

Mavin Capital Limited Ltd

Terms & Conditions for IT Relocation & Migration Services

I. Definitions and Interpretation

- 1.1 The following are the standard terms and conditions under which MAVIN CAPITAL LIMITED (registered in England and Wales under registration number 7431625 with its registered office at 29 Harley Street, London, W1G 9QR) ("MAVIN CAPITAL LIMITED") supplies services. These terms and conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof and shall be deemed to be incorporated into all such agreements. PLEASE READ CLAUSE 11 CAREFULLY since it has been included to limit MAVIN CAPITAL LIMITED'S liability so as to relieve MAVIN CAPITAL LIMITED'S customers of the additional amount that MAVIN CAPITAL LIMITED would need to charge to recover insurance costs were its liability not limited as provided for in Clause 11 unless customers wish to pay such an additional amount so that MAVIN CAPITAL LIMITED accepts a higher level of liability.
- 1.2 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:
- "Agreement" - means the agreement between MAVIN CAPITAL LIMITED and the Customer for the supply of the Services in accordance with these Terms and Conditions;
- "Charges" - means the fees set out in the Supply Proposal and payable by the Customer for the supply of the Services in accordance with Clause 5;
- "Collection Point" - means the Customer's premises from where the Goods are to be collected as set out in the Supply Proposal;
- "Commencement Date" - has the meaning given in Clause 2.2;
- "Customer" - means the person or firm who purchases the Services from MAVIN CAPITAL LIMITED;
- "Delivery Point" - means the Customer's premises to where the Goods are to be delivered as set out in the Supply Proposal;
- "Directive" - means the Waste Electrical and Electronic Equipment Directive 2002/96/EC;
- "Event of Default" - has the meaning given in Clause 11.5.2;
- "Goods" - means the Customer's goods (or any part thereof) in respect of which the Services are to be undertaken under the Agreement including, as applicable and without limitation, (1) servers; (2) information technology equipment; and (3) cables;
- "Good Industry Practice" - means the exercise of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, complying with all applicable laws, rules and regulations including codes of practice and conduct in force from time to time relating to the Services;
- "Order" - means the Customer's order for the Services by way of any notification made by the Customer to MAVIN CAPITAL LIMITED that they wish the Services to proceed in response to the Supply Proposal;
- "Premises" - means the Customer's premises where the Services are to be performed as set out in the Supply Proposal including, without limitation, the Collection Point and the Delivery Point;
- "Services" - means the services supplied by MAVIN CAPITAL LIMITED to the Customer as set out in the Supply Proposal including, as applicable and without limitation, (1) the storage and handling of the Goods including unloading and loading of the Goods and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing ("Storage

Services"); (2) the movement of the Goods between the Collection Point and the Delivery Point and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing ("Relocation Services"); (3) the erasure and/or migration of data on storage media and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing ("Data Services"); (4) the treatment, reverse manufacture and dismantling of WEEE, the reuse and recovery of recyclable materials in accordance with the Directive and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing ("WEEE Services"); (5) installation and rollout of the Goods and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing; (6) cable management and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing; and (7) project management and such other ancillary services as MAVIN CAPITAL LIMITED may agree to in writing;

"Supply Proposal" - means any written proposal by MAVIN CAPITAL LIMITED provided to the Customer in respect of the Services;

"Terms and Conditions" - means these terms and conditions as amended from time to time in accordance with Clause 20.1 and Clause 20.2; and

"WEEE" - means waste electrical and electronic equipment.

- 1.3 Any reference to a day or days refers to business days unless otherwise stated – that is any day which is not a weekend or public or bank holiday in the United Kingdom.
- 1.4 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- 1.5 Any reference in these Terms and Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to writing or written includes faxes and e-mails.

2. Customer Orders

- 2.1 An Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms and Conditions.
- 2.2 An Order shall only be deemed to be accepted by MAVIN CAPITAL LIMITED upon it issuing written acceptance of the Order or it commencing supply of the Services, at which point and on which date the Agreement shall come into existence ("Commencement Date").
- 2.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MAVIN CAPITAL LIMITED which is not set out in the Agreement.
- 2.4 Any descriptive matter or advertising issued by MAVIN CAPITAL LIMITED are issued or published for the sole purposes of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.5 These Terms and Conditions apply to the Agreement to the exclusion of any others that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), these Terms and Conditions shall prevail.
- 2.6 The Customer acknowledges and agrees that it is classified as a business customer in respect of the supply to it of the Services.

3. Supply Proposals

- 3.1 The Supply Proposal is deemed to be subject to these Terms and Conditions and shall not constitute an offer.
- 3.2 MAVIN CAPITAL LIMITED reserves the right to withdraw or amend the Supply Proposal prior to the Agreement coming into existence. Supply Proposals are deemed to be withdrawn after 28 calendar days should an Order not be made.

4. The Services

- 4.1 MAVIN CAPITAL LIMITED shall supply the Services to the Customer in accordance with the Supply Proposal, with reasonable care and skill and in accordance with Good Industry Practice.
- 4.2 In supplying the Services, MAVIN CAPITAL LIMITED shall:
 - 4.2.1 Not be required to supply the Services where, in its reasonable opinion, doing so would create an undue risk of accident, physical injury or harm to any person.
 - 4.2.2 Supply properly skilled staff, apparatus and equipment necessary for the supply of the Services.
 - 4.2.3 Have the right to make any changes to the Services which are necessary to comply with applicable law or safety requirements, or which do not materially affect the nature or quality of the Services, and MAVIN CAPITAL LIMITED shall notify the Customer in any such event.
 - 4.2.4 Where Relocation Services are to be supplied, safely disassemble, pack, mark, label, load, stow, transport from the Collection Point, unload, unpack and reassemble at the Delivery Point the Goods. MAVIN CAPITAL LIMITED shall, at its complete and sole discretion, be able to choose the method of carriage, the type of vehicle and the route to be used for the carriage of the Goods as part of the supply of Relocation Services.
 - 4.2.5 Comply with all applicable laws (including data protection laws where MAVIN CAPITAL LIMITED provides Data Services) and, where MAVIN CAPITAL LIMITED provides WEEE Services, the terms of its waste management licence.
 - 4.2.6 Use reasonable endeavours to ensure minimum disruption to the Customer's business.
- 4.3 In the absence of prior written instruction to MAVIN CAPITAL LIMITED giving sufficient detail, no particular precautions nor any special treatment need to be taken or provided for the Goods.
- 4.4 In the case of Relocation Services, MAVIN CAPITAL LIMITED'S responsibility for the Goods starts when disassembly at the Collection Point commences and ends when the Goods are reassembled at the Delivery Point.
- 4.5 In the case of Storage Services, MAVIN CAPITAL LIMITED'S responsibility for the Goods starts when the Goods are accepted into MAVIN CAPITAL LIMITED'S store and ends when they are tendered for collection or on the expiry of notice under Clause 14.2.
- 4.6 Where MAVIN CAPITAL LIMITED provides Storage Services and Relocation Services, it shall also be responsible for the Goods while they are transferred from its vehicle to its store and vice versa.
- 4.7 Where MAVIN CAPITAL LIMITED provides Data Services involving data destruction and WEEE Services, it shall collect the Goods from the Collection Point and title to the Goods shall pass to MAVIN CAPITAL LIMITED upon such collection.
- 4.8 The Customer acknowledges and agrees that time is not of the essence (and may not be made of the essence by notice) for:
 - 4.8.1 Any dates or times when the Services are due to be performed.
 - 4.8.2 The length of time that any Services will take to perform.
 - 4.8.3 Any date or time when the Services will be completed by.

5. Charges

- 5.1 MAVIN CAPITAL LIMITED'S fees in consideration of providing the Services will be the Charges.
- 5.2 MAVIN CAPITAL LIMITED may revise the Charges from time to time. Any such revision shall not become effective until after the expiry of 21 calendar days from the date notice of the proposed revision is given to the Customer.
- 5.3 If the Customer requests that MAVIN CAPITAL LIMITED undertakes work outside of the scope of the agreed Services or if the Customer wishes to change the scope of the Services, then it shall submit details of the requested change to MAVIN CAPITAL LIMITED in writing and MAVIN CAPITAL LIMITED shall, within a reasonable time, provide a written estimate of any variations to the Charges. If the Customer wishes to proceed with the change, MAVIN CAPITAL LIMITED has no obligation to do so unless and until the parties have agreed in writing on the necessary variation to the Charges and any other relevant terms of the Agreement to take account of the change.
- 5.4 The Charges and any additional charges do not include value added tax, custom duties and any other fees or taxes payable to government bodies which, if applicable, shall be added at the rate in force at the time of supply.
- 5.5 Without prejudice to any other rights MAVIN CAPITAL LIMITED may have in respect of any failure by the Customer to pay the Charges or other monies payable pursuant to the Agreement, MAVIN CAPITAL LIMITED may:
 - 5.5.1 Charge interest and late payment compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
 - 5.5.2 Charge the Customer on an indemnity basis for any costs incurred in obtaining (or attempting to obtain) payment of any unpaid amounts including, without limitation, legal fees.
 - 5.5.3 Require the Customer to pay, in advance, for any Services which have not yet been performed until all charges owing have been paid in full and cleared funds.
 - 5.5.4 Not perform further Services until all charges owing have been paid in full and cleared funds.
- 5.6 MAVIN CAPITAL LIMITED has the right to charge for Storage Services for so long as it has custody of, or is responsible for, the Goods.
- 5.7 If the Customer postpones, delays or cancels the Services, MAVIN CAPITAL LIMITED will be entitled to charge it according to how much notice is given as follows:
 - 5.7.1 More than 10 days before the Services were due to start, no charge.
 - 5.7.2 Between 5 and 10 days inclusive before the Services were due to start, not more than 30% of the Charges.
 - 5.7.3 Between 2 and 5 days inclusive before the Services were due to start, not more than 60% of the Charges.
 - 5.7.4 Less than 48 hours before the Services were due to start, not more than 95% of the Charges.

6. Payment

- 6.1 The time stipulated for payment shall be of the essence of the Agreement and failure to pay within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by MAVIN CAPITAL LIMITED, render the Customer in material breach of the Agreement.
- 6.2 Invoices shall be payable in Pounds Sterling within the period stated in the invoice or, if no period is stated, no later than 30 calendar days of the invoice date in full and cleared funds. MAVIN CAPITAL LIMITED shall be entitled to invoice in respect of the Services to be performed in advance.

- 6.3 Payment of any MAVIN CAPITAL LIMITED invoice shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved and upon the termination of the Agreement.

7. Customer's Obligations

- 7.1 During the continuance of the Agreement the Customer shall:
- 7.1.1 Furnish MAVIN CAPITAL LIMITED promptly upon receipt of a request for such any information as MAVIN CAPITAL LIMITED may reasonably require for the supply of the Services.
- 7.1.2 Nominate prior to the supply of any Services an authorised representative to be its prime point of contact with MAVIN CAPITAL LIMITED during the continuance of the Agreement, such representative having the authority to represent and legally bind the Customer on all matters in connection with the Agreement.
- 7.1.3 Ensure the accuracy and validity of all information provided to MAVIN CAPITAL LIMITED.
- 7.1.4 Allow MAVIN CAPITAL LIMITED reasonable access to its employees for the purpose of the supply of the Services and ensure its employees cooperate fully with MAVIN CAPITAL LIMITED in relation to the supply of the Services.
- 7.1.5 Provide free and safe access to the Premises as is necessary by MAVIN CAPITAL LIMITED to comply with its obligations under the Agreement.
- 7.1.6 Co-operate with MAVIN CAPITAL LIMITED in all matters relating to the Services.
- 7.1.7 Where MAVIN CAPITAL LIMITED is supplying Storage Services, give MAVIN CAPITAL LIMITED not less than 10 days' notice of its intention to remove the Goods from MAVIN CAPITAL LIMITED's storage premises.
- 7.2 The Customer warrants that the Premises are safe for work and comply with all statutory requirements for the health and safety at work of MAVIN CAPITAL LIMITED'S staff. MAVIN CAPITAL LIMITED may refuse to permit its staff to work in or around the Premises if it reasonably considers that they may be exposed to undue risk or danger.
- 7.3 The Customer warrants that the Services can be undertaken at the Collection Point and the Delivery Point by the use of normal doors and staircases without the use of specialised equipment.
- 7.4 The Customer warrants that the approach roads to the Premises are suitable for MAVIN CAPITAL LIMITED'S vehicles and that parking is available at no cost to MAVIN CAPITAL LIMITED.
- 7.5 The Customer warrants that either it is the owner of the Goods or is authorised by such owner to accept the Terms and Conditions on the owner's behalf. In the event of any claim being made by any third party against MAVIN CAPITAL LIMITED in respect of loss of or damage to the Goods or in respect of any conversion or of interference with the Goods, the Customer will indemnify MAVIN CAPITAL LIMITED in respect of such claim.
- 7.6 The Customer warrants that the Goods are as described to MAVIN CAPITAL LIMITED with regard to their value, nature, weight, quantity, condition and dimensions.
- 7.7 The Customer will indicate if Data Services and WEEE Services are required and the Customer warrants that, except to the extent notified in detail to, and accepted by, TECHIMOVE in writing, none of the Goods require any official consent or licence to handle, possess, deal with or carry or will at any time whilst in the care or control of MAVIN CAPITAL LIMITED constitute WEEE. The Customer shall obtain at its own expense all documents, permits, permissions, licences and customs documents necessary for the Services to be completed.

8. Performance

- 8.1 MAVIN CAPITAL LIMITED shall use its reasonable endeavours to comply with any day or dates for the supply of the Services as stated in the Supply Proposal, however such dates shall constitute only statements of expectation and shall not be binding. If MAVIN CAPITAL LIMITED, having used its reasonable endeavours, fails to supply or complete the Services by such date or dates, such failure shall not constitute a breach of the Agreement. The Customer shall not be entitled to treat the Agreement as thereby repudiated or to rescind it or any ancillary agreement in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.

9. Assignment

- 9.1 MAVIN CAPITAL LIMITED may assign, transfer, charge, sub-contract or delegate any of its rights under the Agreement and may sub-contract or delegate any of its obligations or responsibilities arising out of the Agreement to any of its business associates. Performance by such associates shall be deemed to be performance by MAVIN CAPITAL LIMITED.
- 9.2 Where Storage Services are sub-contracted, MAVIN CAPITAL LIMITED will on request notify the Customer of the location of the Goods.
- 9.3 Where WEEE Services are sub-contracted, MAVIN CAPITAL LIMITED will only sub-contract to sub-contractors who hold a suitable waste management licence.
- 9.4 The Customer may assign, novate or otherwise transfer the Agreement with MAVIN CAPITAL LIMITED'S prior written consent.

10. Equipment

- 10.1 All apparatus and equipment supplied by MAVIN CAPITAL LIMITED shall remain the sole property of MAVIN CAPITAL LIMITED.

11. Liability

- 11.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms and Conditions and the Agreement by MAVIN CAPITAL LIMITED in respect of the Services.
- 11.2 MAVIN CAPITAL LIMITED warrants that it will use reasonable care and skill in supplying the Services.
- 11.3 MAVIN CAPITAL LIMITED provides no warranty that any result or objective can or will be achieved or attained at all as a result of its supply of the Services.
- 11.4 The following provisions set out MAVIN CAPITAL LIMITED'S entire liability (including any liability for the acts and omissions of its employees and sub-contractors) to the Customer in respect of:
- 11.4.1 any breach of its contractual obligations arising out of the Agreement; and
- 11.4.2 any representation, statement, breach of statutory duty or tortious act or omission, including negligence arising out of or in connection with the Agreement.
- 11.5 The Customer's attention is drawn to the following provisions:
- 11.5.1 MAVIN CAPITAL LIMITED'S liability to the Customer for death or personal injury resulting from its own or that of its employees' and sub-contractors' negligence and for fraud or fraudulent misrepresentation shall not be limited;
- 11.5.2 any other act or omission on the part of MAVIN CAPITAL LIMITED falling outside Clause 11.5.1 shall be known as an "Event of Default"; and
- 11.5.3 subject to the limits and exclusions set out below and in Clause 22,

MAVIN CAPITAL LIMITED shall accept liability to the Customer resulting from the negligence of MAVIN CAPITAL LIMITED or its employees or sub-contractors or the breach of contract by MAVIN CAPITAL LIMITED.

11.6 Subject to Clause 11.5.1:

11.6.1 MAVIN CAPITAL LIMITED shall not in any circumstances be liable for loss of or damage to the Goods arising after it has ceased supplying Storage Services and Relocation Services, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of MAVIN CAPITAL LIMITED, its employees or sub-contractors.

11.6.2 Subject to MAVIN CAPITAL LIMITED'S limitation of its cumulative liability under Clause 11.6.4, in the event that the Insurance Option is not requested by the Customer and is not agreed by the parties in writing by way of an Order then MAVIN CAPITAL LIMITED'S liability in respect of physical loss, mis-delivery of or damage to Goods howsoever arising and occasioned during the supply of the Services shall in all circumstances be limited to the lesser of (1) the value of the Goods actually lost, mis-delivered or damaged; or (2) the cost of repairing any damage or of reconditioning the Goods; or (3) the sum of £40 for each single item or suite of items in respect of the Goods actually lost, mis-delivered or damaged; and the value of the Goods actually lost, mis-delivered or damaged shall be taken to be their replacement cost at the commencement of the Services taking account of depreciation for wear and tear. For the purposes of this Clause 11.6.2, MAVIN CAPITAL LIMITED shall be entitled to proof of the value of the Goods lost, mis-delivered or damaged.

11.6.3 Subject to MAVIN CAPITAL LIMITED'S limitation of its cumulative liability under Clause 11.6.4, MAVIN CAPITAL LIMITED'S liability in respect of the Premises howsoever arising and occasioned during the supply of the Services shall in all circumstances be limited to making good the damaged area only.

11.6.4 MAVIN CAPITAL LIMITED'S cumulative liability in respect of all claims made in respect of or in connection with the Agreement (including claims arising in contract, tort, breach of statutory duty or arising in any other way out of the subject matter of the Agreement) shall not exceed (1) a sum equal to the Charges actually received by MAVIN CAPITAL LIMITED in respect of the Services to which the Event of Default and its liability relates or the amount of the Customer's proved loss, whichever is the lesser; or (2) where the Insurance Option is agreed by the parties in writing by way of an Order, a sum equal to the declared value of the Goods to which the Event of Default and its liability relates or the amount recovered by MAVIN CAPITAL LIMITED under the policy of insurance taken out pursuant to the Insurance Option, whichever is the lesser.

11.6.5 MAVIN CAPITAL LIMITED shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or data or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or MAVIN CAPITAL LIMITED had been advised of the possibility of the Customer incurring the same. If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Agreement.

11.6.6 MAVIN CAPITAL LIMITED shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served written notice of the same upon MAVIN CAPITAL LIMITED within 7 calendar days of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware by the exercise of reasonable diligence. MAVIN CAPITAL LIMITED shall in any event be discharged from all liability whatsoever and howsoever arising in respect of any Event of Default unless legal proceedings are issued and served within 1 year of the date the Customer became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware by the exercise of reasonable diligence.

11.7 The Customer hereby agrees to afford MAVIN CAPITAL LIMITED not less than 60 days in which to remedy any Event of Default which is capable of remedy.

11.8 MAVIN CAPITAL LIMITED does not accept liability in respect of physical loss, mis-delivery of or damage to Goods howsoever arising and occasioned during the supply of the Services above the sum of £40 for each single item or suite of items in respect of Goods unless the Customer requests that MAVIN CAPITAL LIMITED insures the Goods for a higher value ("Insurance Option"). The Customer may request the Insurance Option prior to the commencement of the Services so that MAVIN CAPITAL LIMITED increases its liability beyond that detailed in Clause 11.6.2. When making this request the Customer will be required to declare the value of the Goods in respect of which the Services will be performed and should note the warranty in respect of such value it will make to MAVIN CAPITAL LIMITED pursuant to Clause 7.6. If MAVIN CAPITAL LIMITED wishes to allow the Customer to proceed with the Insurance Option then the fact that this increases its liability will then be reflected in the level of the Charges detailed in the Supply Proposal so that it can recover insurance costs and MAVIN CAPITAL LIMITED will provide a summary of insurance terms when providing the Supply Proposal ("Summary of Terms"). If the Insurance Option is then accepted by the Customer by way of an Order, the following shall apply:

11.8.1 MAVIN CAPITAL LIMITED shall take out and maintain a contract of insurance in accordance with the Summary of Terms provided to the Customer so as to provide MAVIN CAPITAL LIMITED with insurance cover for the replacement value of the Goods, such replacement value being the value of Goods declared by the Customer.

11.8.2 If loss or damage occurs to the Goods as a result of an Event of Default and any matter which may result in a claim under such insurance cover, subject to Clause 11.6.6, MAVIN CAPITAL LIMITED will notify the insurer promptly of the claim upon receipt from the Customer of a written direction to notify a claim in the form attached to the Summary of Terms. For the purposes of processing any such claim, the Customer will provide MAVIN CAPITAL LIMITED, the insurer or any agent of the insurer appointed to investigate any such claim with such information and assistance as may reasonably be required in relation to the claim. MAVIN CAPITAL LIMITED will also provide to the Customer, the insurer or any agent of the insurer appointed to investigate the claim with such information and assistance in relation to the claim as may reasonably be required. In addition, at the Customer's request, MAVIN CAPITAL LIMITED will send the Customer a copy of all correspondence with the insurer or any agent of the insurer relating to the claim (including the notification). While MAVIN CAPITAL LIMITED will, in accordance with the previous provision of this Clause 11.8.2, notify claims to the insurer, it is not under any circumstances obliged to start or threaten to start any legal proceedings in relation to any such claim.

11.8.3 In the event that MAVIN CAPITAL LIMITED makes a claim under such insurance cover in respect of damage or loss caused to the Goods as a result of an Event of Default, MAVIN CAPITAL LIMITED shall pay or arrange for payment to the Customer that part of any proceeds of such claim made by MAVIN CAPITAL LIMITED which relates to such damage or loss to the Goods after deduction of any outstanding Charges due to MAVIN CAPITAL LIMITED from the Customer. For the avoidance of doubt, the Customer acknowledges that, subject to MAVIN CAPITAL LIMITED'S limitation of its cumulative liability under Clause 11.6.4, in the event that the Insurance Option is requested by the Customer then MAVIN CAPITAL LIMITED'S liability in respect of physical loss, mis-delivery of or damage to Goods howsoever arising and occasioned during the supply of the Services under such insurance cover shall in all circumstances be limited to the lesser of (1) the value of the Goods actually lost, mis-delivered or damaged based on their declared value; or (2) the cost of repairing any damage or of reconditioning the Goods; or (3) for each single item or suite of items in respect of the Goods actually lost, mis-delivered or damaged, paying the Customer those sums which MAVIN CAPITAL LIMITED recovers under the insurance policy relating to the Goods.

11.8.4 MAVIN CAPITAL LIMITED does not give any advice concerning the insurance cover referred to in this Clause 11 and it is for the Customer to make its own judgment whether such insurance is appropriate to cover the Goods and risks to them.

11.8.5 Nothing in this Clause 11 makes MAVIN CAPITAL LIMITED the Customer's agent.

11.9 Nothing in this Clause 11 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

11.10 Each exclusion and limitation in these Terms and Conditions exists separately and cumulatively.

12. Term

12.1 The Agreement shall be effective as of the Commencement Date and shall continue in effect until the Services have been completed unless terminated earlier as provided in these Terms and Conditions or unless renewed or otherwise extended by mutual written agreement between the parties.

13. Termination

13.1 Without prejudice to any other provision contained within these Terms and Conditions or of the Agreement, MAVIN CAPITAL LIMITED may terminate the Agreement by notice in writing in any of the following events:

13.1.1 the Customer commits a material breach of the Agreement which is incapable of remedy; or

13.1.2 the Customer commits a material breach of the Agreement which is capable of remedy but which the Customer fails to remedy within 14 calendar days of written notice by MAVIN CAPITAL LIMITED specifying the breach and requiring its remedy.

13.2 MAVIN CAPITAL LIMITED and the Customer may by notice in writing to the other terminate the Agreement if the other shall have a receiver or liquidator appointed, shall pass a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction), if a court shall make an order to that effect, if the other party shall enter into a composition or arrangement with its creditor(s) or shall become insolvent. Such an event shall be deemed to be a material breach of the Agreement which is incapable of remedy.

14. Consequences of Termination

14.1 Any termination of the Agreement howsoever caused shall not affect any accrued rights or liabilities of either MAVIN CAPITAL LIMITED or the Customer arising out of the Agreement.

14.2 Upon termination of the Agreement howsoever caused, if MAVIN CAPITAL LIMITED was supplying Storage Services then it may require the removal of the Goods forthwith. If the Goods are not removed after notice is given by MAVIN CAPITAL LIMITED in accordance with this Clause 14.2 then MAVIN CAPITAL LIMITED may, at its absolute discretion, sell the Goods after the lapse of a reasonable period of time after notice of its intention to sell the Goods is given by it.

15. Lien

15.1 MAVIN CAPITAL LIMITED shall have a particular lien on the Goods for any unpaid Charges or for any unpaid sums whatsoever. If such lien is not satisfied within a reasonable time, TECHIMOVE may sell the Goods as agent for the owner and apply the proceeds towards any sums unpaid and the expenses of the insurance and sale of the Goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.

16. Fair and Reasonable

16.1 The Customer acknowledges that the provisions of these Terms and Conditions are essential to protect the legitimate commercial and business interests of MAVIN CAPITAL LIMITED and that they are fair and reasonable having regard to the level of the Charges.

17. Notices

17.1 Any notice pursuant to the Agreement shall be in writing, shall be delivered personally, sent by prepaid delivery, by facsimile transmission or e-mail to the party due to receive such notice at the address or number of the party as notified when entering into the Agreement or to such other address or number as shall be notified in writing to the other party to the Agreement from time to time.

17.2 Any notice delivered personally shall be deemed to be received when delivered. Any notice sent by prepaid delivery shall be deemed (in the absence of evidence of earlier receipt) to be received 2 days after posting. In proving the time of dispatch it shall be sufficient to show that the envelope containing such notice was properly posted.

17.3 Any notice sent by facsimile transmission or e-mail shall be deemed to have been received upon on the next day after transmission.

18. Waiver

18.1 The rights and remedies of either party under the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the other party nor any failure or delay by the other party in asserting or exercising any such rights or remedies.

19. Severance

19.1 If at any time one or more clause, paragraph, subparagraph or any other part of the Agreement or these Terms and Conditions is held to be, or becomes, void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted and the validity and/or enforceability of the remaining provisions of the Agreement or these Terms and Conditions shall not in any way be affected or impaired thereby.

19.2 If any invalid, unenforceable or illegal provision of the Agreement or these Terms and Conditions 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.

20. Variation

20.1 Subject to Clause 20.2, no variation in the provisions of the Agreement or the scope of the Services shall be of any effect unless made in writing and signed on behalf of the Customer and MAVIN CAPITAL LIMITED.

20.2 These Terms and Conditions may be revised by MAVIN CAPITAL LIMITED from time to time. Any such revision shall not become effective until after the expiry of 21 calendar days from the date notice of the proposed revision is given to the Customer.

21. Set-off

21.1 All payments due from the Customer shall be made without any set-off, deduction or deferment of any nature regardless of any dispute which the Customer has or alleges it has against MAVIN CAPITAL LIMITED.

21.2 MAVIN CAPITAL LIMITED may set-off any sum it may owe to the Customer against any sum the Customer may owe to it.

22. Force Majeure and Exclusion of Liability

- 22.1 In the event that either party is prevented from fulfilling its obligations under the Agreement by reason of any supervening event beyond its reasonable control including but not limited to Act of God, war, national emergency, civil disturbance, extensive disruption of public services, flood, earthquake, strike or lockout, mechanical breakdown in respect of any MAVIN CAPITAL LIMITED vehicle, impedance by any road traffic congestion, adverse weather conditions, subject to Clause 22.2, the party shall not be deemed to be in breach of its obligations under the Agreement. The party shall promptly give written notice of this to the other party and must take all reasonable steps to resume performance of its obligations.
- 22.2 Clause 22.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.
- 22.3 Other than as a result of MAVIN CAPITAL LIMITED's negligence or breach of contract, MAVIN CAPITAL LIMITED will not be liable for any loss or damage if:
- 22.3.1 caused by electrical or mechanical derangement to any Goods unless there is any evidence of related external damage caused by MAVIN CAPITAL LIMITED; or
- 22.3.2 attributable to the Goods having a pre-existing defect.

23. Acceptance

- 23.1 The Customer accepts these Terms and Conditions by signing below, by accepting them electronically (including by electronic mail), by accepting them in writing and/or by accepting supply of the Services following these Terms and Conditions having been brought to the Customer's reasonable attention. In the event of signature of these Terms and Conditions, facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format) and electronic signatures shall be deemed to be original signatures.

24. Contracts (Rights of Third Parties) Act 1999

- 24.1 No term of these Terms and Conditions is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Agreement.

25. Law and Jurisdiction

- 25.1 These Terms and Conditions and the Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any dispute concerning them or their interpretation shall be adjudicated in that jurisdiction.