

## Terms and Conditions

General Terms and Conditions of Trading with Tender Business Solutions Limited

**THESE TERMS & CONDITIONS SET OUT THE TERMS ON WHICH YOU WILL BE BOUND IF YOU PURCHASE PRODUCTS AND/OR SERVICES FROM TENDER BUSINESS SOLUTIONS LTD. PLEASE READ THESE TERMS & CONDITIONS CAREFULLY AS THEY WILL GOVERN OUR RELATIONSHIP WITH YOU. THESE TERMS AND CONDITIONS ARE BASED ON AND REFLECT A BUSINESS-TO-BUSINESS TRANSACTIONAL RELATIONSHIP.**

### 1. Parties

- a. Tender Business Solutions Limited is a company registered in England (company no. 13287182) with its registered address at 9 Somers Road, Rugby, Warwickshire, CV22 7DB and
- b. You are the customer who has engaged Tender Business Solutions Limited to purchase Products and/or Services on behalf of the business that you work for (the "Customer").

### 2. Definitions and Interpretation

- a. The definitions and rules of interpretation in this clause apply in this Customer Contract ("Agreement"):

**Data Protection Laws:** means within the EU the EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the General Data Protection Regulation 2016/679 (GDPR) from 25 May 2018 and laws implementing or supplementing the GDPR (in the United Kingdom by the Data Protection Act 2018), and to the extent applicable, the data protection or privacy laws of any other country. 'Personal Data' shall have the meaning defined by the applicable Data Protection Laws;

**Device:** any single item of Hardware provided by Tender Business Solutions Limited to the Customer;

**Hardware:** any hardware provided by Tender Business Solutions Limited, including without limitation, point of sale terminals, receipt printers, cash drawers, pdq terminals, and epos peripherals;

**Intellectual Property Rights:** any patents, copyright, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs (whether registered or unregistered) database rights, topography rights, moral rights, rights in confidential information (including without limitation, know-how and trade secrets) and any other intellectual property rights or industrial property rights, in each case whether registered or unregistered and including without limitation 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;

Product: any Hardware and/or Software;

Professional Services: means all projects that are scoped out under the name 'Professional Services' in an order or Statement of Work;

Return to Base: means that the Customer is required to send any Hardware with a fault or defect back to Tender Business Solutions Limited 's designated location to undertake testing of the Hardware;

Services: the services to be provided by Tender Business Solutions Limited to the Customer under this Agreement, as agreed by the parties in writing. This can include: support, maintenance and installation of the Products;

Software: any point of sale software provided by Tender Business Solutions Limited for use with the Hardware or any third party hardware;

Statement of Work: a document entered into by the parties which incorporates the terms of this Agreement and provides further specifications for the Services;

Support Plan: the 'Standard' support plan or 'Premium' support plan for the maintenance and upkeep of the Software, as further detailed in clause 11;

System: the Tender Business Solutions Limited applications, TenderPOS, interfaces and technical systems, including any Software and any related manuals;

Working Days: Monday to Friday (excluding any bank or public holidays in England); and

Working Hours: 9am to 6pm GMT on a Working Day.

- - b. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  - c. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  - d. 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 or following those terms.
  - e. In the event of conflict between this Agreement and any Statement of Work, the Statement of Work will prevail.
  - f. A reference to 'writing' or 'written' includes faxes and email unless stated otherwise.<sup>3</sup>.

### 3. Application of this Agreement

3. This Agreement shall apply to any Products and/or Services provided by Tender Business Solutions Limited to the Customer (and shall be incorporated into any quotation or order for such Products and/or Services).
4. Any acceptance of a quotation or placement of an order by the Customer will be treated as an offer to purchase the Products and/or Services from Tender Business Solutions Limited and Tender Business Solutions Limited will have the right to reject such offers at any time.
5. This Agreement 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.
6. This Agreement incorporates and supplements the Tender Business Solutions Limited and TenderPOS Software End User Licence Agreement ("EULA") at Annex A (as updated from time to time). In the event of conflict between the terms of this Agreement and the EULA, this Agreement shall prevail.
7. Notwithstanding any other provision in this Agreement, the duration of any Software licence and/or any Hardware rental period shall be as agreed by the parties in writing.

#### 4. Choosing a Product and Services from Tender Business Solutions Limited

8. Tender Business Solutions Limited shall provide information about its Products and Services to help inform the Customer's basis of its purchase and, if requested by the Customer, Tender Business Solutions Limited may provide a full demo of its Software on a free of charge basis, with limited product support as clarified on a case by case basis.
9. Notwithstanding clause 4.1, it is the sole responsibility of the Customer to ensure that the Product(s) and/or Services it is purchasing meet the Customer's requirements.
10. Upon the Customer's request, Tender Business Solutions Limited will promptly provide a written quotation for any Product(s) and/or Services. This quotation will be a guideline price and does not form the basis of any contract between the Customer and Tender Business Solutions Limited.
11. Any advice or recommendation given by Tender Business Solutions Limited or its representatives to the Customer regarding the Services or the storage, application or use of the Products which is not confirmed in writing by Tender Business Solutions Limited is followed or acted upon at the Customer's own risk, and accordingly Tender Business Solutions Limited shall not be liable for any such advice or recommendation which is not so confirmed in writing.
12. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, website or other document or

information issued by Tender Business Solutions Limited shall be subject to correction without any liability on the part of Tender Business Solutions Limited.

13. The Customer will assume the risk for the Products once they have been delivered to the delivery address specified in the Customer's order. Risk in the Products will only transfer back to Tender Business Solutions Limited upon its physical receipt of the Products in the event that they are eligible to be returned in accordance with this Agreement.
14. Subject to clauses 8 and 9 (where title remains with Tender Business Solutions Limited at all times), title to any Products ordered by the Customer shall pass to the Customer upon Tender Business Solutions Limited receiving payment in full for those Products.

## 5. Fees

15. All Product and Service pricing is provided in 'good faith' by Tender Business Solutions Limited. Unless stated otherwise in a quotation, written quotations are valid for 30 days from the date of their issue, however, some offers and discounts are subject to shorter timeframes. Where this is the case, the Customer will be advised by Tender Business Solutions Limited representatives and/or in Tender Business Solutions Limited's sales literature.
16. Pricing for our Bundles, hardware, software and Support Plan charges, and any other services (sections 11 and 12) will vary and pricing will increase dependent upon: (i) number of Devices and (ii) number of locations that have an associated Device. In these terms and conditions any pricing given is to licence or support a single item of Hardware.

. The Customer will reimburse Tender Business Solutions Limited for any travel, subsistence and living expenses reasonably incurred for the performance of the Services, which Tender Business Solutions Limited shall quote and agree in advance with the Customer where such expenses are reasonably foreseeable.

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- a. All invoices are due and payable by the Customer (or via a finance provider, where applicable) immediately upon receipt of the applicable invoice. The Customer acknowledges that no Products will be dispatched, and no Services will be provided, until payment of the applicable invoice is received by Tender Business Solutions Limited in cleared funds.
- b. All prices Tender Business Solutions Limited quotes are exclusive of VAT (or such other applicable sales tax in force from time to time). Where VAT is payable by the Customer, this will be added to the invoice in addition to the fees.

- c. Without prejudice to any other right or remedy that Tender Business Solutions Limited may have, if the Customer fails to pay Tender Business Solutions Limited by the relevant invoice due date, Tender Business Solutions Limited may:
  - i. charge interest on such sum from the due date for payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
  - ii. suspend the provision of the Services (including all of the Customer's access to the Software), access to our customer support team; and/or
  - iii. (Where either section 8 or 9 applies), the Customer shall hold the Products on a fiduciary basis and Tender Business Solutions Limited shall be entitled at any time to require the Customer to 'deliver-up' the Products to Tender Business Solutions Limited and, if it fails to do so, the Customer acknowledges and agrees that Tender Business Solutions Limited may enter the Customer's premises or any third party premises where the Products are stored and repossess the Products.
- d. The standard service offered by Tender Business Solutions Limited shall include standard 'welcome' setup of the System and remote support (in accordance with the applicable Support Plan). Complimentary implementation training may also be offered and provided by Tender Business Solutions Limited to the Customer (subject to availability), which will consist of up to 4 hours of training, email and/or live chat support. Any additional Professional Services, further training, on-site support and/or custom work required will be subject to a professional services fee (which will be quoted on application) at the then current Tender Business Solutions Limited day / hour rates. All Professional Services exclude travel, subsistence and living expenses, which shall be invoiced separately in accordance with clause 5.3.
- e. All postage and packaging fees will be charged to the Customer in addition to the fees for the relevant Products and Services at Tender Business Solutions Limited's then current rates.

## 6. Customer Responsibilities

- 17. The Customer will be responsible for installing the Hardware (unless otherwise agreed in writing with Tender Business Solutions Limited) and will keep the Hardware in the environmental conditions recommended by Tender Business

Solutions Limited and ensure that the external surfaces, cables and fittings of the Hardware are kept in good, clean condition.

18. The Customer will ensure that the Hardware is only used by properly trained staff in accordance with Tender Business Solutions Limited's instructions from time to time. The Customer will ensure that only personnel authorised by Tender Business Solutions Limited adjust, modify, configure, maintain, repair, replace or remove any part of the Hardware.
19. The Customer will maintain adequate records of the use, maintenance and malfunction of the Hardware and will provide Tender Business Solutions Limited with such information and assistance concerning the Hardware, its application, use, location and environment as Tender Business Solutions Limited may reasonably require to enable it to carry out the Support Plan.
20. The Customer will immediately notify Tender Business Solutions Limited if there is any failure of the Hardware or the System and will allow Tender Business Solutions Limited full and free access to the Hardware and all documentation, software, materials and services necessary for the provision of the Support Plan. The Customer will ensure that relevant trained and experienced staff are available when required by Tender Business Solutions Limited to provide Tender Business Solutions Limited with information required to diagnose and/or repair the issue.
21. It is the Customer's sole responsibility to regularly operate and verify a proper back-up routine, maintaining all back-up copies in a secure environment.
22. The Customer undertakes to put and keep in place adequate security measures and up-to-date firewalls to protect the Hardware, Software and Systems from any viruses, harmful code or unauthorised access. Tender Business Solutions Limited shall not be responsible for any unauthorised access to the System by means of hacking, any unauthorised access of the Hardware with intent to commit or facilitate the commission of an offence or any unauthorised modification of the Hardware by a third party.
23. The Customer is responsible for ensuring that their login password to the Tender Business Solutions Limited Systems remains secure and confidential. The Customer should update their password regularly and 'remember me' type functions should not be used on publicly available or shared computers.

## 7. Internet / Network Requirements

24. Tender Business Solutions Limited's Products require a reliable and robust connection to the internet / local network to take advantage of all of the online features and benefits. It is the Customer's responsibility to ensure that it has an appropriate internet / local network connection in place prior to installation of the Software and to also ensure that the internet connection is maintained

correctly and includes an up-to-date firewall. The recommended internet speeds are a minimum 7Mbps download speed and 0.6Mbps upload speed to support up to four till devices. Larger locations / installations will need higher internet speeds as appropriate to the size of installation and business. This speed requirement does not include any additional internet usage required over and above the Tender Business Solutions Limited System such as staff or guest networks or other business requirements. Internet speeds and consistencies can be checked by using internet speed test websites or by contacting the applicable internet service provider.

25. The Customer must provide a separate physical network or a separate V-LAN for Tender Business Solutions Limited systems. This must not be shared with other devices, particularly those that cause high volume, high congestion or unpredictable network loads including (but not limited to) guest networks and music or video streaming devices.
26. The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Products.
27. Whilst Tender Business Solutions Limited representatives may provide advice and an indication of the suitability of the Customer's internet / local network connection, it remains the Customer's sole responsibility to ensure it has a suitable internet / local network connection both before and after an order is placed. Tender Business Solutions Limited is not responsible for any slow responses to its Systems, including where this is caused by the Customer's poor internet / local network connection.
28. Provision of Local Area Network (LAN) infrastructure (e.g. cabling, network switches, WAN router) is the responsibility of the Customer and should be appropriate to the size of business and criticality of the operation.
29. Where the System is to be used over wifi (e.g. tablets/mobile devices):
  - a. the Customer is responsible for the setup, configuration and management of both the wifi infrastructure and the Customer devices. This includes ensuring wifi coverage in required areas and ensuring network dropouts due to wifi roaming are minimised; and
  - b. the Customer must consider that wifi is not as robust as a wired network and network dropouts can occur due to wifi coverage, access point roaming, tablet sleep modes as well as other environmental factors. This is not unique to Tender Business Solutions Limited Systems and should be considered when selecting a wifi solution.
30. Tender Business Solutions Limited Systems are designed to work offline, but where no network connection (LAN or WAN) is available or the network connection is unreliable, some functionality is reduced.



31. Where Customer devices are used offline for long periods, the Customer must ensure that such devices are regularly (at least every 7 days) connected to the internet to ensure data is synchronised with its servers. All till devices must regularly (at least every 7 days) perform 'End of Day/Close Till' operations to ensure that the local data store can be archived to the servers.

8. Hardware as a Service (Monthly Fee: Hardware without up-front costs)

32. Tender Business Solutions Limited offers a monthly fee subscription option for the provision of the Products, whereby it will supply Hardware and/or Software solutions without any upfront cost. This includes CCTV integration. For this option, fees are charged on a monthly basis with a minimum contract term equal to the HaaS Period ("Subscription Contract").

33. If the Customer cancels the Subscription Contract within the HaaS Period, or in accordance with clause 8.3.3 below, it must return any Hardware it has received and pay the remaining balance for the remainder of the HaaS Period. This is calculated by multiplying the number of months outstanding by the applicable monthly fee.

34. At least 90 days prior to the end of the contract agreement end period the Customer shall notify Tender Business Solutions Limited of its choice to either:

- a. upgrade the Hardware where applicable and continue payment under the Subscription Service at the same rate (unless notified to the Customer by Tender Business Solutions Limited from time to time in accordance with these terms). This will be for a further fixed period equal to the HaaS Period. All rights relating to Product warranties and the Swap It service shall continue to apply to the Hardware; or
- b. keep the current Hardware and continue payment under the Subscription Service at the same rate (unless notified to the Customer by Tender Business Solutions Limited from time to time in accordance with these terms). The rental of the Hardware under this option shall be on a rolling monthly basis, which may be cancelled at any time by the Customer providing Tender Business Solutions Limited with at least one month's prior written notice. All rights relating to Product warranties and the Swap It service shall continue to apply to the Hardware; or
- c. cancel the Subscription Contract with effect from the end of the Subscription Contract term, and if the Customer fails to notify Tender Business Solutions Limited within this 90 day period, clause 8.3.2 shall apply as the default position.

35. Subject to clause 8.2, either party can terminate the Subscription Contract at any time by providing the other party with at least 30 days' prior written notice.



36. For the avoidance of doubt, title to the Products shall not pass to the Customer at any point under the Subscription Contract option and Tender Business Solutions Limited will remain the owner of the Products at all times.
37. The Customer must arrange the safe return of Hardware within 10 Working Days of the end of the Subscription Contract.
38. If the Products are not returned, after a period of 10 Working Days from the end of the Subscription Contract (or any earlier date where termination takes place during the HaaS Period) that Tender Business Solutions Limited has not received the Hardware, Tender Business Solutions Limited will charge an additional £25 (ex vat) per item.

## 9. Product Rental

39. Tender Business Solutions Limited may offer the ability to rent the Products from Tender Business Solutions Limited and where this is possible, it will notify the Customer of the rental period, and the applicable fees for that period.
40. On acceptance of an order, a deposit per point of sale terminal will be taken in addition to the first month's rental fee. If the rental period is greater than one month, the subsequent payments will be due in one-month intervals, starting from the first date of the rental period.
41. Tender Business Solutions Limited will remain the owner of the Products and will retain title in them at all times.
42. It is the Customer's responsibility to ensure that the Hardware is maintained and returned in the same condition as it was dispatched (fair wear and tear excepted)
43. The Customer must arrange the safe return of Hardware within five Working Days of the end of the rental period.
44. Tender Business Solutions Limited may offer to collect the Hardware, however, it is the Customer's responsibility to document the cosmetic condition before the Hardware is collected by Tender Business Solutions Limited (or Tender Business Solutions Limited's third-party courier).
45. For each day after the five Working Days from the end of the rental period that Tender Business Solutions Limited has not received the Hardware, Tender Business Solutions Limited will charge an additional £25 (ex vat) per item.
46. Upon return of the Hardware, Tender Business Solutions Limited will inspect the Hardware and compile a report. Based on the report, a full refund of the deposit may be made, less any adjustments. If the Customer is eligible for a return of the deposit, this payment will be made within 14 Working Days of receiving the returned Hardware.
47. If the Hardware is returned in a damaged condition where the cost of repair or replacement exceeds the value of the deposit, Tender Business Solutions Limited retains the right to invoice the Customer for an additional sum to cover the

damage exceeding the value of the deposit. The Customer must pay this sum within 14 days of the date of the applicable invoice.

48. If the Hardware is not returned after 28 days after the rental period, Tender Business Solutions Limited will withhold the entirety of the deposit and invoice the Customer for the remaining value of the Products and any charges outstanding. This must be paid within 14 days of the date of the applicable invoice.
49. The Hardware rental does not include any ongoing services or consumables (e.g. support, applications or peripheral hardware such as USB scanners), but these are available on request (subject to agreed fees).

## 10. Annual Software Licence Fee

50. Unless the Customer has opted to purchase a Support Plan, the Customer will be charged for a Software licence annually.
51. The annual Software licence provides the Customer with:
  - a. use of the Software for a minimum 12 calendar months;
  - b. maintenance and operating costs of the Tender Business Solutions Limited servers; and
  - c. selective System updates, improving the running and functionality of the Software.
52. The first year of the Software licence is included within the price of purchasing the Software.
53. The annual Software licence fee is chargeable for each separate point of sale terminal (as updated from time to time).
54. Payment of the Software licence is due on the anniversary of the original account activation for each point of sale terminal.
55. The Software licence fee is non-negotiable and is non-refundable in the event that this Agreement is terminated.
56. The Software licence shall apply for a minimum period of 12 months (“Initial Term”) and will automatically renew for further 12 month periods (each a “Renewal Period”) unless and until a party provides the other party with written notice to cancel the Software licence at least 30 days before the start of the next Renewal Period, which shall take effect no earlier than the end of the Initial Term or the end of the then current Renewal Period. Upon the start of each Renewal Period, the Customer will be charged for the Software licence fees (at the then current rates) via the original billing method.
57. The Customer acknowledges and agrees that upon the annual Software licence renewal date, the Customer will be required to upgrade to the then latest version of the Tender Business Solutions Limited Software platform.

## 11. Support Plan

58. Tender Business Solutions Limited offers two optional Support Plans:

- a. Standard Support, which shall include:
  - i. the annual Software licence fee;
  - ii. access to the Tender Business Solutions Limited support team during Working Hours;
  - iii. remote technical and support from Tender Business Solutions Limited's UK call centre;
  - iv. Software updates;
  - v. email support;
  - vi. encrypted backup of transaction data;
  - vii. remote training for all Customer staff.
- b. Premium Support, which shall include the contents of the Standard Support Plan and:
  - i. 24 hour telephone support; and
  - ii. priority email support.

59. The Customer can upgrade to a Support Plan at any time either through the 'Back Office' of the System using its log-in credentials, or by contacting Tender Business Solutions Limited. If the Customer is already part-way into a Standard Support Plan contract, this existing contract will be cancelled and replaced by the Premium Support contract.

60. Where the Customer has paid for a Standard Support Plan contract and wishes to upgrade to a Premium Support Plan, the remaining term of the Standard Support Plan will be discounted from the Premium Support plan's payment on a pro rata basis. The Premium Support Plan contract shall continue for at least one year from the date of taking out the Premium Support Plan.

61. All Support Plans are contracts for minimum 18-month periods and are governed by the terms of this Agreement.

62. The Customer will pay the Support Plan on a monthly rolling recurring basis, charged up front one month in advance. The Customer must provide recurring payment details through direct debit

63. Tender Business Solutions Limited will attempt to take the payment each month through its payment providers. Where a payment fails, Tender Business Solutions Limited will attempt to take the payment again. If a payment continues to fail, Tender Business Solutions Limited retains the right to restrict access to the Tender Business Solutions Limited Software for all of the Customer's licenses,

locations and devices until all outstanding payments are made in full, and forward any fees incurred due to failed payment.

64. If the Customer wishes to cancel its Support Plan part-way through the annual contract, it will be liable to pay a charge calculated by multiplying the number of months remaining on the contract by the monthly payment.
65. Tender Business Solutions Limited reserves the right to increase the Support Plan fees at any time upon providing the Customer with at least 30 days' notice in advance. Should the Customer not agree to the Support Plan fees, the Customer may cancel the Support Plan and receive a pro rata refund for any unused proportion of the Support Plan fees after the effective date of termination that have been paid in advance.
66. If the Customer has a Support Plan but uses third party hardware, Tender Business Solutions Limited will use reasonable endeavours to resolve any software compatibility issues, but any hardware maintenance issues will be the Customer's sole responsibility.

## 12. Support Plan Renewal & Cancellation

67. After one year (and each subsequent year), the Customer's Support Plan will automatically renew for another year unless the Customer advises Tender Business Solutions Limited before the renewal date that it does not wish it to renew.
68. The Customer has a 30 day cooling-off period after the automatic renewal date in which to notify Tender Business Solutions Limited that it does not wish to continue the Support Plan, Tender Business Solutions Limited will cancel the Support Plan contract with no penalty to the Customer.
69. To continue to use the Tender Business Solutions Limited Software after cancellation, the Customer must either pay the annual Support Plan licence fee or sign up to another Support Plan.
70. Tender Business Solutions Limited may also choose to end the Support Plan contract at any time if Tender Business Solutions Limited discontinues the Support Plan.

## 13. Delivery of Hardware

71. Whilst Tender Business Solutions Limited takes reasonable care to ensure the Hardware packaging prevents any damage to the Hardware in transit, it is the Customer's responsibility to check the Hardware before it accepts the Hardware at the time of delivery.
72. It is the Customer's responsibility to document, and notify Tender Business Solutions Limited of, any defects in the cosmetic condition of the Hardware within 24 hours of receiving the Hardware.

73. Provided clause 16.2 has been complied with, in the rare occasion that the Hardware is faulty or damaged on arrival, Tender Business Solutions Limited will provide the Customer with replacement Hardware.
74. Whilst Tender Business Solutions Limited shall use reasonable endeavours to deliver the Hardware by the date specified in the Customer's order, Tender Business Solutions Limited shall not be liable for the delay in delivery from any cause whatsoever and howsoever arising and time shall not be of the essence for delivery.
75. All deliveries must be signed for by the Customer or its authorised representatives. Tender Business Solutions Limited's third party courier may notify the Customer the timeframe when the Customer should expect the delivery by email and/or text message. It is the responsibility of the Customer to provide Tender Business Solutions Limited with the correct address, email and mobile number to benefit from this Service.
76. It is the responsibility of the Customer to have an appropriate and authorised person available to sign for the delivery of the Hardware. Tender Business Solutions Limited is not responsible for any deliveries that cannot be made due to an authorised person not being available to receive the Hardware, or its courier not having access to the delivery location.

#### 14. Tender Business Solutions Limited Hardware Warranty

77. Subject to clause 17.5, in relation to any new Hardware purchased directly from Tender Business Solutions Limited, and that is manufactured by Tender Business Solutions Limited, Tender Business Solutions Limited warrants that such Hardware will be of good, satisfactory quality and free of any material defects for a period of 12 months from the date of the delivery of the Hardware to the Customer.
78. Subject to clause 17.5, in relation to any refurbished Hardware purchased directly from Tender Business Solutions Limited, Tender Business Solutions Limited warrants that such Hardware will be of good, satisfactory quality and free of any material defects for a period of 90 days from the date of delivery of the Products, unless it is sold as 'like new' where it will have a warranty period of 12 months from the date of the delivery of the Products.
79. Each of the 12 month long warranties under clauses 17.1 and 17.2 are "Limited Warranties".
80. The Customer may choose to purchase an "Extended Warranty" within the Limited Warranty period. This Extended Warranty confers the same rights as the Limited Warranty, but shall apply for a period of three years from the date of the original delivery of the Products to the Customer.

81. Notwithstanding the above clauses, the warranties stated in this clause 17 shall not apply to:
- a. any third-party hardware. Third-party hardware is any hardware that is not manufactured by Tender Business Solutions Limited, or any Hardware which is not branded with the Tender Business Solutions Limited name and/or logo;
  - b. any Hardware that has been tampered with, repaired and/or modified by non-authorized personnel;
  - c. any Hardware where the warranty seals have been broken or altered;
  - d. any damage (accidental or other) to the Hardware that is cosmetic (meaning that damage that does not impact the operation and functioning of the Hardware), including rust, change in colour, texture or finish, wear and tear and gradual deterioration;
  - e. any damage to the Hardware caused by war, terrorism, fire, accident, natural disasters, intentional or accidental misuse, abuse, neglect or improper maintenance, use under abnormal conditions, accidental drops, spills, or power surges;
  - f. any damage to the Hardware caused by improper installation, connection or malfunction of a peripheral device such as a printer, optical drive, network card, or USB device;
  - g. any damage to the Hardware through the Customer's neglect to protect the Hardware, Software or System from viruses;
  - h. any damage to the Hardware caused by an external electrical fault or any accident;
  - i. fraud, theft unexplained disappearance or wilful acts;
  - j. liquid or fluid damage or contamination of any kind; or
  - k. any damage caused by user error such as malware, uninstallation, other programs, mistreatment or any software problems that are caused by use of anything other than Tender Business Solutions Limited Software.
82. If the Customer believes that the Hardware contains a fault that is covered by the warranties provided herein, the Customer must report the issue to Tender Business Solutions Limited in writing within the applicable warranty period and, at the Customer's expense, return the item to Tender Business Solutions Limited for inspection. Within 28 days of receiving the Hardware in question, Tender Business Solutions Limited will examine the item and if covered by the warranty, at Tender Business Solutions Limited's discretion, Tender Business Solutions Limited will either replace the Hardware with one of similar performance and capabilities or repair the Hardware. If a device fails outside of the first 30 days of original purchase, Tender Business Solutions Limited retains the right to replace or repair the Hardware with refurbished or remanufactured parts. If Tender

Business Solutions Limited determines that the Hardware is outside of the warranty rights, Tender Business Solutions Limited will, at the Customer's request, prepare a quote for repair or replacement of the item in question. The Customer can then choose to pay for the repair or replacement or to have its original Hardware returned to it (at the Customer's expense).

83. Where Tender Business Solutions Limited replaces or repairs Hardware under warranty, or as a chargeable out of warranty service, the repaired or replacement Hardware inherits the remaining warranty period from the original Hardware. If the original Hardware has less than 30 calendar days of warranty remaining, the replacement or repaired Hardware will receive a warranty of 30 calendar days.
84. If any new Hardware fails within the first 30 days of its original purchase, and is covered by a warranty, Tender Business Solutions Limited will replace the device with new Hardware, at Tender Business Solutions Limited's expense.

#### 15. Swap It service

85. If the Customer has purchased a Support Plan, and where the Hardware is covered by a Limited Warranty or Extended Warranty, the Customer is entitled to have its Return to Base warranty upgraded to the Swap It service.
86. If the Customer notifies Tender Business Solutions Limited prior to 3.00pm (GMT) on a Working Day of a fault with the Hardware, Tender Business Solutions Limited will arrange for a courier to deliver replacement Hardware (of a similar specification to the original) to be delivered the following Working Day.
87. When the courier delivers the replacement Hardware, they will collect the failed Hardware. The courier will not leave the replacement Hardware without taking away the failed Hardware. The courier will allow a maximum of 15 minutes for the replacement to occur. It is not possible to arrange a specific time of day for the replacement to occur.
88. If Tender Business Solutions Limited is notified of the need for a Swap It after 3.00pm (GMT) or on a non-Working Day, the replacement Hardware will be delivered within two Working Days' time.
89. The Swap It service is only available for addresses in the UK. For all addresses outside of the UK the Customer must use the Return to Base option.
90. The Swap It service is not available on Hardware for which there is no Tender Business Solutions Limited warranty, for example third-party products not manufactured by Tender Business Solutions Limited.
91. If Hardware fails outside of the first 30 days of original purchase, Tender Business Solutions Limited retains the right to replace or repair the Product with refurbished or remanufactured parts.



92. The Customer, wherever possible, must also provide the serial number of the Hardware to be swapped when requested by an Tender Business Solutions Limited support agent. Failure to do so may result in a refusal of the Swap It case.
93. When Hardware is returned to Tender Business Solutions Limited via a Swap It, Tender Business Solutions Limited will inspect the device to ensure that it should be replaced under warranty. Tender Business Solutions Limited only offers the Swap It service to Hardware that is covered by an Tender Business Solutions Limited warranty. Whilst Tender Business Solutions Limited tries to validate the warranty status before agreeing to perform a Swap It, there are occasions where Tender Business Solutions Limited perform a Swap It on Hardware that are not covered by warranty. If it is found to be out of warranty Tender Business Solutions Limited reserves the right to raise an invoice, due immediately, for the Customer to pay the replacement cost.
94. Hardware can be out of warranty for many reasons, including (but not limited to):
- a. the warranty period has expired;
  - b. any of the circumstances of clause 17.5 apply; or
  - c. improper or insufficient cleaning and maintenance.
95. If the Hardware returned is found to be in working condition but in a poor and unreasonable state of cleanliness, the Customer will be billed for cleaning the Hardware at a fixed rate per item.
16. Refunds and return of the Products
96. No return or refund will be issued by Tender Business Solutions Limited unless the complaints procedure outlined in clause 20 is followed.
97. The Software licence fee is strictly non-refundable.
98. Any returned Products should be packed in the original packaging, with all boxes, leads, discs, adaptors and manuals. Tender Business Solutions Limited reserves the right to charge for any damages caused in transit due to poor packaging.
99. Tender Business Solutions Limited Systems and Software sales are excluded from the standard returns policy due to the considerable costs in configuration, personalisation, training and dispatch. These items are strictly non-refundable.
100. Any money paid to third parties for any modifications made to the Software at the Customer's request shall also not be refunded to the Customer.
101. Tender Business Solutions Limited will not process a return where any of the following apply:
- a. Customer or staff training needs, i.e. where the Customer is not understanding or using the System properly;
  - b. the Customer not properly researching or qualifying the purchase;
  - c. functions that are not present or work differently than other products available in the market;

- d. compatibility with third party items/systems;
  - e. Products that have been dispatched, configured, personalised and used;
  - f. the Customer shutting down the business or where the Product is surplus to requirements after delivery;
  - g. orders that contain bespoke or custom equipment;
  - h. operational problems that arise from the Customer's internet connection / local network or other environment problems that are out of Tender Business Solutions Limited's control;
  - i. the Customer accidentally damaged the Products after delivery;
  - j. the Customer or a third party has misused the Products and damaged them;
  - k. the Customer or a third party has tried to open or tamper with the Hardware in some way;
  - l. the Customer no longer requires the Hardware and the Customer has personalised it;
  - m. if the item is sold as faulty via Tender Business Solutions Limited's auctions or clearance;
  - n. if the item is part of a custom or large order;
  - o. the item is not returned in its original packaging;
  - p. the Customer has not paid the annual Software licence fee; or
  - q. the Products are not in 'as new' condition upon their purchase by the Customer.
102. Tender Business Solutions Limited shall assess the return request by using the following process:
- a. Tender Business Solutions Limited shall use reasonable endeavours to understand why the Customer feels the Product is 'unfit for purpose' and attempt to reasonably resolve any issues when highlighted by the Customer via remote desktop;
  - b. Tender Business Solutions Limited shall attend the Customer's business premises if the situation cannot be resolved remotely to perform a site survey and on-site training or repair. This may be subject to a charge; and
  - c. once the issue is identified, Tender Business Solutions Limited must be given reasonable time to resolve the issue (and with the Customer's assistance (where applicable) to do so).
103. The Customer is responsible for the delivery of the Products back to Tender Business Solutions Limited at the Customer's expense, and only after the Products have been checked by an engineer of Tender Business Solutions Limited, will any payment be agreed upon and released. Reasonable return costs (at the cheapest available rate) will be refunded by Tender Business Solutions Limited where a fault is identified.

104. Refunds will only be made after reasonable endeavours have been made by Tender Business Solutions Limited to resolve the issue.
105. In the event of a return, refunds, credit notes and exchanges can only be made to the card account or business/person that made the order originally, and these will be processed within 28 days of the item's return to Tender Business Solutions Limited.
106. For any payments made through a finance company, Tender Business Solutions Limited is only able to refund any amounts due via the finance company's instruction in writing.
107. Any amounts paid for on-site installations, product imports, support payments, postage, module integrations and repair and labour cost are non-refundable.

## 17. Complaints Procedure

108. Tender Business Solutions Limited endeavours to ensure that all Customers are satisfied with their purchase, however, where problems arise the Customer commits to following the complaints procedure in this clause.
109. If the Customer is not entirely satisfied with the Products and/or Services, its first action should be to contact the Tender Business Solutions Limited support team. Contact details are available at [www.tenderbusinesses.co.uk](http://www.tenderbusinesses.co.uk) If the issue has not been satisfactorily resolved, the Customer should then make a written complaint either by email to [accounts@tenderpos.com](mailto:accounts@tenderpos.com) or by post to: Complaints, Tender Business Solutions Limited Limited, 9 Somers Road, Rugby, CV22 7DB.
110. Written complaints should include full details of the situation and the nature of the Customer's complaint. Additionally, the Customer should ensure that it provides the best contact details to reach them on.
111. Tender Business Solutions Limited will respond to the initial written complaint within two Working Days, confirming that Tender Business Solutions Limited has received the Customer's complaint and advising the Customer of which Tender Business Solutions Limited manager will be managing the resolution.
112. The assigned manager will endeavour to resolve the Customer's complaint as quickly as possible, working with the Customer to understand all aspects and come up with a proposed resolution where a fault is identified.
113. Once the proposed resolution is understood, the assigned manager will write to the Customer documenting the resolution and rationale behind the decision.
114. Should the Customer still not be happy with the resolution provided, the Customer should contact the assigned manager and notify them that it wishes to

escalate the complaint further. No claim will be valid unless the Customer firstly follows the above process.

115. All sales are bound by the terms of this Agreement and Tender Business Solutions Limited asks that the Customer read the full Agreement before raising a complaint. Please note that whilst the Customer's statutory rights are not affected, this is a business-to-business transaction, and is therefore not governed by consumer law (such as the Consumer Rights Act 2015).

116. PLEASE NOTE: Tender Business Solutions Limited does not tolerate any abusive, offensive or inappropriate behaviour or intimidation towards its staff. In the event that the Customer does not treat Tender Business Solutions Limited's staff in a courteous and professional manner at all times, Tender Business Solutions Limited reserves the right to cease all correspondence with the Customer and provide this as evidence of non-cooperation and bad faith in any subsequent legal proceedings.

## 18. Intellectual Property Rights

117. All Intellectual Property Rights and all other rights in the Products shall vest and remain vested in Tender Business Solutions Limited.

118. All Customer data (including but not limited to transactional data, sales data, product data and stock data) are owned by the Customer.

119. The Customer hereby provides Tender Business Solutions Limited with a non-exclusive, royalty-free, perpetual, irrevocable, transferable, worldwide licence to use the Customer's transactional data, sales data, product data and stock data that is generated through the Tender Business Solutions Limited System for the enhancement of existing services and the provision of new services for Tender Business Solutions Limited, its customers and partner organisations. For the avoidance of doubt, any personally identifiable information will be anonymised and/or aggregated.

120. The Customer acknowledges that it will not acquire any Intellectual Property Rights in the Hardware and that it will have no rights in or to the Intellectual Property Rights in the Software other than as set out in the EULA at Annex A.

121. The Customer agrees not to remove deface or cover up any name plates, logos or trade marks appearing on the Products.

122. The Intellectual Property Rights in the Products supplied by Tender Business Solutions Limited may be owned by third party suppliers. Where Tender Business Solutions Limited notifies the Customer that this is the case, the Customer acknowledges that its use of rights in third party materials may be governed by, and will be conditional upon, the Customer agreeing to an end-user licence (or sub-licence) of such rights directly with the relevant licensor.

123. PLEASE NOTE: The Customer's historic stock data, which is stored by Tender Business Solutions Limited expressly for use in the Stock History report in the back office, will only be stored for one year and it will be deleted at the end of this period. Tender Business Solutions Limited recommends that the Customer exports this data from the stock history report from time to time to avoid any loss of data.

## 19. Liability

124. This clause sets out the liability of each party under this Agreement and its Annexes.
125. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
126. Nothing in this Agreement limits or excludes the liability of either party for death or personal injury which results from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.
127. Subject to clause 22.3 and excluding any provisions in this Agreement where an indemnity is provided by either party:
- a. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, pure economic loss, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - b. each party's total liability to each other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to the price paid or payable for the relevant Products and/or Services provided to the Customer by Tender Business Solutions Limited giving rise to such liability.

## 20. Confidentiality

128. A party ("Receiving Party") will 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 (either orally, in writing or by demonstration) to the Receiving Party by the other party ("Disclosing Party") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("Confidential Information").

129. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
- a. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
  - b. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
  - c. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
130. Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
- a. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
  - b. the Receiving Party can show was: (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
  - c. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
  - d. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
  - e. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
131. This clause 23 shall survive termination of this Agreement, however arising.

## 21. Data Protection

132. General Obligations. Each party will ensure that in the performance of its obligations under this Agreement it will at all times comply with all applicable Data Protection Laws and any other applicable privacy laws and regulations. The personal information relating to natural persons is covered by the EU General Data Protection Regulation EU 2016/679 for countries in the EEA and The Data Protection Act 2018 within the UK.
133. Data Specification: The Customer must provide Tender Business Solutions Limited with a document setting out the (a) subject matter and duration of any processing to be undertaken by Tender Business Solutions Limited; (b) the nature and purpose of the processing; and (c) the type of Personal Data and the categories of data subject relevant to this Agreement.
134. Data Controller. The Customer acknowledges and agrees that it will be the Data Controller under this Agreement and that it will be responsible for adequately addressing the use of cookies and data protection obligations in its end-customer / Customer Terms & Conditions and policies. As Tender Business Solutions Limited does not have any control over the Customer's data protection notices, policies and Terms & Conditions, the Customer will indemnify and keep Tender Business Solutions Limited and its Affiliates indemnified against all losses, costs, and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Tender Business Solutions Limited arising out of or in connection with any claim in respect of: (a) a breach of clause 24.1, 24.2 or 24.3; (b) any liability arising whatsoever in respect of the cookies on, or the capture of Personal Data through, the Customer's website(s); and (c) the consent of data subjects for the exportation of any Personal Data outside of the European Economic Area by Tender Business Solutions Limited under clause 24.6.
135. Data Processor. Tender Business Solutions Limited acknowledges and agrees that it will be the Data Processor under this Agreement and that it shall: (a) keep all Personal Data it receives, stores and collects from the Customer strictly confidential (pursuant to clause 20 (Confidentiality)), and not disclose any Personal Data to third parties; (b) not use the Personal Data for any purpose other than to perform its obligations under this Agreement; (c) ensure that all Personal Data it receives, stores and collects from the Customer is processed in accordance with this Agreement or as otherwise instructed in writing from time to time by the Customer and Tender Business Solutions Limited shall not process the Personal Data for any other purpose, unless required by law to which Tender Business Solutions Limited is subject, in which case Tender Business Solutions Limited shall to the extent permitted by law inform the Customer of that legal requirement prior to responding to the request; (d) promptly carry out any



written request requiring Tender Business Solutions Limited to amend, transfer or delete the Personal Data or any part of the Personal Data made by the Customer during this Agreement; and (e) notify the Customer without undue delay or in any case within 48 hours upon Tender Business Solutions Limited or any sub-processor becoming aware of a breach affecting Personal data and at this time providing the Customer with all sufficient information required to meet any obligation to notify the relevant data protection authority or inform affected individuals under applicable Data Protection Laws.

136. Assistance. Tender Business Solutions Limited agrees to assist the Customer with all subject access requests which may be received from an end-customer in a prompt timeframe (at the Customer's cost) and ensure that appropriate technical and organisational measures are in place to enable the Customer to meet its obligations to those requesting access to Personal Data held by Tender Business Solutions Limited. Upon request, Tender Business Solutions Limited shall provide you with reasonably requested information within a reasonable timeframe to demonstrate its compliance with this clause 24. Tender Business Solutions Limited shall assist the Customer in relation to any data impact assessments and/or any prior consultation with the relevant data protection authority, provided that Tender Business Solutions Limited shall be entitled to charge a reasonable fee for such assistance.
137. Data Transfers. Tender Business Solutions Limited may transfer Personal Data to other countries (i) where it is necessary in order to fulfil the terms of any contract which you have with Tender Business Solutions Limited or (ii) in order to arrange provision of services to you (such as those from a credit card company). However, Tender Business Solutions Limited will only transfer such data as follows; (a) within the EU/EEA (b) to countries as recognised by the EU as having data-compliant laws through an "adequacy decision" (c) by "restricted transfer" (d) to other Tender Business Solutions Limited group entities by use of standard contractual clauses as approved by the European Commission, or (e) by other method approved by the Information Commissioner's Office (or other regulator) from time to time.
138. Return of Data: Upon the termination or expiry of this Agreement for any reason, Tender Business Solutions Limited shall return all Personal Data to the Customer as requested by the Customer in writing, provided that this shall not prevent Tender Business Solutions Limited from retaining a copy to meet its legal or regulatory obligations.
139. Sub-Processors. The Customer hereby agrees that Tender Business Solutions Limited may appoint any of its sub-contractors as sub-processors without requiring further consent. Such sub-contractors are deemed to be

approved under this clause and the Customer may request a list of such sub-processors from time to time.

140. Safeguards. Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purpose of processing as well as the varying risks to rights and freedoms of natural persons, the parties warrant that for the duration of this Agreement they will implement administrative, technical and physical safeguards sufficient to ensure the security and confidentiality, and protect against the unauthorised or accidental destruction, loss, alteration, use, or disclosure, of Personal Data and other records and information of the end-customers or employees and to protect against anticipated threats or hazards to the integrity of such information and records.
141. The Customer acknowledges and agrees to the processing by Tender Business Solutions Limited of all of the Customer's transactional and sales data, which may include 'Personal Data' (as defined by applicable Data Protection Laws) for all purposes connected with this Agreement.
142. The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form.
143. Tender Business Solutions Limited cannot guarantee the recovery of Customer data where this is deleted by the Customer (or Tender Business Solutions Limited at the Customer's request).

## 22. Indemnity

144. The Customer shall indemnify and keep Tender Business Solutions Limited and its officers, employees, consultants, agents and sub-contractors indemnified, on demand, against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Tender Business Solutions Limited arising out of or in connection with any claim against Tender Business Solutions Limited in relation to or arising out of the Customer's actions (including the actions of those granted access by the Customer) including:
  - a. the Customer's content or data on the Tender Business Solutions Limited System:
    - i. infringing a third party's Intellectual Property Rights;
    - ii. being inaccurate or incomplete ; and/or
    - iii. being defamatory, offensive, in breach of privacy or data protection laws or otherwise being in breach of any civil Tort or criminal statute.

- b. use of the Products in a manner which causes loss, harm or damage to Tender Business Solutions Limited or to any third party.

### 23. Termination

145. Unless stated otherwise herein, no cancellation or variation of an order by the Customer shall be effective unless it is made in writing and accepted in writing by an authorised officer of Tender Business Solutions Limited. Tender Business Solutions Limited reserves the right to refuse to accept such cancellation or variations or to accept cancellation or variation only subject to such conditions as it considers are warranted according to the circumstances.
146. Without limiting any other rights or remedies, either party (“Terminating Party”) may terminate this Agreement with immediate effect by providing written notice to the other party (“Defaulting Party”) on or at any time after the occurrence of any of the events specified below:
- a. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so; or
  - b. an event, including (or similar in nature to) the following:
    - i. the Defaulting Party is unable to pay its debts as they fall due;
    - ii. the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
    - iii. a receiver is appointed in respect of the whole or any part of the Defaulting Party;
    - iv. a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
  - c. the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
147. Tender Business Solutions Limited may terminate this Agreement with immediate effect if it reasonably believes that the Customer has infringed or will infringe Tender Business Solutions Limited’s rights or the rights of a third party.
148. If this Agreement terminates for any reason, notwithstanding any other provision, Tender Business Solutions Limited shall have no obligation to refund the Customer and all charges payable by the Customer to Tender Business Solutions Limited under this Agreement will become due and payable

immediately. This clause is without prejudice to any right by Tender Business Solutions Limited to claim for interest or any other right under this Agreement.

149. The Customer's data stored within the Tender Business Solutions Limited System shall be available for the Customer to download for a period of 30 days from the effective date of termination. After this period, the Customer's data shall not be recoverable by or for the Customer and may be deleted by Tender Business Solutions Limited.

150. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

#### 24. Force Majeure

151. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances which could not reasonably be contemplated at the time of entering into this Agreement and which are beyond the parties' reasonable control (including, without limitation, an act of God, strikes, lock-outs or other industrial disputes (involving the workforce of Tender Business Solutions Limited), failure of a utility service or transport network, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers or sub-contractors). If a force majeure event causes failure to perform obligations for a continuous period of 30 days or more, either party may terminate this Agreement immediately by providing the other party with written notice.

152. As per schedule 27.1, Tender Business Solutions Limited withholds the right to delay order deliveries by up to 30 days in the event of force majeure.

#### 25. Audit

153. During the term of this Agreement and for a period of two years following its termination, upon reasonable notice to the Customer, Tender Business Solutions Limited will have the right to audit all usage of the Software by the Customer either remotely or at the Customer's premises, provided that the Customer will not be required to submit to such audit more than twice in any calendar year. The Customer will provide Tender Business Solutions Limited (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit. The parties will bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 25.1, unless the audit identifies a material default by the Customer, in which case the Customer will reimburse Tender Business Solutions Limited for all of its reasonable costs incurred in the course of the audit.

154. If an audit identifies that the Customer is in breach of this Agreement, without prejudice to Tender Business Solutions Limited's other rights and remedies, the Customer will promptly take the necessary steps to comply with its obligations (including making an additional payment for any use of the Software outside of the agreed licence scope at Tender Business Solutions Limited's then current rates).

## 26. Referrals

155. Tender Business Solutions Limited may provide the Customer with incentives ("Offer") for the Customer to make referrals to relating to the Tender Business Solutions Limited Services and/or Products to third parties from time to time ("Referral").

156. The terms of the Offer shall be documented by Tender Business Solutions Limited on the relevant web page or document detailing the Offer.

Notwithstanding, any referral activity that has been formally pre-authorised by Tender Business Solutions Limited in the form of an Offer shall be governed by this clause 29.

157. In the event of conflict between the Offer terms and the terms of this clause 29, this clause 29 shall prevail.

158. To provide Referrals, the Customer may be permitted by Tender Business Solutions Limited to generate a shareable URL / link from its account within the Software. This link may then be provided by the Customer to third parties. When the third party follows the link and successfully purchases the relevant Tender Business Solutions Limited Services and/or Products detailed in the Offer, the Customer may be entitled to the incentive detailed in the Offer. To be a valid Referral, the relevant purchase of Tender Business Solutions Limited Services and/or Products must be made without any cancellation of the order within a period of one month.

159. No incentive or referral fees will be payable to the Customer where the Customer has any fees or other charges outstanding.

160. We may share certain personal data with third parties to fulfil these rewards in accordance with our [Privacy Policy](#)

## 27. Miscellaneous

161. This Agreement 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. Each party acknowledges that in entering into this Agreement 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 Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

162. It may be necessary for Tender Business Solutions Limited to update this Agreement and its terms from time to time. If the Customer continues to use Tender Business Solutions Limited's services after Tender Business Solutions Limited has informed the Customer of any updated version of this Agreement, the Customer will be deemed to have accepted these changes and they will be incorporated into this Agreement.
163. Subject to clause 27.2, no variation of this Agreement will be effective unless it is in writing and signed by both parties.
164. The Customer is responsible for informing Tender Business Solutions Limited of any changes to their contact details.
165. Please note that Tender Business Solutions Limited may record phone calls that we receive from the Customer for training purposes and quality control.
166. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
167. The Customer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of Tender Business Solutions Limited. Tender Business Solutions Limited 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 this Agreement.
168. All notices must be in writing and will be deemed given when mailed by registered or certified mail, return receipt requested, to the other party's main business address. Serving notice by email or fax will not be accepted as an effective method of providing notice of a claim under this Agreement.
169. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms. The Customer and Tender Business Solutions Limited hereby waive their rights (i) to sue before a jury (where applicable); or (ii) to participate in a class action, class-wide arbitration (where applicable), private attorney general action, or any other proceeding in which a party acts in a representative capacity.
170. Nothing in this Agreement is intended to, or will be deemed to establish any partnership or joint venture between the parties, make a party the agent of the other party or authorise a party to make or enter into any commitments for or on behalf of the other party.

171. If any provision or part-provision of this Agreement 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 Agreement.
172. This Agreement is governed by the laws of England and Wales and the parties agree to irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

ANNEX A: Tender Business Solutions Limited Software End User License Agreement (“EULA”)

PLEASE READ THIS EULA CAREFULLY BEFORE USING ANY TENDER BUSINESS SOLUTIONS LIMITED SOFTWARE. BY USING ANY TENDER BUSINESS SOLUTIONS LIMITED SOFTWARE YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT USE THE SOFTWARE.

173. Application of this EULA
- a. This EULA incorporates and supplements the Tender Business Solutions Limited Terms & Conditions (General Terms and Conditions of Trading with Tender Business Solutions Limited) (“Agreement”) as updated from time to time. In the event of conflict between the terms of this EULA and the Tender Business Solutions Limited Terms & Conditions, the Tender Business Solutions Limited Terms & Conditions will prevail.
174. General Use
- a. The Software, Systems, interfaces, content, fonts, documentation and any data that is provided by Tender Business Solutions Limited to the Customer under its Software licence (as may be updated or replaced by Software updates or System restore software provided by Tender Business Solutions Limited whether in read only memory, on any other media or in any other form) are licensed to the Customer (for the number of licences purchased only) on a non-exclusive, revocable, non-transferable basis for the Customer to make reasonable use of the Tender Business Solutions Limited System under the terms of this Agreement and not for any other purpose.
  - b. Tender Business Solutions Limited retains ownership of the Software and reserves all rights not expressly granted to the Customer
  - c. Tender Business Solutions Limited, at its discretion, may make available future updates to the Software for the Customer’s Epos System.



- d. The Customer shall carry out regular back-ups to removable media stored separately from the supported items and carry out other normal system housekeeping routines (disc defragging etc). Tender Business Solutions Limited shall not be liable for any loss or damage sustained or incurred by the Customer or any third party through loss or corruption of data resulting from any maintenance activity by Tender Business Solutions Limited required or performed under this Agreement. Tender Business Solutions Limited will use reasonable endeavours rectify any such loss of data or programs, but reserves the right to charge for such services.
  - e. The Customer remains solely responsible for implementing adequate and industry standard virus protection measures to all parts of the Tender Business Solutions Limited System.
  - f. Any additional software which is downloaded by the Customer, which is not already pre-installed on the System, is solely done at the Customer's risk.
  - g. The Customer is responsible for keeping the Software up-to-date and must accept automatic updates to the Software at all times. The Customer is responsible for keeping the operating system up-to-date with available patches and upgrades at all times.
  - h. From time to time Tender Business Solutions Limited will deprecate older operating system versions, supporting Software or Hardware minimum specifications. Tender Business Solutions Limited will use reasonable endeavours to give 60 days' notice in such circumstances and after this period the Customer must move away from any such deprecated Hardware, Software and/or operating systems at the Customer's expense.
175. Permitted Software licence uses and restrictions
- a. Each Software licence allows the Customer to use the Software on the specific point of sale terminals requested by the Customer at the point of purchase.
  - b. Each licence does not allow the Software to exist on more than one point of sale terminal, and the Customer must not make the Software available over a network where it could be used by multiple devices or multiple computers at the same time, unless otherwise agreed in writing by Tender Business Solutions Limited.
  - c. This EULA does not grant the Customer any rights to use Tender Business Solutions Limited proprietary interfaces or any other Intellectual Property Rights in the design, development, manufacture, licensing or distribution of third-party devices and accessories for use with the Tender Business Solutions Limited System. Except as and only to the extent expressly permitted in this EULA or by applicable law, the Customer must not copy,

decompile, reverse engineer, disassemble, and attempt to derive the source code of, decrypt, modify, or create derivative works of the Software (or any updates), the Tender Business Solutions Limited Systems, or any part thereof. Any attempt to do so is a violation of the rights of Tender Business Solutions Limited. If the Customer breaches this restriction, it may be subject to prosecution and damages.

- d. The Customer may not rent, lease, lend, charge, redistribute or sub-license the Tender Business Solutions Limited Software or Software updates.

176. Termination

- a. This EULA is effective until terminated in accordance with the Agreement. The Customer's rights under this EULA will terminate automatically without notice from Tender Business Solutions Limited if the Customer fails to comply with any term(s) of this EULA. Upon the termination of this EULA the Customer's Software will be restricted

The following section applies to any API integrations with the Customer's web platform or systems.

API TERMS OF USE

177. Licensed Uses and Restrictions.

- a. "API" means the software set of functions and procedures that allow the creation of third-party applications to access the features or data of Tender Business Solutions Limited's System.
- b. The Tender Business Solutions Limited APIs are owned by Tender Business Solutions Limited and are licensed to the Customer on a worldwide (except as limited below), non-exclusive, non-transferable basis on the terms set forth herein.
- c. These API Terms of Use define the legal use of Tender Business Solutions Limited APIs, including all updates, revisions, substitutions, and any copies of the Tender Business Solutions Limited APIs made by or for the Customer.
- d. Tender Business Solutions Limited Customer data (including but not limited to transaction data, sales data, product data and stock data) are owned by the Customer and not by Tender Business Solutions Limited.
- e. The Customer's right to use the Tender Business Solutions Limited APIs shall terminate immediately if Tender Business Solutions Limited disables the Customer's access to the Tender Business Solutions Limited APIs for any reason.
- f. The Customer shall:

- i. comply with any requirements or restrictions imposed on usage of client data by their respective owners. Although the Tender Business Solutions Limited APIs can be used to provide the Customer with access to client data, neither Tender Business Solutions Limited's provision of the Tender Business Solutions Limited APIs to the Customer nor the Customer's use of the Tender Business Solutions Limited APIs override the Customer's data privacy requirements and restrictions, which may include "all rights reserved" notices, data protection laws, Creative Commons licenses or other terms and conditions that may be agreed upon between the Customer and its clients. In all cases, the Customer is solely responsible for making use of its client data in compliance with the applicable client's requirements and/or restrictions;
  - ii. remove from the Tender Business Solutions Limited System any client data or other information that the applicable client asks the Customer to remove within 24 hours;
  - iii. disclose through a privacy policy or otherwise displayed in the footer of each page of the Customer's applications, how it collects, uses, stores and discloses data collected from visitors and clients, including, where applicable, that third parties may serve content and collect information directly from visitors and may place or recognise cookies on visitors' browsers;
  - iv. provide accurate contact details for the Customer to Tender Business Solutions Limited upon request; and
  - v. provide an accurate statement of intended use of the applicable API to Tender Business Solutions Limited upon request, and once provided restrict the Customer's activities to stay within this statement.
- g. The Customer shall not:
- i. Use the Tender Business Solutions Limited APIs for any application that replicates or attempts to replace the essential user experience of Tender Business Solutions Limited, TenderPOS or any of its products or software or any Tender Business Solutions Limited app or website;
  - ii. attempt to cloak or conceal the Customer's identity or the application's identity when requesting authorisation to use Tender Business Solutions Limited APIs;
  - iii. cache or store any content other than for reasonable periods in order to provide the service the Customer is providing to its clients;

- iv. use the Tender Business Solutions Limited APIs for any application that constitutes, promotes or is used in connection with spyware, adware, or any other malicious programs or code;
  - v. use the Tender Business Solutions Limited APIs in any manner or for any purpose that violates any law or regulation within the UK and the location of any of its own servers, or any rights of any person, including but not limited to Intellectual Property Rights, rights of privacy, or rights of personality;
  - vi. use the Tender Business Solutions Limited APIs in a manner that adversely impacts the stability of Tender Business Solutions Limited.com servers or adversely impacts the behaviour of other applications using the Tender Business Solutions Limited APIs. Further, Tender Business Solutions Limited reserves the right to rate limit or block applications that make a large number of calls to an API that are not primarily in response to direct user actions;
  - vii. sell, lease, or sublicense the Tender Business Solutions Limited APIs or access thereto or derive revenues from the use or provision of the Tender Business Solutions Limited APIs, whether for direct commercial or monetary gain or otherwise, without prior written agreement from Tender Business Solutions Limited; or
  - viii. serve, or allow third parties to serve, advertising materials to clients, or to collect data for the purposes of marketing or advertising.
178. Ownership and Relationship of Parties.
- a. Tender Business Solutions Limited owns all rights, title, and interest in and to the Tender Business Solutions Limited APIs. Tender Business Solutions Limited's rights apply to the Tender Business Solutions Limited APIs and all output and executables of the Tender Business Solutions Limited APIs, excluding any software components developed by the Customer which do not themselves incorporate the Tender Business Solutions Limited APIs or any output or executables of the Tender Business Solutions Limited APIs.
  - b. The Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices or restrictions provided by Tender Business Solutions Limited to the Customer.
  - c. These terms do not grant the Customer any right, title, or interest in any Intellectual Property Rights owned or licensed by Tender Business Solutions Limited, including (but not limited to) the Tender Business Solutions Limited APIs and Tender Business Solutions Limited trademarks.
179. API Support

- a. Tender Business Solutions Limited may elect to provide the Customer with support or modifications for the Tender Business Solutions Limited APIs (collectively, "API Support"), in its sole discretion, and may terminate such API Support at any time without providing notice to the Customer.
- b. Tender Business Solutions Limited may change, suspend, or discontinue any aspect of the Tender Business Solutions Limited APIs at any time, including the availability of any Tender Business Solutions Limited APIs.
- c. Tender Business Solutions Limited may also impose limits on certain features and services or restrict the Customer's access to parts or all of the Tender Business Solutions Limited APIs or the Tender Business Solutions Limited website without notice or liability.

180. Payment

- a. Tender Business Solutions Limited retains the right to charge for use of the APIs on a recurring basis upon notifying the Customer in advance. Tender Business Solutions Limited may increase, reduce or remove this charge at any time. Where an increase is made, a notice period of no less than 7 calendar days will be provided to the Customer by Tender Business Solutions Limited
- b. Where payment is not received, Tender Business Solutions Limited reserves the right to exercise its rights for late payment detailed in the Agreement.

181. Disclaimer of Warranties

- a. Some of the Tender Business Solutions Limited APIs may be experimental and not tested in any manner. Tender Business Solutions Limited does not represent or warrant that any Tender Business Solutions Limited APIs are free of inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid.
- b. The Tender Business Solutions Limited APIs are provided 'as is' with no warranty, express or implied, of any kind. Tender Business Solutions Limited expressly disclaims any and all warranties and conditions, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and/or non-infringement.
- c. The Customer's use of the Tender Business Solutions Limited APIs is at the Customer's own discretion and risk, and the Customer will be solely responsible for any damage that results from the use of any Tender Business Solutions Limited APIs including, but not limited to, any damage to the Customer's computer system or loss of data.
- d. It remains the Customer's responsibility to verify the integrity and accuracy of any data accessed, edited or supplied through an API.

