying the additional Products (if there is a shortfall), to removing the additional Products (if there is an excess) or replacing the Products (if the incorrect Products were delivered). This clause 4.12.2, shall not apply where the Client has Ordered the incorrect type or quantity of Products or has not provided sufficient, appropriate and/or accurate instructions/information to the Seller as to the type or quantity of Products required. The Client must arrange a suitable policy of insurance with a reputable insurer against the value of their board or device (and any associated equipment) before the Client's board or device is sent to the Seller's premises for diagnostic testing.

### 5. RETENTION OF TITLE

- 5.1. The Seller retains ownership and the right to dispose of the Products until (whichever is the sooner of):
  - 5.1.1. the Seller has received payment in full in cleared funds for all the Products the subject of the Contract and the full Price in cleared funds for any other Products supplied by the Seller to the Client under any other Contract otherwise howsoever for which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums;
  - 5.1.2. the Client uses the Products in the normal course of its business, in which case title to the Products shall pass to the Client immediately before the time at which such use by the Client occurs; or
  - 5.1.3. the issue of legal proceedings by the Seller against the Client for recovery of payment (by way of a debt) for the Products, in which case title shall pass to the Client immediately before such proceedings are issued.
- 5.2. Provided that title in the Products has not passed to the Client pursuant to clause 5.1, if payment or part of it is overdue, or immediately on the commencement of any act or proceeding relating (in the Seller's opinion) to the Client's solvency, the Seller may (in addition to its other rights) recover and resell the Products and for that purpose the Client irrevocably licenses the Seller and persons authorised by it to enter the Client's premises any other premises where the Seller believes the Products to be during normal business hours.
- 5.3. Until title to the Products has passed to the Client, the Client shall:
  - 5.3.1. keep the Products free from any lien, charge or encumbrance;
  - 5.3.2. hold the Products on a fiduciary basis as the Seller's bailee;
  - 5.3.3. at no cost to the Seller, store the Products separately from all other Products held by the Client so that they remain readily identifiable as the Seller's property;
  - 5.3.4. not remove, deface or obscure any identifying mark or packaging on or relating to the Products; and
  - 5.3.5. maintain the Products in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery.
- 5.4. Until title has passed to the Client, the Seller may require the Products to be returned to it by the Seller and if such requirement is not met within 24 hours, then the Seller may retake possession of the Products and may enter any premises of the Client for that purpose.
- 5.5. Notwithstanding any written agreed credit period, payment will fall due immediately on the commencement of any act or proceeding relating (in the Seller's opinion) to the Client's solvency or upon the occurrence of any event which (in the Seller's opinion) places in jeopardy the Seller's title to the Products.

- 5.6. The Seller may by written notice to the Client transfer ownership in all or any part of the Products specified in the notice to the Client.
- 5.7. The Client must notify the Seller (in writing) of any notices and/or attempts by third parties to seize or distrain against the Products whilst in the Client's possession or power and before title has passed to the Client and must notify any such third parties (in writing) of the Seller's ownership of the Products.

## 6. PRICE

- 6.1. A copy of the Seller's current price list is available on request. Prices in any Quotation are provisional only and are subject to adjustment to take account of increases in the Seller's costs (e.g. increases in Taxes, in acquisition costs and/or in labour/materials/transport costs) overhead expenses and any exchange rate fluctuation which cause the Seller's costs to increase or increases in the cost of the Products which arise due to the instructions/information of the Client or the Client's failure to give the Seller adequate, accurate or complete instructions/information.
- 6.2. Unless otherwise agreed by the Seller in writing, the Price for the Deliverables shall be exclusive of all Taxes and all costs, fees, licences, duties or charges in relation to packaging, loading, unloading, carriage, transport and insurance, all of which amounts the Client shall pay in addition when it is due to pay for the Deliverables.
- 6.3. The Seller may at its discretion charge such additional sum for delivery and insurance as is reasonable to cover:
- 6.3.1. unusual or special arrangements requested by the Client;
  - 6.3.2. any request by the Client to change the delivery date, quantities and/or types of Products Ordered, or the Specification of the Products Ordered;
  - 6.3.3. delivery during a day designated by the Seller from time to time as a day of closure. Such dates if any will be advised to the Client by the Seller's sales office upon the placing of an Order;
  - 6.3.4. delivery to an address outside the UK and Eire mainlands;
  - 6.3.5. delays caused by instructions from the Client or by the failure of the Client to give adequate or accurate delivery instructions or information; and/or
  - 6.3.6. any factor beyond the Seller's control (including, but not limited to, foreign exchange fluctuations, increases in Taxes and increases in labour, materials or manufacturing costs).

## 7. INTELLECTUAL PROPERTY RIGHTS ("IPR")

- 7.1. The Seller is the manufacturer of the Products and is the legal and beneficial owner and/or the licensor of IPR in the Software. IPR are licenced from a number of third parties and such technology is incorporated within the Software.
- 7.2. Title to the Seller's IPR shall never pass to the Client. The Seller's Products and Services are used to diagnose problems with its Clients' boards or to enable programming of its Clients' electronics. XJTAG's IP is not retained in the Clients' product. The Seller's technology uses library files to test devices and each test development adds extra library files to the Seller's technology for the benefit of all XJTAG Clients.
- 7.3. In consideration of the Price paid by the Client, the Seller hereby grants to the Client a non-exclusive licence to use the Software. The full licence terms can be found at <https://www.xjtag.com/end-user-licence-agreement-eula>.
- 7.4. In line with industry standards, the Client may obtain a third-party licence to use the Seller's Software on a network.

## 8. PAYMENT

- 8.1. The Seller shall invoice the Client upon dispatch of the Products to the Client for delivery and/or at the end of each month for all Services performed and any expenses incurred by the Seller during the provision of the Services in the applicable month. If the Seller has granted the Client credit facilities in writing, then except as provided in clause 5.5, payment in full in cleared funds must be made within 30 days following the end of the month of the date of invoice. Time for payment is of the essence of the Contract. Payment must be made direct to the Seller at the address shown for payment on the Seller's

invoice. The Client is not entitled to exercise any right of set-off, counter-claim, abatement or other similar deduction against any payment due to the Seller.

- 8.2. The Seller may withdraw any credit facility of the Client at any time at its sole discretion. Any outstanding payments will fall due immediately.
- 8.3. If the Client fails to pay any amount when due under this agreement, the Seller reserves the right to charge the Client interest on the overdue amount, payable by the Client immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at 8% above the Bank of England's base rate. The Seller reserves the right to recover statutory compensation arising out of late payment.

## 9. SUPPORT AND MAINTENANCE SERVICES

- 9.1. The Seller's Products are supplied with a 12-month support and maintenance service which can be extended by the parties in writing at any time. If the Client intends to extend the support and maintenance services beyond the initial 12-month period, the Client must notify the Seller in writing and the Seller will provide a Quotation for the additional support and maintenance services requested.
- 9.2. Where a Contract is for the provision of Bespoke Consultancy Services by the Seller to the Client, the Client shall not be entitled to the support and maintenance services pursuant to clause 9.1.

## 10. WARRANTIES AND EXCLUSIONS

- 10.1. Subject to clause 10.3, the Seller recommends that its Products should be incorporated into multiple testing mechanisms undertaken by the Client to determine the functioning of the Client's own products. The Client understands and agrees that:
  - 10.1.1. the Seller's Products test only one discrete element within the complex system of the Client's own Products and is therefore not testing other elements of those Products/systems; and
  - 10.1.2. there is no single testing mechanism that can be determinative of the functionality and performance of the Client's Products and a variety of testing mechanisms must be used.
- 10.2. From time to time, the Seller and/or its suppliers may provide separate warranties for certain Products (or Software contained in the Products) sold by the Seller.
- 10.3. The Seller warrants that:
  - 10.3.1. the Products will (on delivery):
    - 10.3.1.1. be of satisfactory quality and reasonably fit for purpose; and
    - 10.3.1.2. conform to the Product Specification; and
  - 10.3.2. the Services will (at the time of performance):
    - 10.3.2.1. be supplied with reasonable care and skill; and
    - 10.3.2.2. any media on which the results of the Services are supplied shall be of satisfactory quality, within the meaning of Applicable Law.
- 10.4. If the Seller is given timely notice in accordance with clause 10.5 that any of the Deliverables do not conform to the warranty in clause 10.3 the Seller will (at its option) correct, repair, remedy, reperform or replace the defective Deliverables free of charge, other than delivery charges (if applicable) or provide the Client with a refund for the Deliverables.
- 10.5. Notice must be given within 7 days of discovery of the defect and in any event not later than 12 months after delivery of the Deliverables.
- 10.6. The Client will retain the purportedly defective Products at its premises (without making any further use of the Products) until requested by the Seller to return them. Products alleged to be defective will be subject to inspection and testing by the



Seller at its own or (if the Seller so chooses) at the Client's premises and the Client will allow the Seller adequate facilities at the Client's premises to investigate the complaint.

- 10.7. The warranty contained in clause 10.3 will not apply where the total Price for the Deliverables has not been paid (in full and in cleared funds) by the due date for payment or if the defect is caused or contributed to by abuse, improper installation or application of the Products, further use of the Products after the Client first suspects that the Products do not comply with the warranty in clause 10.3, failure to follow the Seller's oral or written instructions or (if there are none) good trade practice regarding the storage, commissioning, installation, use and maintenance of the Products, fair wear and tear, wilful damage, designs and Specifications and items outside the Seller's scope of supply, misuse, neglect or repairs or modifications to the Products without the Seller's approval or where the Products have been damaged by accident or by abnormalities (or negligence) in either use, storage and/or transportation. The Seller's current brochures and technical information sheets contain details of the Products and their application, and no representations or warranties are made as to their suitability for any other use, unless such use is expressly made in writing by the Seller.
- 10.8. Subject to clause 11.2, all other terms, conditions, warranties, statements and representations whether oral, written, express or implied (whether by statute, course of dealing or otherwise), as to correspondence with any sample are, to the fullest extent permitted by law, excluded from the Contract. For the avoidance of doubt, nothing in this clause excludes or limits the terms implied into the Contract under Applicable Law.
- 10.9. The Seller's liability under this warranty shall be limited to (and the Client's sole remedy shall be) repair or replacement of the Products (at the Seller's option). In no event whatsoever will the Seller be liable for special, indirect and/or consequential losses, damages, costs, charges or expenses.
- 10.10. Subject to clause 11.2, the Client will fully indemnify the Seller and keep the Seller indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Seller arising from the Client's abuse, improper installation or improper application of the Products except and to the extent that such liabilities have resulted directly from the Seller's instructions. For the purposes of this clause 10.10, abuse includes the Client's failure to use, apply and install the Products with:
- 10.10.1. due care and skill using Suitably Qualified Client Personnel; and
  - 10.10.2. the recommendations of the Seller as set forth in the Seller's current brochures and technical information sheets or other written instructions furnished by the Seller.

## 11. LIMITATION OF LIABILITY

- 11.1. This clause 11 sets out the entire financial liability of the Seller (including any liability for the acts or omissions of its officers, employees, agents and sub-contractors) to the Client in respect of:
- 11.1.1. any breach of the Contract;
  - 11.1.2. any use of the Product;
  - 11.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract; or
  - 11.1.4. any other liability (including non-contractual) howsoever arising under any legal theory whatsoever arising out of or in connection with the Contract.
- 11.2. Nothing in these terms and conditions limits or excludes the liability of the Seller for:
- 11.2.1. death or personal injury resulting from negligence or the negligence of its officers, employees, agents, consultants or sub-contractors;
  - 11.2.2. fraud or fraudulent misrepresentation or wilful default; or
  - 11.2.3. any other liability which is incapable of being excluded or limited by law.

- 11.3. Subject to clause 11.2, the Seller shall under no circumstances be liable to the Client whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution and/or otherwise howsoever under any legal theory whatsoever, for any of the following losses (whether direct, indirect, special and/or consequential):
- 11.3.1. loss of profits or contracts;
  - 11.3.2. loss of anticipated savings;
  - 11.3.3. loss of income or revenue;
  - 11.3.4. loss of or damage to reputation or goodwill;
  - 11.3.5. loss of business;
  - 11.3.6. loss of opportunity;
  - 11.3.7. wasted management and/or other staff and/or office time;
  - 11.3.8. loss and/or costs arising from/connected with the defective installation, commissioning and/or maintenance of the Products by any third party;
  - 11.3.9. payments (e.g. penalties) paid/due to be paid or losses or liabilities to any third party under or in relation to any other contract or arrangement; or
  - 11.3.10. Nor for any other indirect, special and/or consequential loss, damage, costs, damages, charges or expenses.
- 11.4. Subject to clause 11.2, the Seller's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution and/or otherwise howsoever under any legal theory whatsoever arising under or in connection with the Contract shall in all circumstances be limited to the Contract Price.

## 12. PROCESSING OF PERSONAL DATA

When providing Deliverables, we process personal information relating to your personnel. We will process such personal data in accordance with data protection laws and our Privacy Policy at <https://www.xjtag.com/privacy-policy>.

## 13. WMD RULES AND EXPORT CONTROL

- 13.1. The Deliverables must not be used, wholly or in part, in connection with the development, identification or dissemination of chemical, biological or nuclear weapons or the development, production, maintenance or storage of missiles capable of delivering such weapons.
- 13.2. The Seller and the Client will comply with all Sanctions and Trade controls applicable to a Contract.
- 13.3. The Contract is expressly made subject to any Sanctions and Trade Controls on the export from the UK of the materials or information about such materials which may be imposed from time to time by the UK government and U.S Sanctions and Trade Controls.
- 13.4. The Client shall at all times in performing its obligations under this Agreement not become exposed to, penalties under Sanctions and Trade Controls and shall not undertake any action that causes the Seller to be in breach of or be exposed to penalties under applicable Sanctions and Trade Controls.

## 14. FORCE MAJEURE

The Seller shall not be liable for any failure or delay in performing its obligations herein, (and, where delay has arisen, the date on which its obligations are to be fulfilled shall be extended for a period of time equal to the time lost) by reason of any Force Majeure Event.

## 15. TERMINATION

If the Client suffers (or appears to the Seller to be about to suffer) a Client Insolvency Event, or the Seller reasonably believes that there is a legitimate reason to doubt the financial stability of the Client, or the Client ceases to carry on business, or

stops paying its debts as they fall due, or is in breach of any term or condition of the Contract (including without limitation, a failure to pay any sums due under the Contract) the Seller may without prejudice to its other rights or remedies, postpone delivery both in respect of the Contract in question and any other contracts with the Client until the breach has been rectified and/or (at its option) terminate the Contract (and/or any other such contracts) and recover payment for all deliveries already made and for any expenditure already incurred for the purpose of future deliveries (less any allowance for the value thereof as utilised by the Seller for other purposes) and also recover from the Client a sum equivalent to the Seller's loss of profit arising out of such termination. The exercise of the Seller's option to postpone delivery shall not prevent the subsequent exercise of the Seller's option to terminate the Contract and/or any other such contracts.

## 16. CANCELLATION

The Contract may be cancelled by the Client only with the Seller's written consent. In the event of such cancellation the Seller will be entitled to charge the Client a cancellation charge, commensurate with the Seller's costs incurred up to the date of cancellation plus the Seller's loss of profit.

## 17. CONFIDENTIALITY

17.1. In these Terms, each party agrees that it will keep confidential and not disclose, whether directly or indirectly, any confidential information belonging to the other. In this clause, 'confidential information' means all information of a confidential nature (in any form) which is imparted or disclosed to, or otherwise obtained by a party (whether directly or indirectly) including the other party's know-how, trade secrets, financial, commercial, technical, tactical, strategic, marketing or customer information, employee information, any information agreed to be or marked as confidential, any other information a party knows, or could be reasonably expected to know, is confidential and any other such information related to a party or concerning a party's business.

17.2. The Seller may disclose the Client's Confidential Information to its Affiliate Cambridge Technology Consultants Limited and to those of its employees, officers, advisers, agents or representatives who need to know the Client's Confidential Information in order to exercise the Seller's rights or perform its obligations under any Contract provided that the Seller shall ensure that each of its employees, officers, advisers, agents and representatives or that of its Affiliate Cambridge Technology Consultants Limited to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 17, as if it were a party.

17.3. The Client shall not enable or allow any person (including any foreign entity or national) to receive confidential information without notifying the Seller and receiving written authorization from the Seller (which shall only be granted if all export regulations requirements have been met).

17.4. Either party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

17.5. This clause 17 shall survive termination of any Contract.

## 18. NOTICES

18.1. Any notices or other documents to be served under the Contract shall be in writing and addressed to the party to be served at its registered office address or to such other address as may from time to time be specified in writing by the relevant party as its address for the purpose of this condition. Such notices may be delivered by hand, e-mail or special delivery post.

18.2. Notices delivered by hand shall be deemed delivered at the date and time of delivery. Notices sent by special delivery post shall be deemed delivered at 1pm GMT on the next business day following postage. Notices sent via e-mail shall be deemed delivered on receipt of a valid read or delivery receipt from the correct email address.

18.3. This clause 18, shall not apply in respect of the service of any documents in any legal proceedings and/or other form of dispute resolution.

18.4. Notices (and other communications) shall be sent to the Seller for the attention of the Directors at Camtech House, 137 Cambridge Road, Milton, Cambridge, Cambridgeshire, England, CB24 6AZ or by email to: [legal@XJTAG.com](mailto:legal@XJTAG.com).

## 19. DISPUTE RESOLUTION

- 19.1. Any dispute arising from a Contract shall be dealt with in accordance with the provisions of this clause 19.
- 19.2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 19.3. Within seven days of service of the notice, the Directors of the parties shall meet to discuss the dispute and attempt to resolve it. If the dispute has not been resolved within fourteen days of the first meeting of the Directors (or equivalent) under this clause 19.3 then the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 19.4. Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 19.3 and 19.4 have been completed.

## 20. GENERAL

- 20.1. **Severance.** If any provision (or any part of any provision) of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 20.2. **No partnership or agency.** Nothing in these Terms constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.
- 20.3. **Delay.** Failure or delay by the Seller 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.
- 20.4. **Waiver.** Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20.5. **Third Parties.** A person who is not a party to the Contract has no right to enforce any term of the Contract.
- 20.6. **Assignment and sub-contracting.** The Client shall not, without the prior written consent of the Seller, assign, transfer, mortgage, charge, subcontract or deal in any other manner with the Contract or all or any of its rights and obligations under the Contract or purport to do any of the same.
- 20.7. **Variation.** Any variation to the Terms, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller's Director.
- 20.8. **Set off.** Any amount that the Client owes to the Seller under these Terms or otherwise, whether now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent, may be set off by the Seller from any amount due to the Client from the Seller under these Terms or otherwise. Any exercise by the Seller of its rights under this clause 20.8 shall not prejudice any other right or remedy available to it, whether under these Terms or otherwise.
- 20.9. **Entire Agreement.** The Contract (and any documents referred to in it) sets out the entire agreement between the parties in respect of the Contract and supersedes all previous agreements between the parties relating to its subject matter. In entering into a Contract, each party acknowledges that it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) other than as expressly set out in the Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in the Contract (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall exclude or limit the Seller's liability for fraud or fraudulent misrepresentation.
- 20.10. **Law and Jurisdiction.** The Contract and any claim or dispute arising out of it 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 & Wales. The parties irrevocably agree that the Courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) save that the Seller may bring proceedings against the Client in the Court having jurisdiction where the Client resides or carries on business.