

**AGGREKO CANADA, INC.**  
**PURCHASE TERMS AND CONDITIONS FOR**  
**GOODS AND SERVICES**

**1. INTERPRETATION**

**1.1 Definitions.** In these Terms and Conditions, the following definitions apply:

**Agreement:** the terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions as set out in the Order or as otherwise agreed in writing between Customer and Supplier.

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in Canada are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Commercial Markings:** means any trade names, marks, logos, branding or any other form of commercial identification whatsoever.

**Contract:** the contract between Customer and Supplier for the supply of Goods and/or Services incorporating the Order, this Agreement and (if applicable) the Goods Specification and/or the Services Specification.

**Customer:** Aggreko Canada, Inc., a corporation registered in Ontario.

**Customer Materials:** has the meaning set out in clause 2.6.

**Deliverables:** all documents, products and materials (other than the Goods) developed by Supplier or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the goods (or any part of them), including any Deliverables, to be supplied by Supplier under the Contract as set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by Customer and Supplier.

**Incoterms** means the International Commercial Terms 2010 published by the International Chamber of Commerce (ICC).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** Customer's order for the supply of Goods and/or Services, as set out in Customer's purchase order form.

**Sanctions:** means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time under applicable law in any jurisdiction.

**Sanctioned Person:** means, at any time: (a) any person listed in any Sanctions-related list maintained by a relevant authority under applicable law; (b) any person operating, organized or resident in a country, region or territory which is itself the subject or target of any Sanctions; or (c) any person Controlled by any such person or persons.

**Services:** the services, including any Deliverables, to be provided by Supplier under the Contract as set out in the Order.

**Service Specification:** the description or specification for Services agreed in writing by Customer and Supplier.

**Software:** any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Goods and/or Deliverables at the time of its delivery and either necessary for its operation in the manner contemplated by Customer or otherwise referred to in the Supply Contract.

**Supplier:** the party from which Customer purchases the Goods and/or Services and whose name appears in the Order.

**1.2 Construction.** In this Agreement, the following rules apply:

- (a) a reference to a party includes its personal representatives, successors or permitted assigns;
- (b) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (d) a reference to **writing** or **written** includes e-mails, texts and any other electronic communication.

**2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by Customer to purchase Goods and/or Services from Supplier in accordance with this Agreement.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) Supplier issuing written acceptance of the Order; or
- (b) Supplier taking steps to dispatch the Goods and/or perform the Services, at which point and on which date the Contract shall come into existence (**Commencement Date**) incorporating this Agreement.

2.3 This Agreement applies to the Contract to the exclusion of any other terms that Supplier seeks to impose or incorporate (including any terms and conditions attached to or incorporated in Supplier's quotation or written acceptance of the Order), or which are implied by trade, custom, practice or course of dealing.

2.4 Without prejudice to clause 2.3, in the event of any conflict between any terms contained in the Order and this Agreement, the terms contained in the Order will override the corresponding term in this Agreement.

2.5 This Agreement shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.6 Supplier shall ensure that it holds Company's Confidential Information, ideas, improvements, equipment and tools, designs, drawings, specifications, and data supplied by Customer to Supplier (**Customer Materials**) in safe custody at its own risk, maintain Customer Materials in good condition until returned to Customer, and not dispose or use Customer Materials other than in accordance with Customer's written instructions or authorisation.

2.7 Customer shall have the right at any time to make changes in quantity, drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation, in each case by issuing a written directive indicating any change. Supplier agrees to accept and proceed with any such changes. If any such change causes an increase or decrease in the cost, or the time required for performance, Customer shall make an equitable adjustment and the relevant Contract shall be deemed to be modified accordingly.

2.8 Supplier shall ensure that no change is made to the Goods Specification, design of the Goods, the components comprised therein, or to the Services Specification without the prior written consent of Customer.

**3. SUPPLY OF GOODS**

3.1 Supplier warrants that the Goods shall:

- (a) correspond with their description and meet the requirements of, and perform in accordance with, any applicable Goods Specification;
- (b) be of satisfactory quality and fit for any purpose held out by Supplier or made known to Supplier by Customer, expressly or by implication, and in this respect Customer relies on Supplier's skill and judgment;
- (c) be in good working condition free from defects in design, manufacture, materials, workmanship and title and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 In the event the Goods do not comply with the warranty in clause 3.1, Customer shall advise Supplier of the non-compliance. Supplier shall

have seven (7) days from receipt of the notification to correct the non-compliance.

- 3.3 Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 3.1(b) or 3.1(c) if the defect arises due to Customer's failure to follow Supplier's written instructions as to the storage, installation, operation, maintenance or repair of such Goods, provided the relevant instruction manual(s) is/are provided to Customer in advance of or with the delivered Goods; or the defect arises as a result of excessive use beyond normal wear and tear, wilful damage, negligence, or abnormal working conditions taking into account its heavy industrial use in the rental industry.
- 3.4 Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.5 Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.6 If following such inspection or testing Customer considers that the Goods do not conform or are unlikely to comply with Supplier's undertakings at clause 3.1, Customer shall inform Supplier and Supplier shall immediately take such remedial action, at its own cost, as is necessary to ensure compliance.
- 3.7 Notwithstanding any such inspection or testing, Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect Supplier's obligations under the Contract, and Customer shall have the right to conduct further inspections and tests after Supplier has carried out its remedial actions.
- 3.8 Each warranty period shall be extended for a period equal to the period a warranty issue is experienced for the relevant Goods from the date Customer provides notice of the warranty issue until the warranty issue is fully resolved and/or breach is cured.

#### 4. REHIRE OF GOODS AND SERVICES

- 4.1 If the Goods are subject of a re-rental by Customer to another party:
- (a) Supplier shall comply with, and expressly agrees to be bound by, all contractual requirement imposed on Customer by its customer and any higher tier customer ("End User"), which agreement is incorporated herein by reference, with relevant clauses to be provided upon request;
  - (b) Provided Customer is not in default of its obligations contained herein, Supplier shall have no right to terminate the rental or recall the equipment while it is on rent to a third-party;
  - (c) Title to Goods shall remain with Supplier for all rentals; and
  - (d) Customer's responsibility for damage to Goods shall be limited to the lesser of Fair Market Value at the time of the loss less salvage value and depreciated value, and Customer shall only be responsible to the extent of its own negligence or fault. Supplier agrees to look to the End User to recover for any losses occurring while in the End User's care, custody or control.

#### 5. DELIVERY OF GOODS

- 5.1 Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any), operating instructions customer is expected/required to follow, and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered and any other documentation required by Customer; and
  - (c) if Supplier requires Customer to return any packaging material for the Goods to Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to Supplier at the cost and risk of Supplier.
- 5.2 Supplier shall deliver the Goods:
- (a) in accordance with the Incoterms specified in the Order;
  - (b) on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order;
  - (c) to Customer's premises specified in the Order or such other location as is set out in the Order or as instructed by Customer before delivery (**Delivery Location**); and
  - (d) during Customer's normal hours of business on a Business Day, or as instructed by Customer, including an emergency or after hours order

or one with a specific delivery instructions falling outside of Normal Business Hours.

- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Any arrangement by which the Goods are collected by Customer shall be agreed by the parties in writing. Where Customer collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 5.4 Supplier shall not deliver the Goods in instalments without Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Customer to the remedies set out in clause 7.1.
- 5.5 Risk in the Goods shall pass to Customer on completion of delivery. Title in the Goods that are not being rented from the Supplier shall pass to Customer on the earlier of (a) completion of delivery and (b) payment or part payment for the Goods.
- 5.6 Time of delivery of the Goods and performance of the Services shall be of the essence of the Contract.

#### 6. SUPPLY OF SERVICES

- 6.1 Supplier shall from the Commencement Date or any later date set out in the Order (as applicable) and for the duration of the Contract provide the Services to Customer in accordance with the terms of the Contract.
- 6.2 Supplier shall meet any performance dates for the Services specified in the Order or notified to Supplier by Customer.
- 6.3 In providing the Services, Supplier warrants that it shall:
- (a) co-operate with Customer in all matters relating to the Services, and comply with all instructions of Customer;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in Supplier's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Supplier's obligations are fulfilled in accordance with the Contract;
  - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to Supplier by Customer;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Customer, will be free from defects in workmanship, installation and design;
  - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - (h) promptly report to Customer any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of the Contract;
  - (i) observe all Federal, Provincial, State or local health and safety rules and regulations and any other security requirements that apply at any of Customer's premises and any other premises where the Services are to be performed and be responsible for the safety of its own personnel, and the safety of all persons who may be at risk as a result of Supplier's work; and
  - (j) not do or omit to do anything which may cause Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and Supplier acknowledges that Customer may rely or act on the Services.

#### 7. CUSTOMER REMEDIES

- 7.1 If Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to Supplier;
  - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which Supplier attempts to make;
  - (c) to recover from Supplier any costs incurred by Customer in obtaining substitute goods and/or services from a third-party;
  - (d) where Customer has paid in advance for Services that have not been provided by Supplier and/or Goods which have not been delivered by Supplier, to have such sums refunded by Supplier;

- (e) to claim damages for any additional costs, loss or expenses incurred by Customer which are in any way attributable to Supplier's failure to meet such dates; and
- (f) to claim or deduct 1 per cent of the price of the Goods and/or Services for each week's (or part thereof) delay in delivery and/or performance by way of liquidated damages, up to a maximum of 15 per cent of the total price of the Goods and/or Services.

7.2 If Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1 and/or has performed Services that do not comply with the undertakings set out in clause 6.3, then, without limiting its other rights or remedies, Customer shall have one or more of the following rights, whether or not it has accepted the Goods and/or Services (as applicable):

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to Supplier at Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to Supplier;
- (c) to require Supplier to repair or replace the rejected Goods at Supplier's cost, or to provide a full refund of the Price of the rejected Goods (if paid). Repair shall be carried out by Supplier within 2 Business Days (or such other period determined by Customer) of Supplier being notified in writing of the relevant defect at the place where the rejected Goods are located unless Supplier deems it necessary that the rejected Goods (or defective part(s) thereof) are returned to an address defined by Supplier for repair. Supplier is responsible for the removal and re-installation of the rejected Goods (or defective part(s) thereof) and transport of the rejected Goods (or defective part(s) thereof) to and from the place of repair and any associated travel expenses, removal and re-installation costs, labour charges, access charges, freight charges and duties are for Supplier's account. Supplier shall provide (at its own cost) all equipment, tools and vehicles and such other items as are required to repair or replace the rejected Goods;
- (d) to require Supplier to re-perform the defective Services at Supplier's cost, or to provide a full refund of the price of the defective Services (if paid);
- (e) to refuse to accept any subsequent delivery of the Goods which Supplier attempts to make;
- (f) to recover from Supplier any expenditure incurred by Customer in obtaining substitute goods and/or services from a third-party; and
- (g) to claim damages for any additional costs, loss or expenses incurred by Customer arising from Supplier's failure to supply Goods in accordance with clause 3.1 and/or perform Services in accordance with clause 5.3.

7.3 This Agreement shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by Supplier and any repaired or replaced Goods shall carry the remaining portion of the warranty period in clause 3.1 (or if longer, 12 months from the date of repair or replacement).

7.4 Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

## 8. CUSTOMER'S OBLIGATIONS

Customer shall (a) provide Supplier with reasonable access at reasonable times to Customer's premises for the purpose of providing the Services; and (b) provide such information as Supplier may reasonably request for the provision of the Goods and/or Services and Customer considers reasonably necessary for the purpose of providing the Goods and/or Services; provided, however, in the event access is limited as a result of it being on a third-party's property (i.e., a customer of Customer), then access shall be provided in accordance with the third party's rules and requirements, and Supplier agrees to comply with all such rules and requirements.

## 9. CHARGES AND PAYMENT

9.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Customer. No extra charges shall be effective unless agreed in writing and signed by Customer.

9.2 The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Customer, the charges shall include every cost and expense of

Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 In respect of Goods, Supplier shall invoice Customer on or after completion of delivery. In respect of Services, unless otherwise agreed in writing by Customer, Supplier shall invoice Customer on completion of the Services. Each invoice shall include such supporting information required by Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

9.4 Invoices for any Services provided must include a description of those Services sufficient to allow Customer to understand what was provided including description of actions taken and materials used. Failure to do so will result in the invoice being rejected.

9.5 THE RIGHT TO PAYMENT SHALL BE AUTOMATICALLY DEEMED WAIVED FOR ANY INVOICES FOR GOODS OR SERVICES NOT SUBMITTED TO CUSTOMER WITHIN FORTY-FIVE (45) DAYS OF COMPLETION OF THE DELIVERY.

9.6 In consideration of the supply of Goods and/or Services by Supplier, Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by Supplier.

9.7 Customer shall, on receipt of an invoice from Supplier, pay to Supplier such tax as is chargeable on the supply of the Products and/or Services in accordance with the Applicable Laws, unless Customer is entitled to a tax exemption on the purchase and has provided exemption documentation to Supplier.

9.8 Supplier shall maintain complete and accurate records of the time spent and materials used by Supplier in providing the Services, and Supplier shall allow Customer to inspect such records at all reasonable times on request.

9.9 Customer may, without limiting its other rights or remedies, set off any amount owing to it by Supplier under the Contract against any amount payable by Customer to Supplier whether under the Contract or otherwise.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 In respect of the Goods and any goods that are transferred to Customer as part of the Services under the Contract, including without limitation the Deliverables or any part of them, Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Customer, it will have full and unrestricted rights to sell and transfer all such items to Customer.

10.2 Supplier assigns to Customer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Goods and Services, including for the avoidance of doubt the Deliverables.

10.3 To the extent that any Software is created or developed specifically for Customer under or in connection with a Supply Contract ("**Bespoke Software**"), Supplier assigns or shall procure an assignment to Customer of the Intellectual Property Rights in the Bespoke Software.

10.4 Other than in relation to Bespoke Software, Supplier warrants that it has and will continue to have the right to license the Software to Customer and it hereby grants to Customer, without further charge, a perpetual and irrevocable right to use and maintain the Software on or in connection with the Goods and/or Deliverables (and any back-up or related equipment) and to make copies as are necessary to use and maintain the Software and for back-up and ancillary purposes.

10.5 Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under the provisions of any applicable law in any jurisdiction.

10.6 Supplier shall, promptly at Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Customer may from time to time require for the purpose of securing for Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned and licensed to Customer in accordance with clause 10.

10.7 All Intellectual Property and Customer Materials are the exclusive property of Customer, and Supplier shall not incorporate the Intellectual property or Customer Materials into any Goods for a third-party.

10.8 Supplier shall not in any way reproduce or use (whether or not in connection with the supply of the Goods and/or Services) Customer's Intellectual Property Rights or Commercial Markings in any advertising, promotion, marketing or public communication or announcement without the prior written consent of Customer.

#### 11. LIABILITY AND INDEMNITY

11.1 Supplier shall keep Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Customer as a result of or in connection with:

- (a) any claim made against Customer by a third-party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or the performance of the Services;
- (b) any claim made against Customer by a third-party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Supplier, its employees, agents or subcontractors;
- (c) any claims brought by its employees or subcontractors arising out of, or in connection with, damages incurred due to failure to comply with health and safety laws and regulations, or other safety or security rules applicable to the location where the damage occurred; and
- (d) any claim made against Customer for actual or alleged infringement of a third-party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, Deliverables and/or Software, or receipt, use or supply of the Services.

11.2 Supplier shall at Supplier's own expense and for all relevant periods (i) maintain commercial general liability (including premises, completed operations, products liability, broad form property, personal injury and blanket contractual), commercial auto and professional risk coverage to protect Supplier and the Indemnities with limits of at least \$2,000,000, (ii) maintain workers compensation insurance for its employees in amounts required by the laws of the state in which the work is performed, and (iii) maintain such other insurance as may be requested by Customer in advance of shipment by Supplier to Customer. Supplier shall carry insurance to indemnify the Indemnified Parties against any Losses and shall provide a certificate evidencing such insurance to Customer prior to the commencement of the Work. Supplier shall also provide certificates establishing that all policies identified herein (except for worker's compensation and employer's liability insurance) reflecting that: (i) the Indemnities are additional insureds; (ii) Supplier and the underwriters and/or insurers thereof waive their rights of subrogation against the Indemnities and their respective insurers; and (iii) Supplier's policy shall be primary and non-contributory to other available insurance. Customer reserves the right to change the above insurance requirements in its sole discretion.

11.3 Neither party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential damage or loss suffered by the other party that arises under or in connection with the Contract;

11.4 This clause 11 shall survive termination of the Contract.

#### 12. CONFIDENTIALITY

A party (**Receiving Party**) 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 Receiving Party by the other party (**Disclosing Party**), its employees, agents, subcontractors or professional advisers, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

#### 13. TERMINATION

13.1 Without limiting its other rights or remedies, Customer may terminate the Contract with immediate effect by giving written notice to Supplier if:

- (a) Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach or earlier in the event of an emergency at a time determined by Customer in its discretion based on the circumstances;
- (b) in the event of breach of the health and safety requirements in the Agreement, Customer may terminate the Contract immediately;
- (c) an event occurs, or proceeding is taken, in any jurisdiction to which Supplier is subject that has an effect equivalent or similar to the following events: an order is made or a resolution is passed for the winding up of Supplier, or an order is made for the appointment of an administrator to manage the affairs, business and property of Supplier, or such an administrator is appointed, or a receiver or manager or administrative receiver is appointed in respect of all or any of Supplier's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or which entitle the court to make a winding-up or bankruptcy order, or Supplier takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by Supplier with its creditors or an application to a court for protection from its creditors is made by Supplier; or
- (d) Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

13.2 Without limiting its other rights or remedies, Customer may terminate the Contract without cause:

- (a) in respect of the supply of Services, by giving Supplier 4 weeks' written notice; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to Supplier, in which case Customer shall pay Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

13.3 In any of the circumstances in this Agreement in which Customer may terminate the Contract, where both Goods and Services are supplied, Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

#### 14. CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, Supplier shall immediately deliver to Customer all Deliverables, whether or not then complete, and return all Customer Materials. If Supplier fails to do so, then Customer may without limiting its other rights or remedies enter Supplier's premises and take possession of them. Until they have been returned or delivered, Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- (b) the accrued rights and remedies of the parties at the time of termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 15. SANCTIONS & CODE OF CONDUCT

- (a) Supplier represents, warrants and undertakes to Aggreko that: (a) none of Supplier, Supplier's personnel, Supplier's affiliates and all persons performing services and/or providing goods in connection with the Contract (each a "Relevant Party"), is a Sanctioned Person; and (b) no Relevant Party is in breach of, nor shall breach, any Sanctions. Supplier shall immediately notify Aggreko in writing in the event of any breach of the foregoing. If Aggreko reasonably suspects a breach, Supplier will provide reasonable information promptly on request to enable Aggreko to satisfy itself. Any breach of this provision shall be a material breach of the Agreement.
- (b) By fulfilling any order, Supplier agrees to comply with Aggreko's Supplier Code of Conduct, available at [Aggreko Supplier Code of Conduct](#) to which Supplier acknowledges it has access.

#### 16. GENERAL

16.1 Force majeure:

- (a) Neither party shall be liable to the other due to any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstance prevent Supplier from

- supplying the Goods and/or Services for more than 14 days, Customer shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving written notice to Supplier.
- (b) Shortages in materials or labor (including strikes) and increased costs increases in supply costs shall not be considered a Force Majeure unless the shortages or increases are industrywide.
- 16.2 Customer's "Supplier Code of Conduct", anti-slavery and anti-corruption:  
Supplier shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-slavery, anti-bribery and anti-corruption, including the U.S. Foreign Corrupt Practices Act (Relevant Requirements) or other similar local or Provincial requirements;
- (b) comply with Customer's Supplier Code of Conduct (see clause 15(b)) as Customer may update from time to time (**Relevant Policy**); and
- (c) have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policy, and will enforce them where appropriate.
- 16.3 Assignment and subcontracting:
- (a) Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Customer.
- (b) For any subcontractor Supplier utilizes for Goods or Services performed under the Contract, Supplier shall ensure its subcontractors comply with, and are expressly bound by, all contractual requirements of the Contract.
- (c) Customer may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third-party or agent.
- 16.4 Notices:
- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email with proof of delivery receipt.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, with proof of delivery receipt.
- (c) This clause 16.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails.
- 16.5 Waiver and cumulative remedies:
- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.6 Severability:
- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any manner.
- 16.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.9 Amendments: Any amendment, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both Parties.
- 16.10 Governing law and jurisdiction: The validity, interpretation and performance of the Contract 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 laws of the Ontario, and the parties irrevocably submit to the exclusive jurisdiction of Courts in Toronto, Ontario.
- 16.11 Liens; Financing Statements/Other Security Interests. Customer does not consent to the filing of a UCC-1 Financing Statement, PPSA Registrations, liens or any other security interests on the property of Customer, including on the items purchased under this Agreement. In the event Supplier files, or attempts to file, any of the above, Supplier shall be liable to Customer for any and all damages and costs Customer incurs, including attorney's fees and court costs, associated with the filing and removal of the security interest.