



# RotoMetrics International Ltd

## General Terms and Conditions of Sale

### A. Introductory Provisions

#### 1. General

- 1.1 Rotometrics International Limited (“**Maxcess**”) offers the delivery of products (“**Products**”) and the provision of services (“**Services**”) to its customers (“**Customers**”). The following General Terms and Conditions of Sale, as Maxcess may update from time to time, (“**Terms**”) govern the delivery of Products and / or the provision of Services to Customers by Maxcess.
- 1.2 These Terms shall only apply to Customers who purchase Products and / or Services for purposes relating to their trade, business, craft or profession.
- 1.3 No other terms and conditions of the Customer, including any general terms and conditions, shall apply, irrespective of whether or not Maxcess has expressly rejected them. These Terms shall also govern exclusively even if, with knowledge of the Customer’s other terms and conditions, Maxcess effects or accepts contractual performance without reservation.
- 1.4 These Terms shall also apply to any and all future deliveries to and service provisions for Customers by Maxcess without Maxcess having to expressly refer to them again in each individual case.

#### 2. Offers; Ordering Process and Conclusion of a Purchase Contract

- 2.1 Any offers of Maxcess (for example, on Maxcess’ website or in any quotations provided to Customers) are non-binding, unless expressly designated as binding by Maxcess. The same shall apply in relation to any cost estimates.
- 2.2 Maxcess will deliver the Products and/or provide the Services on the basis of individual purchase contracts (“**Purchase Contracts**”), which shall comprise the applicable purchase order and order acknowledgment and which will incorporate these Terms by reference. A Purchase Contract comes into effect if: (a) the Customer issues a purchase order indicating the Products and/or Services to be purchased and (b) Maxcess accepts the respective purchase order by issuing an order acknowledgment. Purchase orders and order acknowledgments must be issued in writing or text form (including fax, email and EDI) in order to be effective.
- 2.3 Upon receipt of a Customer’s purchase order, Maxcess shall accept the Customer’s purchase order by means of an order acknowledgment, if such order is accepted.
- 2.4 Maxcess has no obligation to accept any purchase orders issued by the Customer. Further, Maxcess undertakes no minimum volume commitments in relation to the Products or Services, unless otherwise agreed.
- 2.5 Maxcess reserves the right to establish a minimum order size or to charge a service fee of GBP 50 for any orders whose value is less than GBP 50.
- 2.6 The provisions set out in Part B, D and E of these Terms shall apply, in addition to the provisions set out in Part A, to a Purchase Contract for the delivery of Products.
- 2.7 The provisions set out in Part C, D and E of the Terms shall apply, in addition to the provisions set out in Part A, to a Purchase Contract for the provision of Services.

#### 3. Quality of the Products and Services; Changes

- 3.1 The Products and Services shall comply with the specifications and requirements explicitly agreed between the Customer and Maxcess (if any).
- 3.2 Statements regarding the quality of the Products or Services indicated in publications of Maxcess, particularly in catalogues, brochures and folders, as well as general information in data sheets, drawings and accompanying quotations or in advertising are non-binding indications, unless expressly stated as binding in

a Purchase Contract. Maxcess does not warrant that the Products or Services will be suitable for any particular purpose, regardless of whether any purpose has been communicated between the Customer and Maxcess.

- 3.3 Where (a) Maxcess provides the Customer with drawings, specifications, documents, specimens, prototypes or other materials (collectively “**Objects**”), which shall form the basis for the subsequent production of the Products to be delivered and (b) the Customer approves such Objects, Maxcess shall not be liable for any defects of the Products caused by incorrect, incomplete, unsuitable or defective Objects approved by the Customer.
- 3.4 Maxcess reserves the right to make changes to the Products or Services to the extent such changes are immaterial for the function and use of the Products or Services.

### B. Delivery of Products

#### 4. Delivery

- 4.1 Maxcess shall deliver the Products FCA (INCOTERMS 2020) from the delivery place indicated by Maxcess (“**Delivery Place**”), unless agreed otherwise with the Customer.
- 4.2 Partial deliveries are permitted to the extent they are reasonable for the Customer, particularly if the delivery of the remaining ordered Products is secured and the Customer does not thereby incur any significant additional costs.
- 4.3 Minor defects, such as defects which do not affect a Product’s functionality, do not affect the Customer’s obligation to accept delivery of Products. In this case, the applicable delivery date or delivery period shall be deemed to have been complied with. The Customer’s claims for defects pursuant to Sec. 6 shall remain unaffected (e.g. the obligation to accept delivery of Products with minor defects does not affect the Customer’s rights in Sec. 6).
5. **Retention of Title**
  - 5.1 Delivered Products shall remain in the ownership of Maxcess until any and all receivables owing to Maxcess by the Customer have been fully paid, or in accordance with Sec. 5.3. If a credit account exists between the parties, then the Products remain in the ownership of Maxcess until all payments owed against the recognized account balance have been fully paid.
  - 5.2 Until title to the Products has passed to the Customer, the Customer shall: (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Maxcess’ property; and (b) maintain the Products in satisfactory condition and keep them (i) insured for their full value against all risks to the reasonable satisfaction of Maxcess, and furnish proof thereof to Maxcess upon request, and (ii) free from any legal process. Maxcess may at any time enter into the Customer’s premises in order to inspect the Products in respect of which title has not passed to the Customer.
  - 5.3 The Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Maxcess receives payment, in which case the Customer sells or uses the Products as principal and not as Maxcess’ agent. The Customer’s ordinary course of business will not include any business undertaken whilst it is insolvent. Title to the Products shall pass to the Customer immediately before resale or reuse, but not before. Maxcess may at any time withdraw the Customer’s right to resell or use the Products in which title has not passed to the Customer. Maxcess may, at any time after withdrawal of the right to resell or use the Products, enter into the Customer’s premises to take possession and/or remove the Products.
6. **Defects**
  - 6.1 The Customer shall inspect the Products upon delivery and notify Maxcess of any defects. Such notification of defects shall be made in writing to the email address stated in the order acknowledgment and the Customer must provide specific details of the defect.



Obvious defects shall be notified to Maxcess without undue delay, but at the latest within one (1) week after delivery. Obvious defects are externally visible defects such as obvious damages in transit as well as obvious deviations of identity, quality or quantity of the Products. Hidden defects shall be notified without undue delay, but at the latest within one (1) week after being discovered, subject to Sec. 6.7. If the Customer fails to notify Maxcess of any defects pursuant to the preceding provisions, the Customer's claims for such defects shall be excluded.

- 6.2 Maxcess may rectify any defects by repairing or replacing the defective Products at its sole discretion ("**Subsequent Performance**"). Any Subsequent Performance shall be made without acknowledgement of responsibility, liability or other obligation in respect of the relevant defect. In case of any Subsequent Performance, the remainder of the original limitation period shall run from completion of the Subsequent Performance.
- 6.3 Maxcess shall bear the direct costs associated with the Subsequent Performance, particularly the costs of transport, journeys, labour and material as well as the reasonable costs for the dismantling and assembly of the Products (together "**Subsequent Performance Costs**"). Upon request, the Customer shall make available to Maxcess the defective Products for inspection purposes at the Delivery Place; the obligation of Maxcess to bear the Subsequent Performance Costs shall remain unaffected. However, the obligation of Maxcess to bear the Subsequent Performance Costs shall be excluded to the extent that the expenditure is increased as a result of the Products being brought to a place other than the Delivery Place; Maxcess may charge such increased costs to the Customer.
- 6.4 If Maxcess determines that Subsequent Performance is not possible, the Customer may rescind the affected Purchase Contract; however the Customer shall not be entitled to rescind the affected Purchase Contract: (a) in case of a minor defect (for example, a defect which does not affect a Product's functionality); or (b) in case of any defect in respect of which Maxcess is not responsible, or the Customer is otherwise not entitled to make a claim under these Terms. In any case, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
- 6.5 Maxcess has no obligation to perform Subsequent Performance, and the Customer may not rescind the affected Purchase Contract, where the defects are caused by:
- (a) any incorrect, incomplete, unsuitable or defective Customer Objects (defined at Sec. 9 below);
  - (b) the compliance with any specifications or requirements of the Customer;
  - (c) unsuitable or improper use of the Products, particularly in the event of a violation of applicable statutory provisions, safety or industry standards, any manual provided with the Product;
  - (d) a modification of the Products by the Customer or use of the Products together with items not provided by Maxcess or which Maxcess has not recommended to be used together;
  - (e) faulty or negligent handling or storage of the Products;
  - (f) extrinsic chemical, electrochemical or electrical influences; or
  - (g) a failure to comply with the notifications of Maxcess with respect to the avoidance of defects.
- 6.6 Further claims for defects of any kind whatsoever are excluded, without prejudice to any claims for damages, which shall be subject to the provisions of Sec. 14.
- 6.7 If the Customer wrongly asserts claims for defects (e.g. if the Products are actually not defective), Maxcess may charge to the Customer the costs incurred by Maxcess in connection with inspecting, collecting, repairing or replacing the non-defective Products.
- 6.8 Subject to Sec. 14, the limitation period for claims for latent defects shall be one (1) year commencing upon delivery of the Products to the Customer.

## 7. Product Liability

- 7.1 The Customer shall duly perform its statutory or otherwise legally required monitoring obligations and inform Maxcess immediately in writing in case it obtains knowledge of or has suspicion of (a) any alleged, potential or actual defects or other product characteristics, which are relevant to product liability (together

"**Product Defects**"), in particular that require or appear to require corrective measures, warning notices, recalls or other service actions ("**Field Measures**"), and/or (b) any related governmental agency orders, judicial decisions and actual or impending third party claims.

- 7.2 The Customer shall obtain and maintain evidence in relation to Product Defects and provide Maxcess with such evidence, and any other relevant information, immediately upon request. This obligation shall continue until potential product liability or recourse claims against Maxcess expire.
- 7.3 Where the Customer is required (or believes it is required) to undertake Field Measures, the Customer shall (a) coordinate potential Field Measures with Maxcess in advance and (b) provide Maxcess with all information in connection with such Field Measures. Maxcess shall, where necessary, provide reasonable assistance to the Customer in regards to any Field Measures at its own expense. The Customer shall however bear the burden of proof that (a) any alleged, potential or actual Product Defect is relevant to product liability and (b) requires Field Measures.
- 7.4 Insofar as it subsequently turns out that (a) the alleged, potential or actual Product Defect had no relevance to product liability or (b) the Product Defect did not require Field Measures, the Customer shall indemnify Maxcess against all costs, expenses and damages in this connection, unless the Customer did not know, or could not reasonably be expected to know, that the Product Defect had no relevance to product liability or did not require Field Measures.
- 7.5 The liability of Maxcess towards the Customer in connection with product recalls triggered by a Product Defect is in any case limited in scope and amount to the coverage of the product liability insurance / recall cost insurance Maxcess has in place.
- 7.6 In case claims are directly asserted against Maxcess by any claimants, the Customer shall indemnify Maxcess against all costs, expenses and damages in connection with a Product Defect as well as any other product liability claims, in particular third party claims, to the extent that such claims originate from an act or omission of the Customer.

## C. Provision of Services

### 8. Services; Service Provision

- 8.1 Maxcess shall provide the Services with reasonable care and skill.
- 8.2 Partial services are permitted to the extent they are reasonable for the Customer, particularly if the provision of the remaining part of the ordered Services is secured and the Customer does not thereby incur any significant extra expense or any significant additional costs.
- 8.3 Where the provision of Services by Maxcess includes the development of physical goods and / or materials whose ownership is to be transferred from Maxcess to the Customer, such goods and / or materials will be considered Products and Sec. 5, 6 and 7 shall apply.
- 8.4 In case Maxcess does not provide the Services in accordance with Sec. 8.1
- (a) In case of a minor defect, the Customer shall not be entitled to refuse the acceptance of the Services
  - (b) In case of any defects of the Services, Maxcess may rectify such defects by remedying the defect or providing the Services again at its sole discretion ("**Rectification**"). Any Rectification shall be made without acknowledgement of responsibility, liability or other obligation in respect of the relevant defect. In case of any Rectification, the remainder of the original limitation period shall run from the completion of the Rectification.
  - (c) If Maxcess determines Rectification is not possible, the Customer may rescind the affected Purchase Contract; however, in case of a minor defect (for example, a defect which does not materially affect provision of a major aspect of the Services), the Customer shall not be entitled to rescind the affected Purchase Contract. In any case, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
  - (d) Maxcess has no obligation to perform a Rectification where the defects are caused by any circumstances described in Sec. 6.5 (a) and (b).

- (e) If the Customer wrongly asserts claims for defects (e.g. if the Services are actually not defective), Maxcess may charge to the Customer the costs incurred by Maxcess in carrying out any Rectification. The same shall apply if Maxcess wrongly grants claims for defects without being obliged to do so.
- 8.5 The limitation period for claims for defects shall be one (1) year commencing upon the acceptance of the Services.

#### D. General Provisions

##### 9. Customer's Obligations

- 9.1 The Customer shall (a) provide Maxcess with all necessary information, documents, objects (e.g. specimens, prototypes etc.) or other materials (collectively "**Customer Objects**") required for the delivery of the Products or the provision of the Services (each a "**Contractual Service**") and (b) provide any and all services agreed with Maxcess (if any) as required for the provision of the Contractual Services.
- 9.2 Maxcess is entitled to use the Customer Objects for the provision of the Contractual Services. The Customer grants Maxcess a (a) non-exclusive, (b) non-transferable, (c) sublicensable and (d) royalty-free licence to use the Customer Objects for the provision of the Contractual Services.
- 9.3 The Customer Objects shall be (a) correct, (b) complete, (c) suitable for the provision of the Contractual Services and (d) free from any defects in material or title. Maxcess shall have no obligation to verify whether the Customer Objects meet the aforementioned requirements.
- 9.4 In case the Customer does not perform its obligations under Sec. 9.1 or does not perform them in due time, Maxcess reserves its right to vary any agreed delivery dates and periods as it deems necessary. Any further rights and claims of Maxcess shall remain unaffected.
- 9.5 Maxcess shall not be liable for defects of the Products or Services caused by any incorrect, incomplete, unsuitable or defective Customer Objects provided.

##### 10. Dates and Periods

- 10.1 The estimated delivery date or period will be advised in the Purchase Contract. Dates and periods are non-binding unless they have been expressly agreed upon as binding. Timing of delivery shall not be of the essence.
- 10.2 Compliance with binding dates and periods by Maxcess requires that (a) all commercial and technical requirements for the Contractual Services under a contract have been clarified, (b) any obligations of the Customer have been fulfilled in a timely manner, notably any Customer Objects to be supplied by the Customer have been received by Maxcess and (c) any official authorisation or release that may be required for the Contractual Services has been issued and (d) any advance payments (if agreed) have been received by Maxcess.
- 10.3 Where Maxcess fails to deliver the Products and / or Services in compliance with any binding dates or periods, any damage claims of the Customer resulting from such delay shall be limited to 0.5% of the (net) contract value of the affected Purchase Contract for each full week of the default, up to a total of 5% of the (net) contract value of the affected Purchase Contract.
- 10.4 The Customer is obliged to accept the Contractual Services on the binding date or when the binding period ends. In case of non-binding dates or periods, Maxcess may inform the Customer that the Contractual Services are ready; the Customer must accept such Contractual Services within two (2) weeks from the receipt of the readiness notice. Maxcess reserves its right to charge the Customer for any costs incurred by it as a result of the Customer's failure to accept the Contractual Services, including any storage costs incurred by Maxcess in regards to any Products.

##### 11. Prices and Payment Terms

- 11.1 All prices for the Products and Services are in GBP plus any applicable value-added tax (VAT) and any additional costs or charges, particularly charges for packaging, freight, insurances and custom duties (if applicable) are not included in the prices and shall additionally be borne by the Customer, unless agreed otherwise by the parties.
- 11.2 Prices for Products shall be agreed on the basis of FCA (INCOTERMS 2020) from the Delivery Place, unless agreed otherwise by the parties.

- 11.3 Unless agreed otherwise by the parties, the following shall apply:

Payments under a Purchase Contract shall be made within thirty (30) days after the Customer has received the invoice issued by Maxcess. All payments shall be made in GBP and without deduction. The Customer shall bear any bank fees or costs incurred otherwise. The date of fulfilment of payment shall be the date on which the respective amount is received in the designated bank account of Maxcess.

- 11.4 In case of partial deliveries or partial services, Maxcess shall be entitled to issue invoices for each partial delivery or partial service.
- 11.5 Maxcess may request from the Customer the provision of security for its payment obligations under a Purchase Contract (e.g. a bank guarantee or letter of credit). All costs and fees associated with the provision of such security shall be borne by the Customer.
- 11.6 Without prejudice to Sec. 21, if the payment deadline is exceeded, the Customer shall be, without any additional reminder, in default of payment. In the event of default of payment, Maxcess shall be entitled to charge default interest at the higher rate of either (i) 9%-points above the Bank of England base rate or (ii) the maximum rate permitted by applicable law. Any further rights and claims of Maxcess due to the Customer's default in payment shall remain unaffected.
- 11.7 Where a Purchase Contract refers to a single currency which is not GBP, the amounts in Sec. 2.5, 11.3 and 14.1 shall be deemed to refer to an amount in that currency which is equivalent to the GBP amount stated. Where a Purchase Contract refers to multiple currencies, the reference to GBP shall remain unaffected.

##### 12. Infringement of Third Party IP Rights

- 12.1 The Products and Services shall not infringe intellectual property rights of third parties ("**Third Party IP Rights**") in the territory which they are provided.
- 12.2 The Customer shall immediately inform Maxcess should third parties assert claims against the Customer due to an infringement of Third Party IP Rights in relation to the Products and/or Services provided by Maxcess.
- 12.3 Where Maxcess deems a Third Party IP Rights claim to be valid, Maxcess may at its sole discretion either obtain at its own expense a right of use in respect of the Third Party IP Rights which is sufficient for the agreed or presumed use, modify the Products or Services in such way that the Third Party IP Rights are no longer infringed, or replace the Products with new ones which no longer infringe the Third Party IP Rights (each, a "**Remediation Action**").
- 12.4 Where Maxcess determines that a Remediation Action is required but not possible, the Customer may rescind the affected Purchase Contract. However, the Customer shall not be entitled to reduce the price of the affected Purchase Contract.
- 12.5 Maxcess has no obligation to perform a Remediation Action in case the infringement of Third Party IP Rights is caused by any circumstances described in Sec. 6.5 (a) to (d).
- 12.6 If the Customer wrongly asserts claims for an infringement of Third Party IP Rights by the Products or Services (e.g. if there is actually no such infringement), Maxcess may charge to the Customer the reasonable costs incurred by Maxcess dealing with the alleged infringement. The same shall apply if Maxcess wrongly grants claims pursuant to this Sec. 12 without being obliged to do so.
- 12.7 The limitation period for claims for an infringement of Third Party IP Rights shall be one (1) year commencing upon (a) the delivery of the Products to the Customer in case such infringement is caused by the Products and (b) the acceptance of the Services in case such infringement is caused by the Services.

##### 13. Maxcess Objects

- 13.1 In case Maxcess makes available to the Customer information, documents, Objects (e.g. specimens, prototypes etc.) or other materials (collectively "**Maxcess Objects**"), Maxcess reserves the right of ownership and copyright, unless agreed otherwise.
- 13.2 The Maxcess Objects may only be used for the contractual purpose and must not be transferred, sublicensed, copied, reproduced or made available to third parties, unless agreed otherwise. Maxcess Objects must be returned to Maxcess immediately upon request.

## E. Final Provisions

### 14. Limitation of Liability

- 14.1 Subject to Sec. 14.2 and 14.4, the liability of Maxcess to a Customer shall in any case be limited to an amount equal to the (net) contract value of the Purchase Contract to which the liability relates, however in any case not more than GBP 50,000 per damage event and GBP 100,000 in aggregate per calendar year.
- 14.2 Subject to Sec. 14.4, the liability of Maxcess for loss of profits, business and goodwill and any indirect or consequential loss shall in any case be excluded.
- 14.3 The limitations and exclusions of liability set out in Sec. 6.5, 7.5, 8.4, 9.5, 10.3 and 12.5 shall remain unaffected.
- 14.4 Nothing in these Terms limits any liability which cannot be limited by law, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) defective products under the Consumer Protection Act 1987.

### 15. Force Majeure

- 15.1 In case Maxcess is hindered in performing any of its obligations under a Purchase Contract due to circumstances such as mobilization, war, civil war, terrorism, unrest, insurgency, embargos, natural catastrophes, epidemics, pandemics, fire, legislative activities, judicial decisions or administrative orders, or other unforeseeable circumstances for which Maxcess is not responsible such as labor disputes, strikes or lawful lockouts, operational or transport disruptions, raw material procurement difficulties, or delays by suppliers (together "**Force Majeure**"), Maxcess will temporarily be relieved from its contractual obligations under the affected Purchase Contract; particularly, any agreed dates and periods will be extended for Maxcess for the duration of the impediment plus a reasonable preparatory period. This shall also apply if Force Majeure arises at a point in time at which Maxcess is in default.
- 15.2 In case the impediment caused by Force Majeure lasts for one (1) month or longer, the parties shall in good faith make any necessary adjustments to the contractual obligations under the affected Purchase Contract in accordance with the then prevailing situation, insofar this is reasonable. If such adjustments are unreasonable for a party or impossible, the aggrieved party may rescind the affected Purchase Contract by giving written notice to the other party.
- 15.3 Sec. 15.1 to 15.2 apply irrespective of whether (a) Force Majeure (e.g. Coronavirus/SARS-CoV-2) has occurred before the conclusion of the affected Purchase Contract and subsequently ended, but reoccurred after its conclusion or (b) the parties expected Force Majeure (e.g. Coronavirus/SARS-CoV-2) to end, but Force Majeure did not end, prior to the performance of the affected Purchase Contract, regardless of whether the causes and (potential) effects of such reoccurring Force Majeure were known at the time of conclusion of such contract.

### 16. Confidentiality; Publications

- 16.1 "**Confidential Information**" means, in whatever form (a) any and all trade secrets of a party as well as (b) any other information which is marked as "confidential" or similar or is confidential by its nature, including any and all specifications, requirements and other technical information.
- 16.2 The party receiving Confidential Information ("**Receiving Party**") shall (a) hold Confidential Information of the party disclosing Confidential Information ("**Disclosing Party**") in confidence and not disclose it to third parties, (b) protect it by taking the same degree of care as it uses to protect its own confidential information, but not less than a reasonable degree of care, (c) disclose Confidential Information only to such personnel having a specific need to know for the purposes of the fulfilment of contractual obligations, provided however that they are bound by contractual or legal confidentiality obligations no less restrictive than this Sec. 16 and (d) use Confidential Information only so far as this is necessary for the purpose of a contract and (e) comply with all applicable laws and regulations in relation to the receipt and use of Confidential Information.
- 16.3 Neither party shall (a) carry out any observations, examinations, deconstructions or tests in relation to Confidential Information nor (b) otherwise decompile, disassemble, reverse engineer, analyse or test any Confidential Information.

- 16.4 The foregoing obligations shall apply for a period of five (5) years after termination or expiry of the relevant Purchase Contract. Longer confidentiality obligations under applicable laws shall remain unaffected.
- 16.5 The foregoing obligations shall not apply to information that (a) has been in the public domain at the time of its disclosure, (b) enters after disclosure into the public domain through no unauthorized act of the Receiving Party, (c) was already rightfully known to the Receiving Party without any obligation of confidentiality prior to its receipt from the Disclosing Party, (d) is rightfully received by the Receiving Party from a third party without obligation of confidentiality, (e) is independently developed by the Receiving Party without reference to, or use of any Confidential Information, (f) is required to be disclosed in accordance with applicable laws, regulations, court, judicial or other governmental order, provided that the Receiving Party informs the Disclosing Party hereof immediately in writing and limits the disclosure to the extent possible or (g) is prior approved for disclosure in writing by the Disclosing Party.
- 16.6 The Receiving Party shall immediately return or destroy Confidential Information as well as all copies thereof (respectively delete if received in digital form) on termination or expiry of the relevant Purchase Contract. The aforementioned obligations shall not apply, in case the Receiving Party is obliged to keep the Confidential Information or copies thereof under applicable laws.
- 16.7 Without the prior written approval of Maxcess, the Customer shall not make reference to Maxcess in publications or publicly refer to or advertise the relationship with Maxcess.

### 17. Subcontractors

Maxcess is free to engage subcontractors for the performance of its contractual obligations under a Purchase Contract without consent.

### 18. Set-Off and Retention Rights

The Customer will not be entitled to set-off any amounts payable under a Purchase Agreement against amounts that may be owing by Maxcess.

### 19. Assignment

- 19.1 The Customer may not assign its rights or obligations, either in whole nor in part, without the prior written approval of Maxcess. Maxcess is free to assign or novate its rights and/or obligations under a Purchase Contract, whether in whole or in part, without consent. The Customer will enter into any documents reasonably requested by Maxcess in order to give effect to such assignment or novation.

### 20. No Waiver

No failure or delay by Maxcess to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 21. Term and Termination

- 21.1 Each Purchase Contract shall come into effect in accordance with Sec. 2.2 and shall expire when the Products and / or Services described therein have been provided.
- 21.2 Without affecting any other right or remedy available to it, Maxcess may terminate any Purchase Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay an amount due under a Purchase Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the Customer commits a material breach of any of these Terms or any term of a Purchase Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (c) the Customer takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck

off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this Clause 22.1(c);

- (d) the Customer suspends or ceases, or threatens to suspend or cease, carrying on business; or
- (e) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to meet its obligations under these Terms and / or a Purchase Contract is in jeopardy.

21.3 Termination or expiry of a Purchase Contract shall not affect:

- (a) any rights and remedies that have accrued prior to the applicable termination or expiry date;
- (b) any provision of a Purchase Contract or these Terms that expressly or by implication are intended to continue in force on or after termination or expiry.

21.4 On termination, any amounts owed to Maxcess in respect of the applicable Purchase Contract shall become immediately due and payable. Maxcess reserves its right to charge the Customer in respect of any amounts it has incurred up to the termination date in performing its obligations under the applicable Purchase Contract, irrespective of whether the Products or Services to which such amounts relate have been provided to the Customer.

## 22. **Governing Law; Place of Jurisdiction**

22.1 These Terms, each Purchase Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. All disputes arising between the parties shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. No award or procedural order made in the arbitration shall be published. The seat of the arbitration shall be London, England. The language of the arbitration shall be English. This arbitration agreement is governed by the law of England and Wales.

## 23. **Miscellaneous**

23.1 No changes or modifications of these Terms shall be effective unless agreed by Maxcess in writing. The same shall apply to the cancellation of this written form requirement.

23.2 Should individual provisions of the Terms be or become invalid, the validity of the remaining provisions shall not be affected thereby.

23.3 A person who is not a party to these Terms or a Purchase Contract cannot enforce these Terms or a Purchase Contract, including under the Contracts (Rights of Third Parties) Act 1999.

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