

**CAPSTAN SECURITY (WESSEX) LIMITED**  
**Standard Terms for the Supply of Products and Services**

**1. INTERPRETATION**

1.1 the following words and expressions shall have the following meanings unless otherwise stated:

<b>Ad Hoc Services</b>	: the provisions of Spare Parts, call-out services and repair services in the case of damage to the Equipment caused willfully or by accident (to include but not be limited to theft, flood, fire, storm and lightning strike).
<b>British Standards</b>	: the British/European Standard Code of Practices relevant to the Products and the Services.
<b>Business Day</b>	: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Commencement Date</b>	: the date on which the Monitoring and Maintenance Services shall commence, being the date specified as such in the Order Confirmation.
<b>Contract</b>	: the contract constituted by the Quotation, the Order Confirmation and this agreement, entered into between the Supplier and the Customer for the supply of the Product and/or the Services.
<b>Core Hours</b>	: between 9am and 5pm Monday to Friday but excluding public or bank holidays.
<b>Currency</b>	: UK Pounds Sterling or such other currency as set out in the Order Confirmation.
<b>Customer</b>	: the person, firm or company (details of which are set out in the Order Confirmation) who directly purchases Product and/or Services from the Supplier, whether for its own benefit, the benefit of a third party End User or otherwise.
<b>Default Event</b>	: means any of the events described in clauses 16.3.1 to 16.3.10 (inclusive).
<b>Delivery</b>	: means actual delivery of the Product to the Customer at the Delivery Point and 'Delivered' shall be construed accordingly.
<b>Delivery Point</b>	: the place for delivery as specified in the Order Confirmation.
<b>Deposit</b>	: the deposit as may be required and specified in the Order Confirmation.
<b>End User</b>	: the person, firm or company as more fully described in the Order Confirmation and who is the end user of the Product and/or the Services.
<b>Handover Confirmation</b>	: the Supplier's written confirmation of completion of the Services.
<b>Handover Confirmation Date</b>	: the date on which the Supplier delivers the Handover Confirmation to the Customer in accordance with clause 5.10.
<b>Initial Term</b>	: the period of twelve (12) months starting on the Commencement Date unless the Contract is terminated earlier in accordance with this agreement.
<b>Intellectual Property Rights</b>	: all patents, rights to inventions, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Maintenance Services</b>	: the annual maintenance services relevant to the Product to be provided by the Supplier as more fully described in the Order Confirmation.
<b>Monitoring Services</b>	: the annual monitoring services relevant to the Product to be provided by the Supplier as more fully described in the Order Confirmation.
<b>Order Confirmation</b>	: the confirmed order for Product and/or Services issued by the Supplier, setting out the System Design Proposal, details of the Product and/or the Services to be supplied and the Price.
<b>Parties</b>	: together the Customer and the Supplier and each shall be a 'Party'
<b>Price</b>	: the price plus VAT for the sale of the Product or for the provision of the Services for the Relevant Period as set out in the Order Confirmation.
<b>Product</b>	the goods to be supplied by the Supplier to the Customer for installation and use at the

Customer and / or End User's premises (as relevant) or the goods which are the subject of the Services as more fully described and set out in the Order Confirmation.

<b>Quotation</b>	: the Supplier's quotation relating to the Products and/or Services as confirmed in the Order Confirmation.
<b>Relevant Period</b>	: the relevant period for the provision of the Services, as confirmed in the Order Confirmation.
<b>Remote Signalling System</b>	: the system connected to standard telecom exchange lines for the purpose of sending data from an alarm to a remote location.
<b>Renewal Term</b>	: a twelve (12) month period immediately following the Initial Term (or the last Renewal Term as the case may be).
<b>RPI:</b>	the retail prices index as published by the Office for National Statistics
<b>Services</b>	: the installation, implementation and commissioning services, Monitoring Services, Maintenance Services, Ad Hoc Services and the ancillary supplies relevant thereto, which are to be provided by the Supplier as more fully set out in the Order Confirmation.
<b>Service Delivery Point</b>	: the place specified in the Order Confirmation where the Services are to be supplied.
<b>Spare Parts</b>	: any spare parts or replacement components supplied by the Supplier and as may be required to maintain the Product in good working order and as directed by applicable British Standards.
<b>Specification</b>	: the specification for the Product, including any related plans, data and drawings referred to in the Order Confirmation.
<b>Supplier</b>	: Capstan Security (Wessex) Limited a private limited company registered in England under company number 03912958, also trading as 'Capstan Security' whose registered office is at 275 Lymington Road, Highcliffe, Christchurch, BH23 5EB.
<b>System</b>	: the security system to be purchased by the Customer and installed at Customer's premises as described in the System Design Proposal.
<b>System Design Proposal</b>	: the Supplier's proposal for the design of the System containing a sketch plan.
<b>Term</b>	: the Initial Term plus any Renewal Term.
<b>VAT</b>	: value added tax chargeable under the Value Added Tax Act 1994.
<b>Warranty Extension</b>	: a warranty extension as set out in the Order Confirmation.

1.2 In this agreement, a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Clause headings do not affect the interpretation of this agreement.

1.4 A reference to "writing" or "written" in this agreement includes faxes and email.

**2. CONTRACTING PROCESS**

2.1 A Contract shall be subject only to the provisions of this agreement as read with the Order Confirmation.

2.2 By placing an order for Product and/or Services with the Supplier, the Customer shall be taken to have offered to purchase the Product and/ or the Services on the terms of this agreement and the Order Confirmation to the exclusion of all other terms and conditions (including any terms or conditions which the Customer or the End User purports to apply under any purchase order, confirmation of order, specification or other document, whether communicated to the Supplier before or after the date on which the Customer executes the Order Confirmation).

2.3 If the content of this agreement conflicts with that of the Order Confirmation, then the conflicting provision of the Order Confirmation shall prevail over the relevant provision in this agreement.

2.4 Subject to clause 2.5, the Supplier shall confirm the acceptance of the Customer's offer referred to in clause 2.2 and the coming into being of a Contract by signing and delivering a copy of the Order Confirmation to the Customer. Until the Supplier has communicated such acceptance to the Customer no Contract shall be taken to have come into being.

2.5 If a Customer accepts Delivery of the Product and/or the provision of the Services or uses the Product, then the Customer shall be bound by the provisions of this agreement and the Order Confirmation.

2.6 Where the Supplier has communicated acceptance of the Customer's offer in accordance with clause 2.4 above then, the Customer shall

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remain bound by the Contract notwithstanding the fact that it may be required, due to the Customer's internal administrative protocols, to issue a purchase order for the purchase of the Product and/or the Services.

- 2.7 Any variation to this agreement and /or the Order Confirmation and any representations made in respect of the Product and/or Services shall have no effect unless expressly agreed and writing and signed by an authorised representative of each Party.
- 2.8 The Supplier's obligations under the Contract shall be as set out in this agreement, the Quotation and the Order Confirmation only. The Customer agrees that it has not relied on and that the Supplier shall not be liable for any statement, promise, warranty or representation not set out in the Contract (including but not limited to those made or given by or on behalf of the Supplier, such as specifications, particulars of weight, dimensions, sales proposals, statements, representations, descriptions or illustrations contained in sales and marketing material, catalogues and publicity material, all of which are only intended to convey only a general idea of the Product and Services mentioned). The Supplier reserves the right to alter any details or design of Product illustrated in the Supplier's catalogues and marketing material. Nothing in this clause shall exclude or limit the Supplier's liability for fraudulent misrepresentation
- 2.9 The Supplier may at its sole and absolute discretion be entitled to amend any Quotation or price list until a Contract has been concluded with that Quotation confirmed in the Order Confirmation.
- 2.10 Any typographical, clerical or other error or omission in any Contract shall be subject to correction at the sole discretion of the Supplier without any liability on the part of the Supplier.
- 2.11 No Contract may be cancelled by the Customer without the prior written consent of the Supplier. The Supplier reserves the right to charge the Customer for all damages, losses and expenses suffered or incurred as a consequence of any cancelled Contract.

### **3. DELIVERY OF PRODUCT**

- 3.1 The quantity, description, Price and component parts of the Product and the cost of the Delivery thereof (in the case where there is to be a charge for Delivery) shall be as set out in the Order Confirmation.
- 3.2 Delivery shall take place during Core Hours at the Delivery Point.
- 3.3 Any dates specified by the Supplier for Delivery are an estimate only and any attempt to make the time of Delivery the essence of the Contract by notice to that effect shall be invalid.
- 3.4 The Supplier shall not be liable to the Customer for any loss suffered by the Customer (whether direct, indirect or consequential) arising from a delay in Delivery.
- 3.5 Where the Product is to be delivered or the Services are to be supplied in instalments then any delay in Delivery of or the performance of any one instalment shall not entitle the Customer to cancel or to repudiate the Contract as a whole.
- 3.6 If the Customer does not accept Delivery of Product then the Customer shall pay the Supplier any additional costs that the Supplier may incur, including but not limited to all storage costs reasonably incurred.
- 3.7 Products should be inspected as soon as they are Delivered. The Customer shall indicate any damage to the Products or packaging on the carrier's delivery note at the time of Delivery and the contents and packaging of the Products must be retained for inspection as proof of damage, failing which the Supplier shall have no liability to the Customer for such damage.
- 3.8 The Supplier shall not be responsible for any Product shortages or defects discovered after Delivery unless the Customer informs the Supplier in writing within 3 Business Days following Delivery.

### **4. RISK & RETENTION OF TITLE**

- 4.1 Risk in the Product shall pass to the Customer at the point of Delivery and notwithstanding that the installation Services are yet to be fulfilled.
- 4.2 Title to the Product shall not pass to the Customer until the Supplier has received in full (in cleared funds) all sums due to it in respect of the Product, the Services or under or arising from any other contract or liability owed by the Customer to the Supplier whether under a Contract or otherwise.
- 4.3 The Remote Signalling System is and shall at all times remain the property of the Supplier. Title to Remote Signalling System shall not pass to the Customer. The Customer shall immediately return the Remote Signalling System or cause the Remote Signalling system to be returned to the Supplier forthwith upon the occurrence of a Default Event.
- 4.4 Where title to the Product has not yet passed to the Customer then the Customer's right to possession of the Product shall terminate immediately upon the occurrence of a Default Event and the Customer shall immediately return the Product or cause the Product to be returned to the Supplier.
- 4.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Product is or may be stored in order to inspect it, or, where the Customer's right

to possession has terminated, to recover the Product. All costs incurred by the Supplier in repossessing the Product following a termination of the Customer's right of possession shall be borne by the Customer.

- 4.6 The Supplier shall be entitled to recover payment for the Product notwithstanding that title in the Product has not passed to the Customer.
- 4.7 Until title in the Product has passed to the Customer, the Customer shall:
- 4.7.1. hold the Product on a fiduciary basis as the Supplier's bailee;
- 4.7.2. if the Product has not yet been installed, then store the Product separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
- 4.7.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Product; and
- 4.7.4. maintain the Product in a satisfactory condition (at no cost to the Supplier) and keep it insured on the Supplier's behalf for its full price against all risks with reputable insure and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the deposits into an overdrawn bank account. On request the Customer shall produce the policy of insurance to the Supplier.
- 4.8 If, notwithstanding the provisions of clause 4.2, the Customer purports to sell the Product to a third party or End User before the title to the Product passes to the Customer then the Supplier shall be beneficially entitled to all of the proceeds of that sale received by the Customer from the third party or End User.
- 4.9 On termination of this agreement or a Contract, howsoever caused, the Supplier's rights contained in this clause 4 shall remain in effect.

### **5. PROVISION OF SERVICES**

- 5.1 The Services shall be provided to and for the benefit of either the Customer or, by agreement with the Customer (to be confirmed on the Order Confirmation), to the End User.
- 5.2 Any dates for the provision of the Services shall be estimates only and the time for the provision of the Services shall not be of the essence.
- 5.3 The Supplier agrees to provide the Services for the duration of the Term to either the Customer or the End User (as the case may be and as shall be confirmed in the Order Confirmation).
- 5.4 The Services shall be provided during Core Hours at the Service Delivery Point and the frequency for the Provision of Services shall be set out in the Order Confirmation.
- 5.5 The Services shall be supplied by the Supplier in accordance with the relevant British Standards.
- 5.6 As part of the Ad Hoc Services the Customer authorises the Supplier to replace and repair the Product as necessary and at the Supplier's reasonable discretion, but provided that the Supplier provides the Customer with a certification for the repair or replacement work carried out.
- 5.7 The Supplier reserves the right to engage an approved sub-contractor and / or consultant to fulfil the Services on the Supplier's behalf. The Supplier shall have the sole discretion to approve a sub-contractor or consultant.
- 5.8 Unless otherwise agreed in writing the Services shall be performed at the Service Delivery Point.
- 5.9 The Supplier shall be entitled to charge the Customer for any abortive attempt to provide the Services or for any abortive installation of the Product where the Customer is the cause of the delay in the fulfilment of the Services.
- 5.10 Upon fulfilment of the Services, and provided that the Product operates materially in accordance with the Specification contained in the Order Confirmation, the Supplier shall notify the Customer or the End User (if applicable) of that fact by delivering the Handover Confirmation to the Customer on the Handover Confirmation Date and the Customer shall confirm that the Services have been successfully completed to its satisfaction by signing and returning the Handover Confirmation to the Supplier. If the Customer fails to sign and return the Handover Confirmation before the end of 3 Business Days following the Handover Confirmation Date and does not during the 3 Business Days following the Handover Confirmation Date raise any issue with the Supplier regarding the Services, then the Customer shall be deemed to have accepted the Handover Confirmation and the Services shall be deemed to have been successfully completed.
- 5.11 The Customer shall be deemed to have accepted that the Product is operating materially in accordance with the Order Confirmation if the Customer fails to notify the Supplier of any problem in the operation of the Product within 3 Business Days of the Handover Confirmation Date.

### **6. CHANGE OF CONTROL**

- 6.1 If the Customer wishes to change the scope or execution of the Services, it shall submit details of the requested change to the Supplier who shall, within a reasonable time, provide a written estimate to the Customer of:
- 6.1.1. the likely time required to implement the change;
- 6.1.2. any necessary variations to the Price arising from the change; and

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- 6.1.3. any other impact of the change on the Contract.
- 6.2 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to the Price, the Service, and any other relevant terms of the Contract to take account of the change and this agreement has been varied in accordance with clause 2.7
- 6.3 Notwithstanding clause 6.2, the Supplier may on notice to the Customer cancel the Contract or change the Services or increase its Price in order to comply with any applicable safety or statutory requirements, or where the provision of the Services is not feasible due to a technical or commercial reason, but provided that such changes do not materially affect the nature and scope of the Services.
- 7. CUSTOMER OBLIGATIONS**
- 7.1 The Customer shall or procure that the End User shall:
- 7.1.1. be responsible for preparing and maintaining the Service Delivery Point in order to facilitate the performance of the Services and for reinstating any such part of the Service Delivery Point and undertaking any required making good and clean-up work once performance of the Services has been completed;
- 7.1.2. ensure that conditions at the Service Delivery Point are suitable for the performance of the Services and that any relevant thing required to perform the Services thereon is available and in good working order (for the avoidance of doubt, there shall be no obligation on the Supplier to undertake a survey of the Service Delivery Point although the Supplier may at its sole discretion opt to do so);
- 7.1.3. if requested to do so by the Supplier and without charge, provide facilities at the Service Delivery Point for the off-loading and storage of the Product and the Supplier's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Product and the Supplier's tools and equipment whilst the same are stored at the Service Delivery Point;
- 7.1.4. take all steps to ensure the health and safety of the personnel of the Supplier and their sub-contractors whilst they are in attendance at the Service Delivery Point in connection with the performance of the Services and be solely responsible for ensuring the safety of any and all persons who are or may be present at the Service Delivery Point during the performance of the Services, including but not limited to restricting access to those areas of the Service Delivery Point where the Services are or are to be performed to those individuals engaged in performing the Services, or providing assistance to those so engaged;
- 7.1.5. provide the Supplier, its employees, agents and sub-contractors prompt and unobstructed access to and egress from the Service Delivery Point;
- 7.1.6. inform the Supplier of any unusual layout, composition or construction of the Service Delivery Point or its parts and report any unusual conditions or obstacles to the performance of the Services at the Service Delivery Point to the Supplier;
- 7.1.7. notify the Supplier of any special properties of, or requirements of the Customer or End User in relation to, any surfaces, fixtures or fittings at the Service Delivery Point, as the Supplier shall not be liable for any damage resulting directly or indirectly from the installation of any Product's to the Customer's or End User's property, fixtures or fittings, including but not limited to damage caused by the drilling of walls, grounds or other surfaces, the removal of fixtures and fittings whether obsolete or not, or for damage to porous or any other materials;
- 7.1.8. ensure that any materials and/or surfaces upon which the Services are to be performed comply with any tolerances required by the Supplier and are of adequate strength to withstand any work undertaken on them by the Supplier and to support the Product;
- 7.1.9. at all times during the performance of the Services ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Service Delivery Point where the performance of the Services is to take place, so as to ensure that the Services can be performed in one continuous, uninterrupted operation during Core Hours;
- 7.1.10. be responsible at its own cost for obtaining all consents, permissions, easements and licences necessary for the performance of the Services in accordance with these conditions and for conforming with all statutes and orders, regulations and bye-laws which are applicable at any time to the Services and shall indemnify and keep indemnified the Supplier against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause 7.1;
- 7.1.11. provide a supply of electricity, water, gas, test exchange lines, all required electrical and mechanical items and any other services as Supplier shall reasonably require from time to time for the provision of the Services;
- 7.1.12. provide a supply of telephone lines and ADLS facilities (broadband) and pay any telephone, electricity and other utility bills which the System requires to function properly so that the Services are not interrupted.
- 7.1.13. provide the Supplier with all such information, co-operation and support as may be reasonably be required to enable the Supplier to carry out its obligations to the Customer or End User;
- 7.1.14. pay all charges levied at any time against the System or the Supplier by authorities such as the Fire Brigade, Constabulary or similar organisation irrespective of the reason or cause for such charge being levied.
- 7.1.15. ensure that the Product and/or Services (or any part thereof) are not:
- modified without the Supplier's prior written approval
  - subjected to excessive physical and/or electrical stress, accident, neglect, misuse or other damage
  - used in conjunction with any software, magnetic-media, accessory or consumable which does not meet with the Supplier's specifications or which are defective
  - attached to any object, repaired or reinstalled without the Supplier's prior written approval ; and
- 7.1.16. effect and maintain appropriate insurance at the Service Delivery Point on an all risks basis and in an adequate amount.
- 8. PRICE & PAYMENT**
- 8.1 All sums payable under the Contract are exclusive of VAT chargeable on the supplies.
- 8.2 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase of the Product and/or Services and the Delivery thereof under the Contract shall be the responsibility of, and for the account of, the Customer.
- 8.3 The Price for the Product and the Services shall be set out in the Order Confirmation, which shall unless otherwise confirmed in the Order Confirmation, be inclusive of the costs and charges associated with the installation and transportation of the Product to the Service Delivery Point.
- 8.4 The Price is calculated on the basis that the wiring conditions at the Service Delivery Point are sound and suitable for the Installation of the Product. If this is not the case and if, in the reasonable opinion of the Supplier, substantial preparation for wiring is required to be undertaken during the performance of Services, then the provision of clause 6 shall be invoked and the required preparation for the proper functioning of the System shall be deemed to be a change to the scope and execution of the Services and the Price shall be increased in accordance with the provisions of clause 6 commensurate with the additional time and materials which are then required for the Supplier to perform the said preparation. If the parties are not able to reach the agreement on an increase to the Price then either the Supplier or Customer may give written notice to the other to terminate the Contract with immediate effect and the provision of clause 16.5 shall then apply.
- 8.5 The Deposit shall be payable by the Customer forthwith upon the Supplier's signing and delivery of a copy of the Order Confirmation to the Customer in accordance with clause 2.4.
- 8.6 The Supplier shall be entitled to raise its invoice for the Products and / or the Services as follows:
- in the case of the sale of Products only, on the date of Delivery;
  - in the case of the sale of Products and the supply of installation, implementation and commissioning Services, on the date on which the Handover Confirmation is delivered to the Customer in accordance with clause 5.10; and
  - in the case of ongoing Monitoring Services and Maintenance Services, annually in advance on or after the Commencement Date.
- 8.6.4. in the case of Ad Hoc Services, as and when they are incurred.
- 8.7 The balance of the Price (being the total Price less the Deposit already received from the Customer) and VAT thereon is due on the date of the Customer's receipt of the Supplier's invoice (unless account terms have been agreed in writing as between the Supplier and Customer, in which case such payment is due no later than 14 calendar days from the date of the Supplier's invoice). Payment of the Supplier's invoice shall not be conditional upon completion of any work that may be required to be completed by a third party supplier or service provider.
- 8.8 The Price shall be paid in full without deduction, set off, counterclaim, discount, abatement or withholding whatsoever and in pounds sterling.
- 8.9 The keys/fobs, user code or operation instructions for the System shall only be handed over on the date of Handover Confirmation.
- 8.10 Time for payment of the Price shall be the essence of the Contract.
- 8.11 Spare Parts, call outs and repairs to Equipment wilfully damaged or damaged by accident shall be charged for in accordance with the Supplier's price list as set out in the Supplier's then current price list.
- 8.12 Any price lists for Spare Parts are subject to variation at any time on reasonable notice to the Customer to take account of increases in the cost to the Supplier of the supply of those Spare Parts and to take account of RPI increases.
- 8.13 The Supplier reserves the right at its sole discretion to terminate the Contract or to withhold Delivery or to suspend or terminate the provision of any part of the Services if the Customer fails to pay the Deposit, the Price or any part thereof on the due date for payment and upon such

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suspension or termination, the Deposit shall be forfeited to the Supplier and the full unpaid balance of the Price shall then immediately fall due for payment.

- 8.14 Interest on late payment by the Customer of any amount due under the Contract shall be charged by the Supplier at the rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is received by the Supplier, whether before or after any judgement.
- 8.15 All invoices sent under the Contract shall be addressed to the Customer's address as set out in the Order Confirmation and may be sent in .pdf format by electronic mail to an email address specified on the Order Confirmation.
- 8.16 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer
- 8.17 The price for the ongoing Maintenance Services shall be increased with effect from the start of each Renewal Terms to reflect increases in the cost of materials and increases in the RPI during the previous year.

## 9. WARRANTY

- 9.1 Subject to clauses 9.2 and 10 below, the Supplier warrants that the Product or the Spare Parts will perform substantially in accordance with the Specification as set out in the Order Confirmation and that the Services will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 9.2 Subject to clause 9.3 below, if within the period of 12 months of date of the Handover Confirmation Date (or such longer period if the Customer has purchased a Warranty Extension) the Product or the Spare Parts prove to be materially defective under proper use by the Customer and where such defect arises solely as a consequence of faulty materials or workmanship on the part of the Supplier and are not due to normal wear and tear then the Supplier will make good the defect by repair or, at its sole option, by the supply of a replacement Product or the Spare Parts thereof. This covenant is subject to the condition that:
- 9.2.1. the Customer gives the Supplier written notice of the defect within 7 Business Days of becoming aware of the defect;
- 9.2.2. the Supplier is given a reasonable opportunity of examining such Product to verify the defect and its cause; and
- 9.2.3. where possible, the defective parts are promptly returned by the Customer to the Supplier. All return claims must be logged with the Supplier's maintenance department or emailed to info@capstansecurity.org.uk in order to be evaluated by the Supplier.
- 9.3 The Supplier shall not be liable for any breach of warranty set out in clause 9.1 if:
- 9.3.1. the Customer or End User makes any further use of the Product following the giving of notice to the Supplier under clause 9.2.1;
- 9.3.2. the defect arises because the Customer or End User failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of Products or good trade practice;
- 9.3.3. the defect arises from any Specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse of the Product or from any other cause which is not due to the neglect or default of the Supplier; or
- 9.3.4. any defect in the Product arises from any alteration or repair by the Customer or by a third party;
- 9.3.5. the Products differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4 In the case of any Product parts or components not manufactured by the Supplier, and to the extent that it is contractually permitted to do so, the Supplier agrees to pass on to the Customer any warranty or guarantee (if any) which the Supplier may have received from its supplier of such parts or components, but not so as to impose on the Supplier any liability greater than that imposed on the Supplier by clause 9.2.
- 9.5 All warranties, conditions and other terms implied by statute or common law in respect of the sale of Product and the provision of the Services are, to the fullest extent permitted by law, excluded from the Contract.

## 10. LIMITATION OF LIABILITY THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 10.

- 10.1 This Clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 10.1.1. any breach by the Supplier of the Contract;
- 10.1.2. any use made by the Customer or its End User of the Product and/or any part of the Product;
- 10.1.3. the provision of the Services and the Spare Parts; and
- 10.1.4. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 Nothing in this agreement shall be construed as limiting or excluding the liability of the Supplier:

- 10.2.1. for death or personal injury resulting from negligence; or
- 10.2.2. for any damage or liability incurred by the Customer as a result of fraud (including a fraudulent misrepresentation by the Supplier);
- 10.2.3. for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; and
- 10.2.4. for breach of the terms implied by section 12 of Sales of Goods Act 1979.
- 10.3 Subject to clause 10.2, the Supplier shall not be liable to the Customer or to any End User whatsoever for any loss of profits, loss of business, depletion of goodwill, loss of anticipated savings, loss of contract or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses which may be suffered by the Customer or the End user in consequence of this agreement or any Contract.
- 10.4 The Supplier'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 for direct costs and damages only (whether in the form of the additional cost of remedial services or otherwise) and shall be limited to a sum equal to the Price paid to and received by the Supplier from the Customer for the Product or Services that are the subject of the claim.
- 10.5 The terms implied by sections 3,4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

## 11. CUSTOMER'S FAIR DEALING WARRANTY

- 11.1 The Customer warrants that:
- 11.1.1. it shall not use the Product and/or the Services for any improper or unlawful purpose;
- 11.1.2. it shall not permit anyone other than the Supplier to tamper, adjust, reset or interfere with the installation or the System or any part thereof without the express written consent of the Supplier .
- 11.1.3. it shall comply in all material respects with all applicable laws, bye-laws, regulations and codes of conduct (whether statutory or otherwise) of the United Kingdom and any other jurisdiction where the Product is to be used;
- 11.1.4. it shall use and operate the System with reasonable care in accordance with the requirements of operating manual and other instructions that the Supplier issues from time to time.
- 11.1.5. It shall promptly notify the Supplier at once of any defect or fault in the System; and
- 11.2 The Customer shall procure that the End User likewise complies with the provisions of this clause 11.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Customer acknowledges and agrees that all Intellectual Property Rights in the Product (to include all component Products, the Services) are vested in and are the property of the Supplier or its licensor and shall remain the property of the Supplier or its licensor (as appropriate).
- 12.2 The Customer shall promptly give notice in writing to the Supplier if it or the End User becomes aware of:
- 12.2.1. any infringement or suspected infringement by a third party of the Intellectual Property Rights relating to the Product; and/or
- 12.2.2. any claim that any Product infringes the rights of any third party.

## 13. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 13.1 Each Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed by one Party (the "Disclosing Party") to the other (the "Receiving Party"), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, the Product and the Services which the Receiving Party may obtain as a result of such disclosure. Each Party shall restrict disclosure of such confidential material to the End User and to such of the Receiving Party's employees, agents or sub-contractors as may need to know the same for the purpose of discharging the Receiving Party's obligations to the Disclosing Party under this agreement, and shall ensure that its employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the parties to this agreement.
- 13.2 All materials, equipment, drawings, specifications and data supplied by the Disclosing Party under or in accordance with this agreement shall, at all times, be and remain as between the Disclosing Party and the Receiving Party the exclusive property of the Disclosing Party and shall be held by the Receiving Party in safe custody at its own risk and maintained and kept in good condition until returned to the Disclosing Party, and shall not be disposed of or used other than in accordance with the Disclosing Party's written instructions or authorisation.
- 13.3 The rights and obligations under this clause 13 shall survive termination of the Contract, however arising.

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**14. DEFAULT BY CUSTOMER**

The Customer shall pay to the Supplier, on demand, all reasonable costs, charges or loss sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

**15. DATA PROTECTION**

15.1 Each Party shall comply with its respective obligations under the provisions of the Data Protection Act 1988 (the "Act").

15.2 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency and that the Customer shall remain responsible as the 'data controller' as defined in the Act in relation to any personal data it uses in connection with the Product and / or the Services.

15.3 The Customer shall inform all End User's that their and their customer's personal data may be made available to the Supplier as appropriate in order to enable the Supplier to comply with its obligations under this agreement. The Customer warrants that it has where required by the Act obtained the prior informed consent of the End User and the End User's customer for the Supplier to hold that Party's personal data for the purposes of performing its obligations under this agreement.

**16. TERM & TERMINATION**

16.1 In the case of Monitoring Services and Maintenance Services, the Contract for such Services shall commence on the Handover Confirmation Date and shall continue for the Initial Term and shall automatically renew on an annual basis for successive Renewal Terms unless either the Supplier or the Customer serves on the other not less than three (3) months' written notice of termination, such notice to expire on the last day of the Initial Term, or, in the case of a Renewal Term, the last day of that current Renewal Term.

16.2 If a Contract is terminated then the provision of all Services set out in the Order Confirmation shall also terminate.

16.3 Without prejudice to any other rights or remedies it may have, the Supplier may terminate or suspend a Contract without liability to the Customer immediately on giving written notice to the Customer if:

16.3.1. the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 calendar days of being notified in writing of the breach;

16.3.2. the Customer fails to pay any sum due under this agreement or a under a Contract on the due date for payment;

16.3.3. an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer;

16.3.4. the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain the possession of the secured property or otherwise enforce its security;

16.3.5. an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or the directors of the Customer or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

16.3.6. a receiver is appointed of any of the Customer's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets;

16.3.7. the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

16.3.8. the Customer ceases, or threatens to cease, to trade;

16.3.9. the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

16.3.10. there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Customer.

16.4 The Customer may terminate a Contract without liability to the Supplier immediately on giving written notice to the Supplier if the Supplier commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 calendar days of the Supplier being notified in writing of the breach.

16.5 On termination of the Contract for any reason:

16.5.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Product and the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice (and where amount due for the Services are calculated on a pro-rata day rate basis), which shall be payable immediately on receipt;

16.5.2. the Customer shall forthwith return the Product and all the equipment owned by the Supplier. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Product and equipment including the Remote Signalling Device. Until the Product and equipment have been returned or repossessed, the Customer (as relevant) shall be solely responsible for its safe keeping and will not use them;

16.5.3. the Supplier shall be entitled to retain the Deposit; and

16.5.4. the accrued rights of the Supplier shall, notwithstanding any specific provision of this agreement, survive the termination of the Contract.

**17. FORCE MAJEURE**

Neither Party shall have any liability to the other under a Contract if it is prevented from or delayed in performing its obligations under a Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the relevant Party or any other party) failure of a utility service or transport network, 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 sub-contractors.

**18. COMMUNICATIONS**

Any notice or communications about a Contract must be in writing and must be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by email (provided that the sender confirms the email by sending an original confirmation copy by certified or registered mail or expedited delivery service within 5 Business Days after transmission) to the recipient Party at its registered office or such changed address as shall be notified by one party to the other for the purposes of this clause. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of email upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 5 Business days after the date and time of mailing. The provisions for this condition shall not apply to the service of any proceedings or other documents in any legal action.

**19. ASSIGNMENT**

19.1 The Supplier may assign any benefit under this agreement or a Contract or any part of it to any person, firm or company.

19.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

**20. GENERAL**

20.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

20.2 If 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.

20.3 Failure or delay by the Supplier 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 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer 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 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.

20.6 The parties to a 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.

20.7 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, provided that for the sole benefit and at the sole discretion of the Supplier, the Supplier may elect to apply the jurisdiction of any foreign court applicable to the Customer.

This agreement is entered into by the Supplier and the Customer the date of the Order Confirmation.