

## TERMS AND CONDITIONS OF SALE

The following are the terms and conditions under which Softiron sells Equipment and supplies (subject to applicable licence terms) Software required to operate the Equipment.

### 1 Interpretation

The following definitions apply in these conditions:

**Contract:** the Customer's order (whether placed by email, online or otherwise), as acknowledged and accepted by Softiron together with these conditions.

**Customer:** the person, firm or company who purchases Equipment from Softiron.

**Equipment:** the equipment agreed in the Contract to be purchased by the Customer from Softiron (including without limitation any part or parts of it).

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Softiron:** means Softiron Limited, a company registered in England (no. 08172199) with registered address at 1 Venture Road, Southampton Science Park, Chilworth, Hampshire, SO16 7NP, United Kingdom.

**Software:** any operating system or controller software pre-installed on or embedded in the Equipment.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

### 2 Application of Conditions

2.1 These conditions shall apply to sales by Softiron to customers in the UK and other countries excluding the United States of America. Softiron equipment ordered by US customers is supplied by Softiron Inc. (a company incorporated in California and is subject to Softiron Inc.'s separate conditions of sale).

2.2 These conditions shall be incorporated in the Contract and shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Softiron unless in writing and signed by a duly authorised representative of Softiron.

### 3 Contract Creation

3.1 Each order or acceptance of a quotation for Equipment by the Customer and any order placed by the Customer on Softiron's website shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.

3.2 A binding contract shall not come into existence between Softiron and the Customer unless and until Softiron issues a written order acknowledgement to the Customer, or Softiron delivers the Equipment to the Customer (whichever occurs earlier). Orders placed via Softiron's website are subject to availability and if accepted shall be acknowledged by email.

3.3 No order which has been acknowledged by Softiron may be cancelled by the Customer, except with the agreement in writing of Softiron and provided that the Customer indemnifies Softiron in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Softiron as a result of cancellation.

3.4 If Softiron delivers the Equipment in instalments, each separate instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

### 4 Quantity and Description

4.1 The quantity and description of the Equipment shall be as set out in Softiron's acknowledgement of order or (if there is no acknowledgement of order) quotation.

4.2 Any typographical, clerical or other error or omission in any sales literature, website, quotation, price list, acceptance of offer, invoice or other document or information issued by Softiron shall be subject to correction without any liability on the part of Softiron.

4.3 Softiron reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Softiron is not the manufacturer of the Equipment, Softiron shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Softiron.

4.4 Softiron's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

### 5 Prices

5.1 The price of the Equipment shall be Softiron's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Softiron's price list current at the date of acceptance of the order. Softiron's published export price list shall apply to exports of the Equipment as appropriate. Bespoke quotations shall, unless otherwise stated, be valid for a period of 30 days.

5.2 The price for sales made through Softiron's website shall be that specified (if any) on the website. However, Softiron reserves the right to decline orders placed via its website if the pricing on the website is out of date or for alternative commercial reasons. In such circumstances, Softiron will notify the Customer accordingly.

5.3 If the Customer places an order for Equipment for delivery more than 3 months from the date of the Order, Softiron reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to Softiron which is due to market conditions or any factor beyond the control of Softiron (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Softiron adequate information or instructions.

5.4 Unless otherwise specified, all prices are in British pounds sterling and are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties. Where Softiron is required by the applicable delivery terms to arrange shipping and/or insurance, the cost of doing so shall be added to the price.

### 6 Payment

6.1 Subject to any special terms agreed in writing between the Customer and Softiron, Softiron may invoice the Customer for the price of the Equipment on or at any time after delivery of the Equipment, unless:

6.1.1 the Equipment is to be collected by the Customer; or

6.1.2 the Customer wrongfully fails to take delivery of the Equipment, in which case Softiron shall be entitled to invoice the Customer for the price at any time after Softiron has notified the Customer that the Equipment is ready for collection.

6.2 The terms of payment shall be:

6.2.1 in the case of Equipment delivered in the United Kingdom, within 30 days of the date of Softiron's invoice, whether or not delivery has taken place or title in the Equipment has passed to the Customer;

6.2.2 in the case of sales to customers outside the United Kingdom, within 30 days of the date of Softiron's invoice or, if Softiron so requires, in advance of shipment or by irrevocable letter of credit opened by the Customer in favour of Softiron and confirmed by a bank in England acceptable to Softiron.

6.3 Notwithstanding clause 6.2, where the Customer purchases Equipment through Softiron's website, Softiron may require payment in advance by a method specified on its website.

6.4 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Softiron, Softiron shall be entitled to:

6.4.1 terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;

6.4.2 appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and Softiron) as it thinks fit (despite any purported appropriation by the Customer);

6.4.3 charge interest on the amount outstanding from the due date to the date of receipt by Softiron (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;

6.4.4 suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;

6.4.5 make a storage charge for any undelivered Equipment at its current rates from time to time;

6.4.6 stop any Equipment in transit; and

6.4.7 exercise a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Softiron. Softiron shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

6.5 Softiron may, without prejudice to any other rights it may have, set off any liability of the Customer to Softiron against any liability of Softiron to the Customer.

### 7 Delivery of Equipment

7.1 Unless otherwise agreed in writing, all shipments to delivery destinations within the United Kingdom are made Ex-Works (EXW as per Incoterms 2010) at the point of shipment (Softiron factory, redistribution center or other designated point).

7.2 Unless otherwise agreed in writing, all shipments to delivery destinations outside the United Kingdom are made Delivered Duty Unpaid (DDU as per Incoterms 2010) to the port of entry in the destination country.

7.3 Shipment of Product may originate from either Softiron or its authorised sub-contractors or distributors.

7.4 Delivery dates and product availability as set forth in the Contract or as otherwise communicated to the Customer are estimates only. Softiron will make reasonable efforts to deliver in accordance with these dates; however, Softiron will not be liable for failure to deliver as estimated. The Equipment may be delivered by Softiron in advance of the quoted delivery date on giving reasonable notice to the Customer. Softiron may deliver the Equipment by separate instalments.

7.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had 3 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with clause 11.

7.6 Softiron shall be responsible for any damage, shortage or loss in transit prior to delivery, provided that the Customer notifies it to Softiron (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Softiron's stipulations. Any remedy under this clause 7.6 shall be limited, at the option of Softiron, to the replacement or repair of any Equipment which is proven to Softiron's satisfaction to have been lost or damaged in transit.

### 8 Risk and Property

8.1 The Equipment shall be at the risk of Softiron until it passes in accordance with the applicable Incoterm or, if no Incoterm is specified, upon delivery to the Customer at the place of delivery specified in Softiron's acknowledgement of order. Softiron shall off-load the Equipment at the Customer's risk.

8.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Softiron has received in full in cleared funds all sums due to it in respect of the Equipment.

8.3 Until ownership of the Equipment has passed to the Customer under clause 8.2, the Customer shall:

8.3.1 hold the Equipment on a fiduciary basis as Softiron's bailee;

8.3.2 store the Equipment (at no cost to Softiron) in satisfactory conditions in such a way that it remains readily identifiable as Softiron's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

8.3.4 keep the Equipment insured on Softiron's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Softiron, ensure that Softiron's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for Softiron and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 18 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Softiron on the due date.

8.5 The Customer grants Softiron, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Softiron in repossessing the Equipment shall be borne by the Customer.

8.6 On termination of the Contract for any reason, Softiron's (but not the Customer's) rights in this clause 8 shall remain in effect.

8.7 Softiron may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

### 9 Software

9.1 Subject to clause 9.2, the Customer's purchase of the Equipment gives the Customer a right to use the Software on a non-exclusive basis.

9.2 Use of the Software may be subject to third party licences which are either notified to the Customer at the time of sale or which the Customer is required to click to to affirm agreement to upon first use or installation of the relevant Software. The Customer shall strictly comply with the terms of any such licence.

9.3 The Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent.

9.4 The Customer shall not use the Software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides. The Customer acknowledges that the Software contains open source code and any acknowledgments to the authors of such code contained within the Software must not be removed.

9.5 If it is necessary for Softiron to carry out repairs of Equipment or Software under warranty, such repairs may be carried out by means of remote patching or upgrading of the Software provided by Softiron in connection with the provision of the Equipment ("Maintenance"), which may temporarily degrade the quality of the Equipment or result in a partial or complete outage of the Equipment. Any degradation or interruption in the Equipment during such Maintenance shall not give rise to a refund or credit of any fees paid by Customer.

9.6 Customer agrees that the operation and availability of the systems used for accessing and interacting with the Software provided by Softiron in connection with the provision of the Equipment (including telephone, computer networks and the internet) or to transmit information can be unpredictable and may from time to time interfere with or prevent access to, use or operation of the Software. Softiron shall not be liable for any such interference with or prevention of Customer's access to, use or lack of operation of the Software.

9.7 During the performance of the Equipment or in connection with Customer's use of the Software provided by Softiron in connection with the provision of the Equipment, it may be necessary for Softiron to obtain, receive, or collect data or information, including system specific data (collectively, the "Data"). Customer grants to Softiron a non-exclusive, worldwide, royalty-free, perpetual, irrevocable licence to:

9.7.1 use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely for the purposes set out in clause 9.7;

9.7.2 a licence to aggregate the Data with other data for use in an anonymous manner for Softiron's marketing and sales activities; and

9.7.3 a right to copy and maintain such Data on Softiron's servers (or the servers of its suppliers) during the term of this Agreement.

9.8 Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located in connection with Softiron's provision of the Equipment or Customer's use of the Software.

### 10 Export Terms

10.1 The Customer shall be responsible for complying with any legislation governing:

10.1.1 the importation of the Equipment into the country of destination; and

10.1.2 the export and re-export of the Equipment,

and shall be responsible for the payment of any duties on it.

10.2 Where the Equipment is to be shipped by sea, Softiron shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.3 The Customer will not export, either directly or indirectly, any Equipment or system incorporating the Equipment, without first obtaining any required license or other approval from the appropriate host Government or any other agency or department of the host Government with appropriate authority.

### 11 Warranty

11.1 Subject to the remaining provisions of this clause 11, Softiron warrants to the Customer that the Equipment is free from defects of workmanship and materials for a period of 6 months from the date of delivery. Softiron undertakes (subject to the remainder of this clause 11), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within six months of delivery and installation unless extended by agreement at the time of purchase. Replacement, repair or reimbursement is the Customer's sole remedy with respect to such a defect in workmanship or material in the Equipment.

11.2 Softiron shall not be liable for a breach of the warranty in clause 11.1 if:

11.2.1 the defect arises because the Customer failed to follow Softiron's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice or uses it outside its normal application; or

11.2.2 the Customer alters or repairs the relevant Equipment without the written consent of Softiron.

11.3 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the agreed warranty period.

11.4 Softiron does not warrant that component parts of the Equipment will be free from design defects or errors known as "errata". For purposes of this section, "errata" are design defects or errors that may cause the Products to deviate from published specifications.

11.5 The Customer acknowledges that the Software is based largely on open source code. Softiron warrants that the media on which the Software is furnished to the Customer will be free from defects for a period of thirty (30) days from the date of delivery. If such a defect appears within the warranty period, the Customer may return the defective media to Softiron for replacement without charge. Replacement is the Customer's sole remedy with respect to such a defect. Softiron does not warrant that the Software will operate without

## TERMS AND CONDITIONS OF SALE

- interruption or error. SoftIron makes no warranty with respect to defective conditions or non-conformities resulting from the Customer's use, misuse, misinstallation, mishandling, neglect, accident, or abuse of the Software, or errors resulting from incorporation of the Software into a system, or failure of the Customer to apply SoftIron-supplied modifications or corrections.
- 12 Remedies**
- 12.1 If SoftIron's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under clause 19), the Customer shall in all circumstances be liable to pay to SoftIron all reasonable costs, charges or losses sustained by it as a result, subject to SoftIron notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 12.2 In the event of any claim by the Customer under the warranty given in clause 11.1, the Customer shall notify SoftIron in writing of the alleged defect. SoftIron shall have the option of testing or inspecting the Equipment at its current location or moving it to SoftIron's premises (or those of its agent or sub-contractor) at the cost of SoftIron. If the Customer's claim is subsequently found by SoftIron to be outside the scope or duration of the warranty in clause 11, the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.
- 13 Limitation of Liability**
- 13.1 Nothing in these conditions excludes or limits the liability of SoftIron for:
- 13.1.1 death or personal injury caused by SoftIron's negligence; or
- 13.1.2 fraud or fraudulent misrepresentation,
- 13.1.3 liability under section 12 of the Sale of Goods Act 1979
- or any other matter liability for which cannot be limited by law.
- 13.2 Subject to clause 13.1 neither SoftIron or its Licensors shall be liable, in any circumstances, whether in tort (including without limitation for negligence or breach of statutory duty whatsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 13.2.1 any downtime or system interruption, any loss of data, loss of profits; loss of anticipated savings; loss of contract or depletion of goodwill or similar losses; or
- 13.2.2 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising from or in connection with the use of, or distribution of the Equipment.
- 13.3 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 13.4 Subject to clause 13.1, SoftIron's total liability in contract, tort (including without limitation negligence and breach of statutory duty whatsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Equipment under clause 5.
- 14 High Risk Activities**
- 14.1 Customer acknowledges that the Equipment and Software and any associated deliverables and services are not designed or intended for use in hazardous environments requiring fail safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines, or any other application in which the failure of the Equipment or Software nor associated deliverables or services could lead directly to death, personal injury, or severe physical or property damage ("High Risk Activities"). SoftIron expressly disclaims any express or implied warranty of fitness for High Risk Activities.
- 15 Intellectual Property Rights**
- 15.1 If SoftIron manufactures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified SoftIron against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by SoftIron in connection with, or paid or agreed to be paid by SoftIron in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from SoftIron's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of SoftIron.
- 15.2 SoftIron shall indemnify the Customer against any claims made by a third party against the Customer that any Equipment or Software delivered under the Contract infringe that third party's Intellectual Property Rights in the country in which the Equipment was delivered by SoftIron (an "IPR claim") provided the Customer gives SoftIron prompt notice of any IPR claim and does not settle such claim without SoftIron's consent (such consent not to be unreasonably withheld). If SoftIron receives notice of a prompt IPR claim which SoftIron believes in its reasonable opinion is likely to result in an adverse ruling then it shall, at its option (a) obtain a right for the Customer to continue using the Equipment (b) modify the Equipment to make it non-infringing, (c) replace the Equipment with a non-infringing equivalent; or (d) refund the price paid for the Equipment. SoftIron shall have no obligation under this clause for any IPR claim arising from (i) modifications of the Equipment or Software that were not performed by or on behalf of SoftIron, (ii) the combination, operation or use of the Equipment or Software in connection with a third party product, software or service (the combination of which causes the claimed infringement); or (iii) SoftIron's compliance with Customer's written specifications or directions, including the incorporation of any software or other material or processes provided or requested by the Customer.
- 15.3 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of SoftIron or (as the case may be) the applicable third party rights owner.
- 15.4 SoftIron shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of SoftIron.
- 15.5 SoftIron's Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of SoftIron, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
- 16 In relation to the Software:**
- 16.1 the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- 16.2 nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- 16.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence Contracts, terms of use and registration requirements relating to them.
- 16 Confidentiality and Supplier's Property**
- 16.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by SoftIron or its agents, and any other confidential information concerning SoftIron's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to SoftIron, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 16.2 All materials, equipment and tools, drawings, specifications and data supplied by SoftIron to the Customer shall at all times be and remain the exclusive property of SoftIron, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to SoftIron, and shall not be disposed of or used other than in accordance with SoftIron's written instructions or authorisation.
- 16.3 This clause 16 shall survive termination of the Contract, however arising.
- 17 Customer's Obligations**
- 17.1 The Customer undertakes that it shall:
- 17.1.1 not transfer or duplicate any aspects of the Equipment (except for reasonable backup);
- 17.1.2 not reverse engineer (unless allowed by law for interoperability), disassemble or de-compile the Equipment;
- 17.1.3 not to share, copy, resell or distribute the Equipment to any third party without the explicit agreement of SoftIron;
- 17.1.4 comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws.
- 17.2 This clause 17 shall survive termination of the Contract, however arising.
- 18 Termination**
- 18.1 Without prejudice to any other right or remedy available to SoftIron, SoftIron may terminate the Contract or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous Contract or arrangement to the contrary if:
- 18.1.1 the ability of the Customer to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control;
- 18.1.2 the Customer commits a material breach of any of the terms and conditions of this Contract;
- 18.1.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or if its assets are less than liabilities;
- 18.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 18.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 18.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- 18.1.7 the holder of a qualifying floating charge over the assets of Customer has become entitled to appoint or has appointed an administrative receiver;
- 18.1.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 18.1.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.1.3 to 18.1.8 (inclusive).
- 18.2 Upon expiry or termination of this Contract, the Customer shall, at SoftIron's option, return the Equipment to SoftIron or dispose of the Equipment in a manner so as to render it non-functional, in accordance with the Customer's internal practices for disposal of similar products and in full compliance with all applicable laws and regulations.
- 18.3 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 18.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 19 Force Majeure**
- SoftIron reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of SoftIron or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Force Majeure Event**).
- 20 Waiver**
- No failure or delay by a party to exercise any right or remedy provided under this Contract 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 Rights and Remedies**
- Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 22 Severance**
- 22.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 22.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 23 Entire Agreement**
- 23.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 23.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 24 Assignment**
- 24.1 The Customer shall not, without the prior written consent of SoftIron, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 24.2 SoftIron may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 25 Third Party Rights**
- Except as expressly provided for in clause 17 no one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 26 Notices**
- 26.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:
- 26.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- 26.1.2 sent by international air mail if sent overseas; or
- 26.1.3 sent by fax to its main fax number.
- 26.1.4 Any notice shall be deemed to have been received:
- 26.1.5 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 26.1.6 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or if earlier, at the time recorded by the delivery service;
- 26.1.7 if sent by international air mail, on the fifth Business Day after posting, if earlier, at the time recorded by the delivery service;
- 26.1.8 if sent by fax, at 9.00 am on the next Business Day after transmission.
- 26.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 27 Governing law**
- The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation disputes or claims) are governed by and construed in accordance with the law of England and Wales.
- 28 Jurisdiction**
- 28.1 The courts of England shall have exclusive jurisdiction to settle any dispute arising from or connected with this Agreement between SoftIron and a Customer based in the United Kingdom or any other member state of the European Union (a "Dispute"), including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity. The parties agree that the courts of England are the most appropriate forum to settle such Dispute and accordingly they will not argue to the contrary.
- 28.2 Any dispute, controversy or claim arising from or connected with this Agreement between SoftIron and a Customer located outside the European Union, including one regarding the existence, validity or termination of this Agreement or the consequences of its nullity and any non-contractual or other dispute (an "ROW Dispute") shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration ("LCIA").
- 28.3 The arbitral tribunal shall consist of one arbitrator who shall be an English lawyer of at least 10 years' standing. The seat of the arbitration shall be London, England, all hearings shall take place in London, England, and the language of the arbitration shall be English. The parties waive any right to refer points of law on an ROW Dispute to the courts, to the extent that such waiver may be validly made. The parties agree that the arbitral tribunal shall have the power to order on a provisional basis any relief which it would have power to grant in a final award.