



Standard Terms & Conditions of Sale and Service

(Applicable to all Agreements using these Terms & Conditions)

1. DEFINITIONS

1.1. **"The Company"** means Checkit UK Limited (Company no. 2540171) and its trading brands mentioned herein Next Control Systems ("NCS"), Axon ("AXON") and Tutela Monitoring Systems ("TMS") and its sub-contractors, agents and licensors.

1.2. **"The Customer"** means the legal entity (including its successors and agents) accepting any written or oral quotation for the supply of Products and/or, Services from the Company as described on the Invoice.

1.3. **"Products" or "Hardware"** means the equipment supplied, installed/maintained but not necessarily manufactured by the Company for the purposes specified by the Customer and set out in the Relevant Agreement and schedules.

The details for each specific type of Agreement (the Relevant Agreement) are set out in **Clause 2** below.

1.4. **"The Services"** means work carried out by the Company for the Customer in Agreements that include but are not limited to the specific type of Agreement set out in **Clause 2** below.

1.5. **"The Agreement, "Agreements" or "the Relevant Agreement"** means these Terms and Conditions and any formal Agreement to provide **"The Services"** and/or **"Products or Hardware"** and any Schedules, or Annex or Exhibit to these (being the relevant Schedules to the Agreement).

1.6. **"Terms and Conditions"** means these Terms & Conditions applicable to the Relevant Agreement.

1.7. **"Monitored Equipment"** means the Customer's freezers, refrigerators, incubators, clean rooms, cold rooms, and/or other equipment located at the Customers' facilities/sites that were listed during the system installation or are otherwise agreed upon in writing to be included under the Relevant Agreement.

1.8. **"Engineered Projects"** means the supply, installation and commissioning of Products or Hardware at customer sites to facilitate the provision of The Services to the Customer.

1.9. **"Third Party Products"** means Products or Hardware and/or Services provided by another and used by the Company.

1.10. **"KPI"** means Key Performance Indicators.

1.11. **"SLs"** means Service Levels.

1.12. **"Minimum Term"** means a fixed term of **12 months** from the date of the Relevant Agreement unless expressly stated otherwise therein.

1.13. **"Price"** means the charge for Products and or Services including all additional and replacement charges.

1.14. **"Confidential Information"** means all information of a confidential nature disclosed by one party to the other and which is not in the public domain.

2. PRODUCTS AND SERVICES

2.1. The Products and Services supplied by the Company may include but are not limited to:

2.1.1. **"Calibration Service"** is based on the specific needs of individual monitoring system installations. The Company will carry out, where applicable, scheduled re-calibration visits to the Customer's sites and produce a documentary record to evidence work undertaken. The service scope is as documented in **Schedule 3.2** of the Relevant Agreement.

Work may, with the Customer's authorisation, include replacement of parts.

2.1.2. **"Alarm Monitoring Service"** - the Company will receive alarm signals from the Monitored Equipment and respond accordingly with action or notices to the Customer. The service scope is as documented in **Schedule 3.1** of the Relevant Agreement.

2.1.3. **"Electronic Recording"** - the Company will automatically read and record sensor values from the monitored equipment and publish these on secure web pages for access by the Customer. The service scope is as documented in **Schedule 3.1** of the Relevant Agreement.

2.1.4. **"Temperature Mapping Service"** is based on the specific needs of individual monitoring system installations. The Company will carry out on site, scheduled temperature mapping of monitored equipment identified by the Customer and produce an outcome report in support of work undertaken. The service scope is as documented in **Schedule 3.4** of the Relevant Agreement.

2.1.5. **"Maintenance and Breakdown Services"** - the Company will provide planned preventative maintenance, repair and breakdown services in accordance with specific KPIs and SLs stated in the Relevant Agreement and produce a documentary record to evidence work undertaken. The service scope is as documented in **Schedule 3.3** of the Relevant Agreement.

Work may with the Customer's authorisation, include replacement of parts.

2.1.6. **"Extended Hardware Warranty"** - the Company will provide extended Warranty on the Company manufactured hardware installed at the Customer's site(s). The scope of the Warranty is as documented in Schedule 3.5 of the Relevant Agreement but for the avoidance of doubt "Extended Hardware Warranty" does not include third party products.

2.1.7. **"Engineered Projects"** - the Company will design, install, project manage, commission and operationally qualify Products and Hardware at the Customer's site.

2.2. The Company shall supply and the Customer shall purchase the Products or Hardware and/or, the Services as Principals only on the terms that no other party may have any rights or obligations save as provided under the Relevant Agreement.

2.3. The supply of Products or Hardware and/or Services will start on the agreed date as shown in the Relevant Agreements or as otherwise agreed in writing between the parties.

3. GENERAL

3.1. The Products or Hardware and/or Services are supplied subject to the Relevant Agreement to the exclusion of any other terms and conditions of the Customer. Any variations or amendments must be confirmed by the Company in writing and these Terms and Conditions shall prevail over any that the Customer may purport to apply under any purchase order, confirmation order or similar document.

3.2. Unless and until agreed in writing no variation, waiver or addition to these terms and conditions shall be binding on the parties. No employee or agent of the Company has authority to vary these conditions unless expressly authorised in writing by a Director of the Company.

3.3. No agreement for the sale or the supply of Products or Hardware and/or Services may exist unless and until the Company accepts a written acknowledgement of purchase order from the Customer or otherwise receives confirmation in writing, by facsimile transmission, e-mail or pre-paid post from the Customer accepting the Company's quotation (which



shall be in writing and valid for **30 days** after the quotation date). For the avoidance of any doubt, the Terms and Conditions will apply to any Relevant Agreement entered into by the Company and the Customer to the exclusion of all other terms and conditions.

- 3.4. No order accepted by the Company may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer shall pay the Company a cancellation fee not exceeding the outstanding value of the Relevant Agreement as a result of any cancellation.
- 3.5. The Company reserves the right at any time to supplement or change these Terms and Conditions to reflect changes in market conditions, good practice, relevant laws or for any other reason. The Company will give the Customer at least **30 days** prior written notice of any such change. Except as required by law, Customer reserves the right to withhold consent to proposed changes, such consent will not be unreasonably withheld.

4. DELIVERY AND ACCEPTANCE

- 4.1. **Delivery** - The Company will endeavour to meet delivery times for the provision of Products or Hardware and/or services but no guarantee is given as to delivery times or date which are only approximate. Delay in delivery shall not give the Customer the right to cancel the order.
- 4.2. The Company may deliver Products or Hardware and/or services by separate instalments in accordance with an agreed schedule. Each separate instalment will be invoiced and paid in accordance with these Terms and Conditions.
- 4.3. In the case of Shipment of Products or Hardware to destinations outside the United Kingdom, the Customer will be responsible for all costs including shipping, stowage insurances, import duties and taxes, as applicable. Such charges will be shown separately on the Customer's invoice.
- 4.4. **Acceptance** – unless the Customer promptly inspects Products and Hardware and/or services on delivery and notifies the Company in writing within **48 hours** of any defects, or, any damage found. Products or Hardware and/or services shall be deemed to have been accepted on delivery.

5. TITLE AND RISK (Passing of Ownership)

- 5.1. Risk in the Products or Hardware shall pass to the Customer on delivery to the Customer's premises or site.
- 5.2. Title to Products or Hardware shall not pass to the Customer until paid for in full and the Company shall be entitled at any time before Title passes (without any liability):
- 5.2.1. to terminate any Agreement forthwith by notice in writing to the Customer, liquidator, Administrator or other person (as appropriate) and terminate the Customer's right to use, sell or otherwise deal in the Products or Hardware;
- 5.2.2. to enter the premises and recover any or all Products or Hardware in respect of which full payment of the price has not been made and the Customer, Liquidator, Administrator or other person shall afford the Company free access thereto and all such facilities as may be necessary to enable the Company to do so;
- 5.2.3. to use or sell the Products or Hardware.
- 5.3. In the event of a default in payment by the Customer or the Customer entering into liquidation or being made Bankrupt or having a Winding Up Order made against it or having a Receiver or Administrator appointed, the Company shall, Without Prejudice to any other remedies it may have under an Agreement have all the rights set out in **sub-clause 5.2** above.
- 5.4. The Customer shall (if applicable) insure the Products or Hardware against theft or any damage or loss until payment of the price in full and immediately notify the Company of any insurance claim by Customer.

6. PRICE AND PAYMENT

- 6.1. Payment shall be made in full within **30 days** of the date of Invoice.
- The Customer will be invoiced yearly or quarterly in advance for the provision of the Services (as the case may be).
- For the avoidance of doubt:-
- 6.1.1. Monitoring points that are added to the Alarm Monitoring and Electronic Recording Services during the currency of the Relevant Agreement will be invoiced at an additional pro-rated rate for the remaining term of the Relevant Agreement.
- 6.1.2. Monitoring points that are added to the Calibration and Maintenance Service during the currency of the Relevant Agreement will be aligned and invoiced at the next scheduled calibration visit to site.
- 6.2. The price of Products or Hardware and, or, Services is the Company's quoted price or otherwise as shown on the Invoice.
- 6.3. All prices are valid for **30 days** except written quotations in respect of Third Party Products or Hardware which are valid for 14 days only.
- 6.4. All prices are exclusive of sales tax including Value Added Tax, other duties or taxes and the Company's charges for transport and insurance that will be invoiced in addition to the Price.
- 6.5. The price in any Relevant Agreement will be reviewed annually and may be subject to an increase. The charges and terms of payment for the Services shall remain fixed for a period of **12 months** from the stated commencement or renewal date.
- 6.6. Time for payment by the Customer is of the essence and the Company reserves the right to charge interest on any sums overdue in excess of **7 days** on a day to day basis from the date or last date for due payment to the date of actual payment at the rate of 5% above the base rate of Barclays Bank Plc from time to time in force, compounded quarterly. Such interest is payable on demand.
- 6.7. Failure of the Customer to make a timely quarterly or yearly in advance- payment will result in suspension of the Services (after **30 days** written notice to do so) until such overdue payment has been received and cleared into the Company's account.
- 6.8. The Customer may not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the price of the Products or Hardware and/or Services by way of set-off or cross-claim or otherwise.
- 6.9. Unless otherwise agreed in writing all payments will be made in (£) Pounds Sterling.

7. WARRANTY

- 7.1. Except as otherwise provided for in the Relevant Agreement reliance on any Warranty, condition or other term implied by statute or common law is excluded to the fully extent permitted by the law.
- 7.2. The Company warrants to the Customer that Products (excluding Third Party Products and Software) will be free from defects in materials, workmanship, and design for a period limited to **12 months** from the date of purchase or handover. Repaired service replacement hardware will be free from defects in materials, workmanship and design for a period of **6 months** from installation.
- 7.3. In respect of Third Party Products, the Customer will only be entitled to the benefit of any warranty or guarantee given by the Third-Party manufacturer or supplier.
- 7.4. This warranty does not apply to defects resulting from improper or inadequate installation by others, use or maintenance, actions or modifications by unauthorised third parties or the Customer or accidental or wilful loss or damage.



7.5. A warranty for Products or Hardware will be provided in one of two ways at the sole discretion of the Company:-

7.5.1. Exchange units will be despatched free of charge to the Customer for replacement by the Customer in accordance with the Company's **KPIs**. The failed unit must be returned to the Company within **14 days** of receipt of the exchange unit or additional charges will apply.

7.5.2. If deemed necessary by and at the sole discretion of the Company, a field technician will be scheduled to attend site to effect repairs in accordance with the Company's **KPIs**.

8. LIABILITY

8.1. For the avoidance of any doubt the **Alarm Monitoring Service** is not a loss insurance policy since the object and purpose of the Service is to seek to limit, as far as possible, any potential loss to Customer resulting from a Monitored Equipment failure. The Company shall not be liable to the Customer or a Third Party for or by reason of any loss or damage sustained or incurred by the Customer or any Third Party resulting from:

8.1.1. any defects in the Product or Hardware caused by fair wear and tear or abnormal storage or use by the Customer;

8.1.2. any delay in or suspension of the relevant Services or a breakdown or defect in the Product or Hardware (unless such delay, breakdown or defect is caused by the proven negligence of the Company, its employees, agents or sub-contractors) but then only to the extent not excluded by the Agreement;

8.1.3. any representation (unless fraudulent) or implied warranty, condition or other term;

8.1.4. any failure (whatever the cause) in:

- (a) power supplied by the Company's service provider (to enable the Company to supply signals to the Customer);
- (b) communications by the Company service provider(s) to the Company;
- (c) the Company's office hardware, IT and reception technology and communications, equipment and services;
- (d) the Company's or third-party equipment whether due to electrical power failure or otherwise which prevents any alarm from being generated and/or communicated to the Company or the Customer;
- (e) the Customer's Monitored Equipment;
- (f) the Company's IT and server systems located with Third Party hosting service providers.

and the Customer may wish to **insure** against any such risks.

8.2. Notwithstanding any other provision in the Relevant Agreement, the Company shall not be liable to the Customer or any Third Party for any indirect, special or consequential loss, damage, expenses or costs or other claims including but not limited to:

- (a) loss of good will;
- (b) loss of business;
- (c) loss of anticipated profit or savings;
- (d) pure economic loss;
- (e) any expenses or other claims;
- (f) any special, indirect or consequential losses arising out of or in conjunction with the relevant Agreement

AND whether due to breach of statutory duty, negligence, misconduct, breach of contract and/or other liability under or in connection with the Relevant Agreement -

8.3. Except in respect of injury to or death of a person, the maximum liability of the Company to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising

under or in connection with the Agreement shall be limited to **100%** of the price and/or charges paid by or due from the Customer for the Product or Hardware and/or the Services under the Relevant Agreement of any proven loss whether in respect of breach of contract, nuisance, misconduct, or negligence, inclusive of contractual or statutory interest.

8.4. If a number of events of default give rise essentially to the same loss, then they shall be regarded as giving rise to only one claim under the Relevant Agreement.

8.5. The Customer shall be liable to the Company and shall indemnify and keep the Company fully and effectively indemnified against any costs and expenses and any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or misconduct of the Customer, its employees, agents or sub-contractors, or by any breach of its contractual obligations including but not limited to the following: -

8.5.1. the failures of the Customer's communications (including telephone equipment) at its offices or sites; or by the Customer's communications service provider;

8.5.2. Any equipment, hardware or software failures at the Customer's sites which prevent any alarm being raised and/or communicated to the Company, including equipment originally supplied and installed by the Company;

8.5.3. Any failure of the Customer to keep the Company informed of any changes to its staff, contact number changes or the like;

8.5.4. A refusal by the Customer or its agents to accept the Company's verbal notification of an alarm;

8.5.5. The Company giving notice to Customer that the Alarm Monitoring Service was unavailable due to any of the events referred to in the above sub-clauses.

8.6. Upon the Company being requested by the Customer to provide notification to any Third-Party Contractor on the Customer's behalf no liability shall attach to the Company in respect of any abortive charges or any loss or expense whatsoever in consequence thereof.

8.7. Except as otherwise provided in the Relevant Agreement the Company shall be entitled to treat any material breach of the Agreement as a repudiation thereby indicating that the Customer no longer intends to abide by the Relevant Agreement.

8.8. Each party shall take all reasonable steps to minimise and mitigate any loss in respect of their obligations under the Relevant Agreement.

9. FORCE MAJEURE

9.1 No liability is to attach to the Company for any default or any delay in the performance of the Relevant Agreement, caused by any circumstances outside the Company's reasonable control and the Company shall be given a reasonable extension of time for performing its obligations under the Relevant Agreement.

9.2 Notwithstanding the occurrence of any supervening event (including but not limited to frustration of contract) resulting in a repudiatory breach of the Relevant Agreement, the Company shall have the option of either accepting the repudiation or continue with the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. The Company fully reserves its legal rights to any property and copyright or other intellectual property in all its work.

10.2. Any infringement of the Company's intellectual property rights (including without limitation any patent, copyright, registered design, design right, or trade mark) will result in the Customer being liable to the Company to the fullest extent of the law.

11. CONFIDENTIALITY



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- 11.1. Each party shall treat as confidential all information obtained from the other pursuant to the Relevant Agreement.
- 11.2. Upon termination of the Relevant Agreement, each party shall return to the other any equipment and written or other data without retaining copies thereof in respect of the confidential information.
- 11.2.1. The obligations and restrictions in this clause shall be valid for a period of **5 years** from the date of termination of the Relevant Agreement.
- 12. DATA PROTECTION**
- 12.1. The Company is fully compliant with the requirements of the General Data Protection Regulation (**GDPR**) and Data Protection Act 2018 (**DPA 2018**)
- 12.2. As the Company may use the Customer's personal information under the **Data Protection Act 2018**, the Company will do so to the extent that is necessary for purposes of the Relevant Agreement and shall not process Personal Data for any other purposes.
- 12.3. In instances where the Company processes any Customer data, it will comply with all the requirements and obligations under the data protection laws and all data processed shall be in accordance with the Privacy Policy and the Customer's written instruction.
- 12.4. The Company's online business may use GDPR/DPA 2018 to notify website visitors about how it collects, uses and stores Personal Data through use of its website and to provide goods and services.
- 12.5. The Company will keep a record of any processing of Personal Data it may undertake on behalf of the Customer.
- 12.6. The Company will endeavour to ensure that access to Personal Data is limited to:-
- 12.6.1 those employees who need access to Personal Data to meet the Company's obligations under the Relevant Agreement;
- 12.6.2 where it is needed for the performance of any affected employees' duties.
- 12.7. To the extent that this is applicable, the Company will provide the Customer with full co-operation and reasonable assistance in respect of any request made by a Data Subject (an individual who is the subject of Personal Data).
- 12.8. To the extent that this is applicable, the Company will not disclose the Personal Data to any Data Subject or to a third party or other at the request of the Customer or as otherwise provided for in the Relevant Agreement.
- 13. THE COMPANY'S AND CUSTOMER'S OBLIGATIONS**
- 13.1. It shall be the Customer's sole responsibility to provide and maintain at all times adequate environmental and operational conditions for the Products or Hardware installed by the Company and any additional costs incurred by the Company due to the Customer's failure suitably to prepare or maintain the Customer's premises or site or to provide the Company with all facilities reasonably required by it to perform its obligations under the Relevant Agreement shall be borne by the Customer.
- 13.2. The Customer shall ensure that the site has a safe working environment and shall grant the Company, their sub-contractors or Agents access to the site and information reasonably required to perform the services.
- 13.3. The Company's obligations to the Customer are as documented in the Relevant Agreement and annexed Schedule(s) annex or exhibit.
- 14. DURATION & RENEWAL OF TERM**
- 14.1. The Relevant Agreement and all terms and conditions shall continue for the Minimum Term (see **Clause 1** above) stated herein and shall remain in force and continue to be binding on the parties until terminated by either party giving not less than **120 days** prior written notice to the other unless otherwise terminated under **Clause 15**.
- 14.2. The renewal of term provisions in **sub-Clause 14.1** above shall be subject to the termination provisions in **Clauses 15.1 and 15.2** below.
- 14.3. Subject to **Clause 14.1 and 14.2** above.
- 14.3.1 If the Customer does not intend to renew the Minimum Term written notice shall be given to the Company as provided in **Clause 14.1**.
- 14.3.2 If the Customer intends to continue with the Relevant Agreement beyond the Minimum Term, then the Customer shall at least **30 days** prior to the expiry of the Minimum Term issue the Company with a new formal Purchase Order and the Company will respond to the Customer within **21 days** thereafter.
- 15. TERMINATION**
- 15.1. The Relevant Agreement may be terminated by written notice from **either** party if:
- 15.1.1 The other party commits any material breach (not capable of remedy) of any of the terms of the Agreement and, if capable of remedy, shall have failed within **30 days** after the receipt of a request in writing from the other party so to do, to remedy the breach (such notice to detail the breach and to contain a warning of such party's intention to terminate); or
- 15.1.2 The other party becomes insolvent or bankrupt or is otherwise unable to pay its debts as they fall due.
- 15.2. The Relevant Agreement may be terminated forthwith by written Notice by the Company if the Customer fails to pay any sum due and such sum remains unpaid for **14 days** after written notice from the Company that such sum has not been paid.
- 15.3. In the event of the Customer terminating a Relevant Agreement at any time before its expiry for any reason (other than a breach by the Company under **Clause 15.1**), the Customer shall undertake to the Company to meet in full any loss, costs, damages, charges and expenses incurred by the Company.
- 15.4. Where:-
- 15.4.1 the Customer terminates the Relevant Agreement due to a material breach by the Company or;
- 15.4.2 the Customer terminates the Relevant Agreement before the end of the Minimum Term.
- the Customer's liability to the Company is limited to payment of the costs and charges owed for the rest of the Minimum Term.
- 15.4.3. Instead of terminating the Relevant Agreement the Company may at its discretion suspend the provision of Products or Hardware and/or Services.
- 15.4.4. Neither (a) the respective rights and liabilities of the parties to the Relevant Agreement nor (b) any provisions (whether express or implied) that accrued prior to any termination of the Relevant Agreement may be affected and will remain in operation and effect after a termination.
- 16. ENTIRE AGREEMENT**
- The Relevant Agreement supersedes all prior agreements, arrangements and understandings between the Company and the Customer and constitutes the entire agreement between the parties relating to the subject matter of the Relevant Agreement.
- 17. ASSIGNMENT/NO PARTNERSHIP**
- Save and except that the Company may sub-contract all or any of its obligations under the Relevant Agreement to a competent Third-Party the



Customer shall not assign or otherwise transfer any of its rights or obligations without the written consent of the Company. For the avoidance of doubt nothing in the Relevant Agreement shall confer on any Third Party any benefit or the right to enforce any term of the Relevant Agreement.

Nothing in the Relevant Agreement shall create, or, be deemed to create a Partnership.

18. NOTICES

Any notice required to be pursuant to the Relevant Agreement is to be in writing and served by first class pre-paid post, by hand, or by facsimile transmission or e-mail on the Company or at the Customer's respective registered office or principal place of business.

19. SEVERANCE

If any provision of the Relevant Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Relevant Agreement, and the remainder of the provisions in question, shall not be affected.

20. THIRD PARTY RIGHTS

A person who is not a party to the Relevant Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Relevant Agreement.

21. WAIVER

No time given, or concession made on the part of the Company shall be construed as a waiver of any of its rights.

22. MEDIATION AND ARBITRATION

22.1 Any dispute, controversy or claim arising out of, relating to, or in connection with the Relevant Agreement or the breach, termination or validity thereof shall in the first instance be referred to a London mediator for dispute resolution. The parties shall attempt to agree on the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. If the parties should fail to agree to such appointment within **14 days** either party may, upon giving written notice to the other, apply to the President or the Deputy President of the Law Society for the appointment of a mediator.

22.2 In the event of any mediation in **Clause 22.1** above being unsuccessful then any dispute, controversy or claim arising out of, relating to, or in connection with the Relevant Agreement or the breach, termination or validity thereof shall be finally settled by arbitration. The arbitration will be conducted in London in accordance with the rules set by the Law Society and shall be determined by the appointment of a single arbitrator to be agreed between the parties or failing agreement within **14 days** either party may, upon giving written notice to the other, apply to the President or the Deputy President of the Law Society for the appointment of an arbitrator.

23. LAW AND JURISDICTION

The Relevant Agreement shall be governed by and construed in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the English Courts.