

# UK SUPPORT TERMS & CONDITIONS



## 1 Terms

1.1 These are the standard terms and conditions of Audax Global Solutions a company registered in England and Wales (registration number 6154507) ('Audax') for the provision of support services to a Customer pursuant to, and governing, any Order Form for Supported Equipment and/or Supported Software.

1.2 For the purposes of these terms and conditions the following expressions shall have the following meanings:

'Customer' shall mean a purchaser from Audax of Supported Equipment and/ or Supported Software;

'Order Form' shall mean

- (i) a mutually signed agreement, OR
- (ii) a written acceptance by a Customer of a quotation issued by Audax, OR

(iii) an order acknowledgement issued by Audax upon acceptance of a purchase order issued by Customer to purchase and supply goods services and /or software licences and which include the provision of support services for Supported Equipment and / or Supported Software and / or Audax Implementation Services to a Customer in accordance with these terms and conditions;

'Product Care Plan' a service plan which has either been purchased in respect of the Supported Equipment or which applies to that equipment; a Product Care Plan consists of:

- the Audax Warranty or
- Audax Warranty Plus;

'Audax Warranty' **Audax's standard warranty** terms applicable to the Supported Equipment either (i) when purchased new or (ii) when an extension of that warranty has been purchased and for which the applicable Support Fee had been paid by a Customer; the terms and limitations applicable are those provided with the relevant Supported Equipment (and which can be provided upon request);

'**Audax Warranty Plus**' an enhanced product Warranty maintenance service as specified in clause 2 below or any extension thereof that has been purchased and for which the applicable Support Fee had been paid by a Customer and subject to these terms and conditions;

'Audax Implementation Services' services which have either been purchased by Customer from Audax or are agreed in writing to be provided by Audax and which in either case are as specified in the Order Form or otherwise agreed in writing by the parties

'**Hardware Support Plan**' shall mean an inspection, repair or replacement service for Supported Equipment that is not subject to Audax Warranty or Audax Warranty plus for which a Support Fee is payable for each

Support Case;

'**Software Support Plan**' the support services provided by Audax as specified in clause 4 below and subject to these terms and conditions;

'**Support Case**' a Support Request by a Customer for support services under a current and valid Product Care Plan, Service Plan or Software Support Service and which claim is determined by Audax to be potentially valid in accordance with clause 4; 'Support Fee' the charges made from time to time by Audax for the support services or warranty extensions specified by and agreed with the Customer such as the initial fault assessment fee;

'**Support Period**' the period of cover applicable to the Plan or Support Service purchased by the Customer;

'Support Request' a request by a Customer for support services under a Product Care Plan or the Software Support Service that may become a Support Case;

'Supported Equipment' only the equipment which is sold by Audax to a Customer and which Audax agrees to support;

'**Supported Software**' software which is licensed by Audax to a Customer and which Audax agrees to support, the terms of which license are set out separately in a written agreement entered into between Audax and Customer.

1.3 Equipment purchased as new by a Customer from Audax is subject to and has the benefit of the Audax Warranty. There is no Support Fee for the duration of the Audax Warranty (unless that warranty is extended in accordance with clause 1.7).

1.4 Provided the Customer duly pays the appropriate Support Fee for the level of Product Care Plan, Audax shall for the Support Period provide the Customer with support services applicable to the Product Care Plan for which the Customer has paid in accordance with these terms for the Supported Equipment.

1.5 Provided the Customer duly pays the appropriate Support Fee for the Software Support Service, Audax shall for the Support Period provide the Software Support Service applicable to the Supported Software to the Customer.

1.6 Audax may increase any Support Fee by giving the Customer reasonable notice of the increase. Unless otherwise agreed in writing, any such increase will apply to any purchase by the Customer that occurs after such notice of (a) any renewal or extension of a Product Care Plan or the Software Support Service in accordance with clauses 1.7 or 1.8 and (b) any new Product Care Plan or the Software Support Service.

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1.7 Subject to Audax's agreement and prior to the end of the Support Period (unless otherwise agreed in writing with Audax), the Customer may, in respect of Supported Equipment and by payment of the appropriate Support Fee to Audax, (a) purchase a renewal or extension of its existing Product Care Plan or (b) purchase a lower level of Product Care Plan. Any such Product Care Plan purchased shall commence at the expiry of the current Support Period applicable to the Supported Equipment. The Customer cannot upgrade its Product Care Plan to a higher level of support service than its current Product Care Plan. Audax will have no obligation to extend or renew a Product Care Plan if such extension would cause the relevant Support Period to extend beyond the fifth anniversary of the date the Supported Equipment was purchased.

1.8 If Supported Equipment is defective or damaged and is not eligible for repair under a current and valid Audax Care Plan, then customer may purchase a Service Plan from Audax at Audax's then published rates.

1.9 Subject to Audax's agreement and prior to the end of the Support Period (unless otherwise agreed in writing with Audax), the Customer may, in respect of Supported Software and by payment of the appropriate Support Fee to Audax purchase a renewal or extension of its existing Software Support Service. Any such Software Support Service purchased shall commence at the expiry of the current Support Period applicable to the Supported Software.

## **2 Audax Warranty Plus cover**

2.1 If and for so long as any Supported Equipment is the subject of Audax Warranty Plus, Audax shall, in accordance with this clause 2 but subject to clauses 4 and 5:

2.1.1 repair or replace such Supported Equipment which is defective or damaged on the same terms conditions limitations and exclusions as would apply to that equipment as if it was the subject of a Audax Warranty and with only such changes as may be reasonable to give effect to this clause 2.1.1; and

2.1.2 repair or replace Supported Equipment that is damaged as a result of normal operational use, on which subject the Customer's attention is drawn to clause 2.2.

2.2 For the avoidance of doubt events including but not limited to the following are excluded from what constitutes normal operational use:

2.2.1 Contamination of Supported Equipment with body fluids, body waste or other organic matter;

2.2.2 Immersion of Supported Equipment in water or other fluids;

2.2.3 Use of Supported Equipment in connection with wide-scale civil disobedience and riots;

2.2.4 Exposure of Supported Equipment to environmental conditions outside of those specified for the operation or storage of such Supported Equipment;

2.2.5 Wilful or persistent misuse or improper use of the Supported Equipment or operation of the Supported Equipment in contravention of any operating instructions;

2.2.6. in the event that the capacity of any battery contained within the Supported Equipment falls below seventy percent (60%) of specified capacity for such battery (with reference to the battery capacity and / or life stated in the specification for the Supported Equipment), or if the battery leaks, then Audax will replace such battery.

2.2. Audax shall have no obligation under clause 2.2.6 if (i) the battery has been charged by a battery charger not specified or approved by Audax for charging the battery; (ii) any of the seals on the battery are broken or show evidence of tampering; or (iii) the battery has been used in equipment other than the Audax device for which it is specified.

and Audax shall have no obligation under clause 2.1.2 to repair or replace Supported Equipment that is damaged by such events.

## **3 Support Requests and Support Cases**

3.1 If Supported Equipment or Supported Software malfunctions, the Customer may notify Audax of a Support Request either online through Audax's website (currently at <http://www.Audaxuk.com>) or by telephoning the Audax support team on any support telephone number advertised from time to time on Audax's website, or by email to [support@Audaxuk.com](mailto:support@Audaxuk.com) and quoting any applicable Product Care Plan reference number or other Order Form reference number, and other information reasonably requested by Audax.

3.2 The Audax support team shall review the Support Request and determine in its reasonable opinion whether the Support Request is potentially valid under any applicable Product Care Plan, Service Plan or the Software Support Service. If the Service Request is determined to be potentially valid it shall become a Support Case (subject to the terms of clauses 5, 6 and 7 below).

3.3 Audax shall provide support services in respect of Support Cases for Supported Equipment in accordance with clause 5 below.

3.4 Audax shall provide support services in respect of Support Cases for Supported Software in accordance with clause 6 below.

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## 4 Support Services for Supported Equipment

4.1 The Audax support team shall use reasonable endeavours to assist the Customer to remedy the malfunction contained in a Support Case by giving advice by email, online (via the FAQs section) or over the telephone.

4.2 If the malfunction contained in a Support Case cannot be corrected by the support team giving advice in accordance with clause 5.1 above, the Customer shall (if not already done) complete and submit an online fault report through Audax's website (currently at <http://www.Audaxuk.com> ). The Customer shall be issued with a unique return merchandise authorization ('RMA') number and The Customer shall ship the item(s) to Audax. Audax is unable to accept returns of Supported Equipment that has been contaminated with body fluids, body waste or other organic matter and Customer shall ensure that any such contamination is professionally removed prior to submitting a fault report for such Supported Equipment.

4.3 Upon receipt of the Supported Equipment Audax shall inspect such equipment and determine in its reasonable opinion whether or not the Support Case is valid under any applicable Product Care Plan or the equipment eligible for repair under a Service Plan. Fees shall apply at Audax's then published rates for inspection of such equipment under a Service Plan. If no malfunction is found by Audax, Audax shall notify the Customer accordingly and make the Supported Equipment in question available for collection by the Customer or, at its absolute discretion, return the Supported Equipment to the Customer.

4.4 If the equipment is determined to contain a malfunction and the Support Case is valid under an applicable Product Care Plan, Audax shall, at its absolute discretion, EITHER (i) repair or replace such equipment (or the defective part), and return the Supported Equipment to the Customer (and 'repair or replace' may be fulfilled by Audax by providing functionally equivalent or superior replacement product); OR (ii) credit or refund a sum against the original purchase price of such equipment based on duration, age, use. Audax's decision is final in this instance.

4.5 If the equipment is determined to contain a malfunction and the equipment eligible for repair under a Service Plan, Audax shall repair such equipment (or the defective part), and return the Supported Equipment to the Customer. If Audax, at its absolute discretion, determines that such equipment is beyond economic repair,

Audax shall inform Customer and, at Customer's request, Audax shall EITHER (i) subject to payment of an additional fee (at Audax's then published rates) by Customer, replace such equipment (and 'replace' may be fulfilled by Audax by providing functionally equivalent or superior replacement product); OR (iii) return such equipment (without repair) to Customer in which event Audax's then published rates for inspection of such equipment under a Service Plan shall only apply.

4.6 If Audax determines that the Support Case is not valid, Audax shall notify the Customer accordingly and may agree to repair the Supported Equipment in question for the applicable fee or make the Supported Equipment in question available for collection by the Customer.

4.7 Repair or replacement under the terms of the applicable Product Care Plan does not give rise to an extension or a new starting of the period of such Product Care Plan. If Audax repairs or replaces the product then the repaired or replaced product shall be warranted or covered for the remaining period of the existing Product Care Plan.

4.8 In the event that (a) Audax determines that a replacement for Supported Equipment is required under the terms of Product Care Plan and (b) the relevant Support Request is made on a date later than the third anniversary of the date the Supported Equipment was purchased then Audax reserves the right to replace the Supported Equipment with an equivalent product from its then current range.

## 5 Software Support Service

5.1 For Supported Software that is the subject of a Software Support Service, Audax shall, in accordance with clause 6 but subject to clause 7, provide software updates and remedy software malfunctions.

5.2 If the Customer has a Software Support Service, Audax shall (subject to clause 6.3) from time to time notify the Customer by email to the Customer's known or previously designated or used contact email address for support purposes details of a new version of the Supported Software (this new software may correct faults, add functionality or otherwise amends or upgrade the supplied software). The email notification of new versions will include instructions for implementing the new release. Three months after a new version has been issued Audax may withdraw the Software Support Service for any previous version of the Supported Software.

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5.3 Audax is not obliged to make available to the Customer any new major release of Supported Software which from time to time is publicly marketed and offered by Audax in the course of its normal business (that is to say a major release which contains such significant differences from any previous release as to be generally accepted in the marketplace as constituting a new product).

5.4 The Customer may contact Audax's support centre (at the e-mail address and telephone number specified on Audax's website) when Supported Software fails to function as described in the user documentation and will, if requested by Audax, provide written details of the malfunction in a detailed form to be submitted through the Customer's known or previously designated or used contact email address for support purposes. The information provided will determine which priority level the call will be allocated to. Audax's support centre will operate between 09:00 to 15:00 Monday to Friday excluding public holidays (herein after referred to as "Business Hours").

5.5 Audax will allocate the Customer's service needs in accordance with the following Incident Priority Levels:-

5.5.1 P1 - The Supported Software is not operational and that failure is severely impacting on the Customer's business.

5.5.2 P2 - The Supported Software is operational but its functionality is seriously affected. There may be a temporary solution but implementing the temporary solution will be time consuming and will adversely affect that part of the Customer's business dependent on the Supported Software.

5.5.3 P3 - The Supported Software is operational but the Customer's business has been adversely affected. The Customer's business that is dependent on the Supported Software can continue for a reasonable amount of time before the problem becomes critical. A temporary solution is available and is acceptable to the Customer.

5.5.4 P4 - The Supported Software is operational and the Customer wants to submit an enhancement request or has queries or requires further information regarding the Supported Software.

5.6 After responding to the call and gathering such additional information as Audax requests, Audax will develop and communicate a plan for addressing the support request which may involve the providing of a fix, developing a workaround, or providing an alternative solution.

5.7 The Customer must provide reasonable assistance to Audax in verifying, replicating and/or correcting malfunctions to the Supported Software (which may include providing Audax with remote and/or physical access to the Customer's computer system). Remote access will include, but not be limited to, modem access or access via internet connection. Audax will determine if and when on-site support is necessary.

5.8 Audax will investigate and use commercially reasonable efforts to resolve Supported Software problems reported by the Customer through the Customer's known or previously designated or used contact email address for support purposes (but not otherwise). Supported Software problem resolution may include, but is not limited to, an explanation or clarification of the functional operation of the Supported Software, suggested alternative uses of the Supported Software, a temporary method of circumventing the Supported Software problem or a recommendation of the installation of a maintenance version which corrects the Supported Software problem.

5.9 Audax is required only to use commercially reasonable efforts to provide timely resolutions to Supported Software problems.

5.10 Should Audax determine that the Customer's service needs fall outside the scope of the support services outlined in this clause, then such services will constitute additional software services to be provided on a separate fee arrangement.

5.11 Prior to proceeding with a chargeable service, Audax and the Customer will agree in writing on the service to be provided and the fee that will be charged in respect of that service.

## **6 Customer obligations and exclusions to Product Care Plans and Software Support Services**

6.1 Notwithstanding any other provision in these Support Terms and Conditions, the Customer undertakes that it shall:

6.1.1 where a malfunction is reported provide Audax with all such information as Audax may reasonably require (including, without limiting the generality of this provision, in the case of intermittent malfunctions logs of the times and circumstances of the malfunction and access to any monitoring or other equipment interfaced or otherwise used in connection with the Supported Equipment or Supported Software in question);

6.1.2 comply with the operating manual supplied with the Supported Equipment and Supported Software and permit only Audax trained and competent personnel to use the Supported Equipment or Supported Software and ensure that they follow operating instructions issued by Audax from time to time;

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6.1.3 comply with the terms of the Audax Warranty;  
6.1.4 notify Audax promptly if the Supported Equipment or Supported Software is discovered to be malfunctioning;

6.1.5 provide Audax with any information that is reasonably requested in connection with a Support Request or a Support Case;

6.2 Audax has no liability or obligation to provide the Software Support Service in respect of Supported Software operated on an operating system (or a version of an operating system) for which it was not designed to operate or which is operated on an unlicensed or unsupported operating system of hardware.

6.3 All support services are each subject to a reasonable user limitation, that is to say that such support services will not be provided in respect of defects or damage resulting from deliberate or grossly negligent action or omission that a reasonable user would expect to result in defects or damage to any of the Supported Equipment or Supported Software or repetition of any action or omission that is known by Customer previously to have damaged Supported Equipment or Supported Software. Audax has absolute discretion as to the way in which it applies this reasonable user limitation. Audax will use reasonable endeavours to provide support service as soon as is reasonably practical, but gives no guarantee as to the timescales within which malfunctions will be repaired or Supported Equipment or Supported Software despatched to the Customer (and any such guarantee may not be relied on by Customer unless it is confirmed in writing by a member of Audax's staff referring to this clause 7).

6.4 Where Audax is requested to provide the support services in circumstances where it is established that the Customer has not complied with the requirements of clause 7 or that Audax was alleviated from the obligation to provide such support by these terms, Audax may charge, and the Customer shall pay, Audax's fees and costs in respect of that work.

6.5 Audax may communicate with the Customer using the Customer's known or previously designated or used contact email address for support purposes and any message sent to such email address shall be deemed delivered to Customer at the time of sending (if sent during usual work hours) or at 10am on the next working day following the day on which it was sent.

## **7. Audax Implementation Services**

7.1 The provision by Audax of Audax Implementation Services shall be subject to Customer complying with and performing any pre-conditions or obligations specified by Audax as set out in the Order

Form or as otherwise agreed in writing between the parties ("Customer Implementation Obligations").

7.2 Subject to Customer fully performing the Customer Implementation Obligations, Audax shall perform the Audax Implementation Services with reasonable care and skill.

## **8 Term**

8.1 Unless otherwise agreed in writing, the term of the Support Period shall be as set forth in the Order Form or other any contract incorporating these terms or any extension thereof, commencing on the date of such Order Form or other contract.

Without prejudice to any rights that have accrued under these terms or any of rights or remedies contained in them, Audax may terminate the Product Care Plan or the Software Support Service and/or any extensions thereof with immediate effect by giving written notice to the Customer if the Customer:

8.1.1 fails to pay any amount due under any Order Form or other contract incorporating these terms on the due date for payment;

8.1.2 enters or proposes any formal insolvency procedure or commences negotiations with all or any class of its creditors with a view to rescheduling or compromising any of its debts;

8.1.3 has a petition filed, notice given, resolution passed or order made, for or in connection with the appointment of a receiver, administrator or for its winding up;

8.1.4 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

8.1.5 is subject to a change of control of ownership supervision or management as determined by Audax on the basis of the circumstances known to Audax.

## **9 Liability and exclusions**

9.1 Audax does not exclude or limit liability to the Customer for:

9.1.1 fraud or fraudulent misrepresentation; or

9.1.2 death or personal injury caused by negligence.

9.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.

9.2 Subject always to clause 10.1, the Customer agrees that Audax shall not be liable whether in contract, tort (including for negligence and breach of statutory duty),

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misrepresentation (whether innocent or negligent), restitution or otherwise, for:

9.2.1 any loss (whether direct or indirect) of profits, business, revenue, or goodwill;

9.2.2 loss or corruption (whether direct or indirect) or breach of security of data or information; or

9.2.3 any special, indirect or consequential loss, costs, damages, charges or expenses however arising whether under these terms or otherwise.

9.3 Subject always to clause 10.1 and 10.2, Audax's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of any Order Form or other contract incorporating these terms shall be limited to the value of the Supported Equipment that malfunctions or the value of the licences granted to the Customer in respect of Supported Software .

## 10 Data Protection

10.1 Each party agrees that, in the performance of its respective obligations under this agreement, it shall comply with the provisions of the European Union General Data Protection Regulation 279/2016, together with any other replacement law applicable to the protection of personal data in effect from time to time (together, the "Data Protection Laws"), in each case to the extent it applies to each of them. Where used in this clause 11, the expressions process, personal data, data processor and data subject shall bear their respective meanings given in Data Protection Laws.

10.2 For the purposes of Data Protection Laws, where Audax processes any personal data for Customer pursuant to this agreement (Personal Data) Customer shall be the data controller and Audax shall be the data processor.

10.3 Audax shall process the Personal Data only in accordance with these terms and Customer's instructions (provided that such instructions are within the scope of Audax's obligations under these terms) unless otherwise required by law or any other regulatory requirements. Where any such instructions given by Customer result or might result in any increase in costs for Audax in providing the services that are the subject of these terms, Audax is entitled to charge reasonable fees for those affected services by such amount as will compensate it for the increase in costs. Audax shall give reasonable prior notice in writing to Customer regarding such fees. Customer may change its instructions immediately on receiving such written notice provided that Audax has not yet incurred any additional costs in seeking to comply with Customer's instructions.

10.4 Customer warrants that:

10.4.1 all Personal Data provided by or on behalf of Customer shall have been lawfully obtained and retained by Customer (or its nominated third party);

10.4.2 all necessary consents and data processing notices have been provided in relation to the processing of the Personal Data;

10.4.3 Customer will not do or omit to do anything which will place Audax in breach of any Data Protection Laws;

10.4.4 Customer only processes personal data in accordance with the relevant principles under the Data Protection Laws;

10.4.5 Customer is lawfully entitled to provide, procure the provision of or authorise Audax to obtain (as the case may be) the Personal Data for the purposes envisaged by this Agreement; and

10.4.6 any processing of the Personal Data by Audax in accordance with clause 11.3 shall not contravene any Data Protection Laws or infringe the rights of the data subject or any third party;

10.5 Without prejudice to any other right or remedy Audax may have, Customer shall indemnify, keep indemnified and hold Audax harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against Audax arising from or in connection any breach by Customer of this clause 11, as a result of Audax processing the Personal Data in accordance with clause 10.3 and/or any breach of Data Protection Laws by Customer whether or not such matters were foreseeable or foreseen at the date of this Agreement.

10.6 Audax warrants that it shall:

10.6.1 not under any circumstances transfer or allow the transfer of the Personal Data outside the UK or European Economic Area other than as permitted by Data Protection Laws (or as otherwise authorised in writing by Customer);

10.6.2 implement such security measures as required to enable Personal Data to be processed in compliance with obligations equivalent to those imposed on Customer by the Data Protection Laws;

10.6.3 notify Customer without undue delay on becoming aware of a personal data breach and cooperate with Customer to resolve such issue; and

10.6.4 at Customer's expense, provide such assistance as Customer may reasonably require to assist it to comply with its obligations to keep the Personal Data secure, allow it to inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with a regulatory authority regarding the processing of Customer Personal Data and/or respond to requests made by data subjects pursuant to Data Protection Laws.

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10.7 Customer authorises Audax to appoint sub-processors from time to time provided that Audax shall notify Customer of any intended changes concerning the addition or replacement of other sub-processors and shall impose upon any sub-processor (and procure any sub-processor's compliance with) the terms of this clause 11 as if the processing being carried out by the sub-processor was being carried out by Audax (and Audax shall be liable for the acts and omissions of such sub-processors as if they were Audax's own acts and omissions under this Agreement).

10.8 From time to time during the term of this Agreement Audax shall (upon written request from Customer):

10.8.1 provide details in writing of its data processing activities in respect of Personal Data; and

10.8.2 on reasonable notice allow Customer to audit its compliance with these terms (subject to any reasonable requirements or restrictions that Audax may impose to safeguard the personal data it holds on behalf of other customers and/or avoid unreasonable disruption to Audax's business).

10.9 Each party shall:

10.9.1 comply with all Data Protection Laws;

10.9.2 co-operate with any regulatory authority for data processing; and

10.9.3 keep such records of processing of Personal Data as required under Data Protection Laws.

10.10 On termination of this agreement Audax shall return or delete all Personal Data (and delete any copies, save to the extent retention is permitted by law or any regulatory requirements or to safeguard the interests of Audax).

## **11 Nature of Contract**

11.1 Notwithstanding anything to the contrary in this agreement Audax shall have no obligation to repair or replace more than:

11.1.1 seven percent (7%) per annum of the total quantity of Supported Equipment subject to an extension of Audax standard manufacturer's fault Warranty;

10.1.2 twenty percent (20%) per annum of the total quantity of Supported Equipment subject to Audax Warranty Plus; or

11.2 Audax's sole obligation in respect Supported Equipment subject to an extension of Audax standard manufacturer's fault Warranty or Audax warranty Plus cover shall be to repair or replace the Supported Equipment subject to these terms. Audax shall have no obligation to credit or refund the purchase price of, or pay Customer any other financial compensation in respect, of such Supported Equipment.

11.2 Audax's sole obligation in respect Supported Equipment subject to an extension of Audax standard manufacturer's fault Warranty or Audax warranty Plus cover shall be to repair or replace the Supported Equipment subject to these terms. Audax shall have no obligation to credit or refund the purchase price of, or pay Customer any other financial compensation in respect, of such Supported Equipment.

11.3 For the avoidance of doubt, the Order Form or these Terms do not create a contract of insurance. By purchasing an extension of Audax standard manufacturer's fault Warranty or Audax Warranty Plus cover, Customer is making a pre-payment for anticipated and foreseeable future repair services to be rendered by Audax according to these terms and subject to the limits set out in clause

## **12 Entire agreement**

12.1 These terms, together with the Order Form or other contract incorporating these terms and other Audax terms of sale, the software license agreement governing the Supported Software and the Audax Warranty, comprise the entire agreement between the parties relating to the Product Care Plan and the Software Support Service and the provision of any related support services and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

12.2 Each party acknowledges that in entering into any Order Form or other contract incorporating these terms it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms.

12.3 Each party agrees that its only liability in respect of those representations and warranties that are set out in these terms (whether made innocently or negligently) shall be for breach of contract.

## **13 General**

13.1 Audax shall not be in breach of any Order Form or other contract incorporating these terms nor liable for delay in performing, or failure to perform, any of its obligations under these terms if that delay or failure results from events, circumstances or causes beyond its reasonable control.

13.2 Nothing in these terms operates to transfer any intellectual property rights or industrial know-how from Audax.

13.3 Any Order Form or other contract incorporating these terms is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under that agreement without the prior written consent of the other party/s

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ave that Audax shall be entitled to subcontract the administration, delivery or performance of the services (in whole or in part) included within any Product Care Plan or the Software Support Service; provided, however, that no such consent shall be required for Audax to subcontract its operation and conduct of maintenance and support services (or any of them) to independent contractors or for either party to assign that agreement to affiliates and successors in interest upon written notice of any such assignment to the other party. Any purported assignment in violation of this provision shall be void and of no effect. Any permitted assignee shall assume all obligations of its assignor under such agreement. For purposes hereof, an "affiliate" means, with respect to a party, any entity that controls or is controlled by such party, or is under common control with such party (an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty percent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation)).

13.4 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13.5 No variation of these terms shall be effective unless it is in writing (including by email) and approved by the parties. Notwithstanding the foregoing, at the request of Audax, Audax and the Customer shall in good faith enter into discussions to promptly and diligently secure such changes or additional provisions to these conditions as may be considered by Audax to be necessary or reasonable to give effect to any future legislation or other law (and to clarify or to provide for the obligations of either or both parties. The parties shall record their subsequent agreement of such matters in writing and which agreement shall be effective as a variation to these conditions. If the parties fail to reach any such agreement within a reasonable period (to be determined by Audax), Audax shall be entitled to vary these terms and conditions as Audax shall reasonably consider necessary to ensure compliance with any future or subsequent legislation or other law as described above. Such variation shall become effective upon notice by Audax to the Customer. It is agreed that such variations may impose new obligations on each of the parties but only to the extent that Audax considers necessary or reasonable, and that compliance with such legislation is of mutual benefit to the parties.

13.6 If any court or competent authority finds that any provision of these terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other

provisions of these terms shall not be affected.

13.7 If any invalid, unenforceable or illegal provision of these terms would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

13.8 Any Order Form or other contract incorporating these terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13.9 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any contract incorporating these terms or its subject matter or formation (including non-contractual disputes or claims).