



## Amabeti Achievements - Terms & Conditions

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### 1. INTERPRETATION

1.1 In these Conditions unless the context otherwise permits:-

**"Authorised Representative"** means a person whose job title is that of Director or Managing Director or a person who holds the office of director.

**"Consumer"** shall mean any natural person who in the contract with the Customer is acting for purposes that are not related to his trade, business or profession.

**"Customer"** means the person, firm, company, entity or organisation with whom AMABETI contracts for the sale of Products and/or supply of Services.

**"the Conditions/ these Conditions"** means the standard terms and conditions of sale set out in this document or such replacement standard terms and conditions notified to Customer as are in force at the date of the Contract and which at that date appear on AMABETI's web site at <http://www.amabeti.ie> and/or which are available on request at AMABETI's principal trading address at Carrick House, 49 Fitzwilliam Square, Dublin 2, D02 N578, Ireland.

**"the Contract"** means any contract for the purchase and sale or other supply of Products and/or the supply of Services by AMABETI to a Customer

**"Electronic Means"** means any electronic means including without limit on the Web, by EDI or XML.

**"AMABETI"** means Amabeti Achievements Ltd (registered in Ireland number 634541) with its registered office at Carrick House, 49 Fitzwilliam Square, Dublin 2, D02 N578, Ireland.

**"Products"** means any hardware and software, whether packaged, licensed or as a service, and instalments of the Products or any parts of or for them, sold by AMABETI to a Customer.

**"Services"** means any services supplied or performed by AMABETI or its authorised service providers to the Customer.

**"Special Order Products"** shall mean Products that are classified in AMABETI's current comprehensive product listing as special order products or have been ordered specifically by Customer or configured to Customer's specifications.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 The Conditions shall apply to sales of all Products including Special Order Products ordered for shipment to or within the Ireland mainland. AMABETI reserves the right to apply supplemental or other terms for Products to be shipped by AMABETI outside the Ireland mainland.

1.4. Without prejudice to the application of these Conditions additional and more detailed terms may apply for certain Products and suppliers including specific terms applicable to special prices offered by suppliers through AMABETI ("Special Terms") and additional terms may apply with respect to AMABETI's delivery and other aspects of its business. Any additional terms and the updated Special Terms will be made available on AMABETI's web site <http://www.amabeti.ie>. It is the Customer's responsibility to be aware of and adhere to the additional and Special Terms as current from time to time, and by ordering Products from AMABETI the Customer agrees to be bound by additional and Special Terms.

### 2. BASIS OF THE SALE

2.1 All Contracts between AMABETI and a Customer shall be governed by these Conditions (and, where applicable, any other terms and conditions pursuant to Clause 1.3 and/or Clause 1.4) to the exclusion of any other terms and conditions not accepted in writing by an Authorised Representative of AMABETI, including without limit any terms on or referred to in any Customer purchase order. In the case of orders placed by Electronic Means which refer to any terms and conditions of the Customer AMABETI's automatic taking on to its



system of such order shall amount to a rejection of the Customer's terms and conditions and an offer to supply the Products ordered on the basis of these Conditions. No variation to these Conditions shall be binding unless agreed by letter signed by an Authorised Representative of AMABETI. It is the Customer's responsibility to be aware of the Conditions as current from time to time but AMABETI will use best efforts to notify Customer of any material changes to the Conditions before they become applicable. In addition to any acceptance of these Conditions by signing AMABETI's account application form, the Customer's acceptance of these Conditions shall also be made (in respect of the first Contract and all subsequent Contracts) either by (1) Customer providing a purchase order to AMABETI or (2) Customer accepting Products or Services from AMABETI, whichever occurs first.

2.2 No employee or agent of AMABETI other than an Authorised Representative has any authority to make any representation at all concerning Products or Services and an Authorised Representative has no authority to make such representation other than by letter (an "authorised representation") and accordingly Customer agrees that in entering into any Contract it does not rely on any unauthorised representation and Customer agrees it shall have no remedy in respect of any unauthorised representation (unless made fraudulently).

### **3. CUSTOMER IDENTIFICATION**

3.1 In placing an order including by Electronic Means Customer may utilise one or a combination of account name, account number and other forms of identification including password or other code issued to Customer (together and individually "Customer's Identification" or "Customer Identification").

3.2 It is the Customer's responsibility to keep the Customer's Identification confidential. Customer has the sole responsibility for its Customer Identification. Customer shall immediately inform AMABETI in case of loss of password or in case of any abuse or attempted abuse of Customer password or other Customer Identification. Customer agrees that Customer is entirely responsible for use of Customer's Identification and that it is Customer's responsibility to have in place security measures and procedures to ensure use of its Customer Identification only by authorised personnel for authorised purposes.

3.3 Customer agrees that AMABETI is entitled to rely absolutely on any orders placed on AMABETI which have utilised Customer's Identification and to deliver as directed by such orders and to invoice and be paid in respect of such orders.

3.4 Customer agrees that any order placed on AMABETI including by Electronic Means mentioning or utilising Customer's Identification is a valid and binding purchase order.

3.5 Customer acknowledges that AMABETI cannot guarantee the security of the Internet and the possibility of interception or corruption of data transmitted from Customer to AMABETI using correct Customer Identification, and that AMABETI is nonetheless entitled to rely on data transmitted in the form it is received at AMABETI.

3.6 AMABETI shall have no liability towards the Customer should the Customer's customer have placed an order on the Customer for fulfilment by AMABETI or a corresponding order is placed by the Customer on AMABETI, where such orders are found by AMABETI or Customer to be fraudulent. Neither AMABETI nor its carriers shall be liable to Customer should AMABETI or the carriers have delivered Products in accordance with Customer's instructions received before the order is released for shipment, and in no event shall AMABETI and its carriers be liable to Customer for any penalty or claim should the Products have been delivered in accordance with any instruction by the Customer or its customer after the order is released with respect to any changes to the order or an order cancellation.

### **4. INFORMATION AND CONFIDENTIALITY**

4.1 All Product pricing, description, availability and related information ("Information") provided by AMABETI, in any form, is the property of AMABETI or its suppliers. AMABETI hereby grants Customer a limited, non-exclusive, non-transferable license to use the Information for its internal use only for the purpose of Customer's purchases and sales of Products sold by AMABETI to it. AMABETI shall be entitled to stop the provision of Information at any time without notice. Customer agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilise the Information for any purpose except as permitted herein. AMABETI makes no warranty, either express or implied on the Information or its accuracy. All Information is provided to Customer "as is." If AMABETI provides Information to Customer by Electronic Means, Customer agrees to update such Information regularly to ensure its accuracy. Specifically but without limitation Customer is not entitled to utilise Information for any purpose other



than in the normal course of business of a reseller and is not entitled to use, reproduce or display the Information in any way, which in AMABETI's opinion; (1) would enable it to be identified as information obtained from AMABETI (2) would enable comparison of the Information with other suppliers' information relating to Products or (3) could be damaging to AMABETI's business interests.

4.2 AMABETI agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any Customer sensitive information or utilise such information for any purpose if Customer has notified AMABETI in writing that such information is confidential. Customer agrees that AMABETI may disclose to its suppliers certain details (including personal data) about the Customer and AMABETI's sales of the respective suppliers' Products to the Customer.

## **5. ORDERS AND SPECIFICATIONS**

5.1 The Customer shall be responsible to AMABETI for ensuring the accuracy of the terms of any purchase order, and shall be sole responsible for its selection of Products or Services on any purchase order and the fitness of the Products or Services for any particular purpose. AMABETI disclaims any liability for any errors in the Customer's purchase order.

5.2 AMABETI reserves the right to make any changes to the Contract due to changes in the specification of the Products or Services made by its suppliers or changes that are required to conform with any applicable safety or other statutory requirements. These changes will be duly notified to the Customer. The Customer cannot cancel or reschedule the Contract provided the changes do not alter the material terms of the Contract. For other types of changes, the possibility of cancellation will be subject to AMABETI's discretion and conditions.

5.3 AMABETI is under no obligation to accept the withdrawal of an order or the cancellation of a Contract which has been accepted by AMABETI. If AMABETI agrees to accept the Customer's withdrawal of any order or the cancellation of a Contract such agreement will only be effected by means of letter, fax or email signed or sent by an Authorised Representative of AMABETI.

5.4 Notwithstanding any other terms of these Conditions it is agreed that the provision or display of Services and Product pricing and other Information (as defined in Clause 4.1) by AMABETI to Customer does not amount to an offer by AMABETI to sell Product or supply Services at that price or on any other terms. Supply of such Information is only an invitation to treat. An order by the Customer for Product or Services shall be the offer.

5.5 Notwithstanding any acceptance by AMABETI of Customer's offer to purchase Products or Services, if there for any reason has been a material or obvious pricing error by AMABETI, AMABETI shall be entitled within 30 days of its acceptance of such offer or delivery of the Products or commencement of the Services to either invoice the Customer the true and correct list price (not exceeding the prevailing market price at wholesale level) of the Product or Services at the date of order or, if the Customer shall prefer, upon notice to Customer cancel the order and collect the mispriced Product or cease supplying the Services at AMABETI's expense and credit the Customer for the price paid and any charges (e.g. price and freight) invoiced by AMABETI. If the true price is lower than the quoted price, AMABETI will invoice Customer the lower true price for the Products or Services. Customer should make reservations against pricing errors in its applicable sales terms and allow for Customer to cancel its sales order to its customers if notified about a pricing error from AMABETI's side.

5.6 Orders for direct shipment to Customer's customers or Special Order Products may require the Customer's acceptance of additional terms including prepayment of the order and will be subject to additional fees. The Customer is responsible for the accuracy of all information provided about its customers including but not limited to name and ship-to address. AMABETI shall not be liable to the Customer for any loss or damage arising from inaccurate or erroneous information if AMABETI has relied upon such information or shipping instructions provided by the Customer. If the Customer requests a change to the ship-to customer name or address after AMABETI's acceptance of the order such change shall be made in writing by an authorised officer of the Customer and AMABETI shall not act on any verbal instructions by the Customer or anyone acting on the Customer's behalf. AMABETI shall have no obligation to monitor or verify whether the Customer or any orders placed by Customer are the subject to any fraudulent or other criminal activity or attempt by the Customer's customers or any third party.

5.7 AMABETI will set minimum order levels and charge additional fees for any order below such levels. Current minimum order levels can be found on AMABETI's web site <http://www.amabeti.ie>.



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5.8 AMABETI may cancel, and shall be under no obligation to accept or fulfil, an order if Products or Services are in short supply from its suppliers or if the suppliers' prices have increased to such a level that the fulfilment of the order would result in AMABETI selling the Products or Services at a loss or with lower than normal sales margins.

## **6. PRICES**

6.1 Subject to the provisions of Clause 5.5 and Clause 6.2:-

6.1.1 Prices for Products in AMABETI's stock ready to be shipped will be established at the time the order is accepted by AMABETI. Prices for Services will be the prices quoted by AMABETI for the duration of the Service period. When the price for Services is based on future usage or performance, AMABETI reserves the rights to adjust its prices should AMABETI's service provider's prices or the conditions under which the Service prices were quoted become subject to change.

6.1.2 If the Customer places an order for Products not in stock at the time of order (a "Backorder") or the Customer places an order for scheduled delivery, such orders shall be irrevocable and the price for such Products shall be the price established at the time the Backorder or scheduled delivery is accepted by AMABETI.

6.2 Notwithstanding any of the foregoing AMABETI reserves the right to increase its prices after acceptance of a Backorder or scheduled delivery (including subscription Services) due to an increase in its supplier's price to AMABETI or an increase in direct costs to which AMABETI becomes subject (including without limit costs resulting from currency fluctuation) but AMABETI shall only increase its price by such level as is necessary to reflect such increases.

6.3 All prices quoted by AMABETI exclude the cost of transport from AMABETI's warehouse to the Customer's receiving point, as well as configuration, fulfilment and other services provided by AMABETI.

6.4 All prices and charges are exclusive of any applicable Value Added Tax, which the Customer will be additionally liable to pay to AMABETI. Unless otherwise stated prices exclude any copyright levies, waste and environmental fees, and similar charges that AMABETI by law or statute may or shall charge or collect upon resale.

6.5 If Customer is offered special pricing for certain orders and such pricing is made available to AMABETI from its suppliers ("Special Bids"), the Customer shall adhere to the applicable Special Terms and other terms and conditions of such Special Bids and agrees to indemnify AMABETI for any claims made against AMABETI by the suppliers for Customer's non-compliance with the supplier's terms and conditions. Customer agrees to pay any service fees charged for AMABETI's pass-through of Special Bids and other supplier driven benefits the Customer may receive, including any marketing funding, price protection and individual rebates, and agrees that pass-through and payment of such benefits will be subject to AMABETI having received the benefits from its supplier. The Special Terms may oblige the Customer to comply with certain requirements including but not limited to (i) the sale of the Products only to specifically named end-users; (ii) the disclosure of end-user information to AMABETI and its suppliers for the purpose of end-user verification; and (iii) the submission of copies of end-user invoices, end-user purchase orders or end-user shipping documents to AMABETI and its suppliers. Subject to the Special Terms applicable for the individual suppliers and Products, non-compliance with the Special Terms may entitle AMABETI and/or its suppliers to reclaim and invoice the Customer in full for all discounts, rebates and other special price conditions granted to the Customer under the special price.

6.6 It is the Customer's responsibility to be aware of all Special Bids activity and the expiry of Special Bids. The Customer shall not submit any purchase orders on AMABETI with prices that do not reflect valid and non-expired Special Bids, and AMABETI shall not be liable to Customer for any variance between AMABETI's invoice value and the value of expired Special Bids.

## **7. TERMS OF PAYMENT**

7.1 Unless AMABETI shall have previously agreed in writing with the Customer that the Products or Services shall be supplied on credit, payment for the Products or Services shall be made in full by the Customer with the Customer's order or on delivery or collection of the Products or commencement of the Services, as determined by AMABETI. If payment is made by credit or debit card the Customer agrees to pay all fees and service charges incurred by AMABETI for the handling of such transaction including fees charged by the card company to AMABETI.



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7.2 Where AMABETI has agreed to supply the Products or Services on credit Customer shall pay the price of the Products or Services within 14 days of the date of AMABETI's invoice notwithstanding that title to the Products has not passed to the Customer. Customer may take advantage of an early payment discount subject to meeting the conditions detailed on AMABETI's web-site <http://www.amabeti.ie>. Customer shall not withhold, deduct or set off from its payments to AMABETI any amount owed by AMABETI to Customer without AMABETI's prior written approval. Invoices will be dated the day of dispatch of the Products or on completion or commencement (if recurring fees) of the Services. AMABETI shall be entitled at its absolute discretion to alter payment terms (other than on concluded Contracts) and withdraw or alter any credit limit granted at any time with notice. If Customer exceeds its credit limit or fails to qualify for continued credit terms, AMABETI may, at its sole discretion, delay subsequent shipments or require prepayment until AMABETI determines that Customer is once again qualified to receive credit terms. Customer shall not set off or withhold any amount due to AMABETI against its receivables without AMABETI's prior written approval, and shall in the event of a bona fide dispute, pay any undisputed part of the invoice.

7.3 The time of payment shall be of the essence. If the Customer fails to make a payment on the due date then without prejudice to any other right or remedy available to it AMABETI shall be entitled to:-

7.3.1 cancel the Contract and/or suspend any further deliveries or suspend any Services to the Customer; AMABETI may at its discretion grant Customer a reasonable cure period before cancelling the Contract due to non-payment;

7.3.2 appropriate any payment made by the Customer to such of the Products as AMABETI may think fit (notwithstanding any purported appropriation by the Customer); and

7.3.3 collect and repossess any unpaid Products in accordance with section 9 below. Customer accepts that AMABETI will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if AMABETI is not paid according to agreed credit terms.

7.4 Customer shall provide AMABETI's Credit Department with copies of its annual financial statements and its quarterly statements within sixty (60) days of the close of the fiscal period to which they relate. Customer shall inform AMABETI promptly if there is a change of ownership or control of Customer or its direct or indirect parent company (excluding changes of ownership of the shares of a publicly quoted company which do not result in a change in control of the company's board of directors or other governing board), a management buy-out, or all or a substantial part of the Customer's assets are sold or otherwise transferred to any non-affiliated company or member of the Customer's group of companies.

7.5 In the event Customer intends to sell, assign, factor or otherwise transfer any book debt owed to Customer or to enter into any form of invoice discounting arrangement Customer agrees to inform AMABETI in writing prior to entering into any such arrangements.

7.6 It is AMABETI's policy not to accept cash as a method of payment for Products or Services.

7.7 If AMABETI issues a credit note and the Customer does not utilise the credit note within a period of 12 months from the date of its issue AMABETI shall have the right to cancel the credit note and the Customer shall not be entitled to a replacement or any payment in respect of the same.

7.8 Any credit balance shown on a Customer's statement of account issued by AMABETI which remains on the statement for a period of 12 months will be forfeited by the Customer who shall no longer have any rights to the same.

7.9 AMABETI reserves the right to issue and send all invoices to the Customer in an electronic format, and the Customer accepts to receive all invoices electronically including receipt of invoices by e-mail.

7.10 7.10 AMABETI shall have no obligation to perform or supply, and Customer shall have no right to require, any Service ordered by the Customer or any Product subject to subscription and future delivery in the event the Customer or its customers fails to pay any Service or subscription fees when they become due.

## **8. DELIVERY**



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8.1 Delivery of the Products shall take place Free Carrier AMABETI's warehouse (FCA (Incoterms 2020) for international shipments). Absent specific instructions from the Customer AMABETI will select the carrier. Unless the Customer shall have notified AMABETI in writing within 5 working days of the date of AMABETI's invoice that the Products have not been received or that the Products were damaged then delivery shall be deemed to have taken place in accordance with the Contract and the Customer shall not be entitled to raise any claim of short or mis-shipment or damage to the Products.

8.2 The Customer shall upon receipt of the Products sign the delivery note (proof of delivery) and be responsible for complying with the applicable shipping requirements of AMABETI and its carriers details of which are made available at AMABETI's web-site (<http://www.amabeti.ie>). The Customer's sign-off on AMABETI's delivery shall be at carton level. AMABETI shall be entitled to assume that any person who both reasonably appears and claims to have authority to accept delivery who signs a note in respect of the Products on behalf of the Customer or the Customer's customer (if AMABETI has agreed to deliver direct) does in fact have the authority..

8.3 Any dates quoted or scheduled for the delivery of Products or commencement of Services are approximate only and AMABETI shall not be liable for any delay in delivery of the Products or performance of Services howsoever caused.

8.4 Partial delivery of Products is allowed unless otherwise mutually agreed by both parties. Failure by AMABETI to deliver the rest of the Products or partially perform Services shall not entitle the Customer to treat the order as a whole as repudiated.

8.5 Where AMABETI has agreed to ship Products or perform Services direct to the Customer's customer any such shipment or performance shall be deemed to be delivery to the Customer and any refusal by the Customer's customer to accept delivery or performance shall be deemed to be a refusal by the Customer. It shall be the Customer's obligation to report any delivery discrepancies in accordance with Clause 8.1 and comply with Clause 8.2 above when Products are shipped direct to the Customer's customer or when the Products are forwarded by the Customer to its customers.

The Customer shall bear all costs associated with the unjustified refusal of Products and Services. If the refusal is made on the grounds that the order was wrongly placed (i.e. wrong product, wrong pricing, etc.) and the refusal is accepted by AMABETI, AMABETI reserves its right to charge accordingly additional fees for return transportation and administrative expenses related thereto, and original carriage costs will not be reimbursed. AMABETI may charge Customer a refusal fee should the Customer's customer unjustifiably refuse to take delivery of a shipment from AMABETI.

## **9. RISK AND TITLE**

9.1 Risk of damage to or loss of Products shall pass to the Customer or its customer at the time of delivery or if the Customer unjustifiably fails to take delivery of Products the time when AMABETI has tendered delivery of the Products.

9.2 Notwithstanding delivery and the passing of risk of the Products or any other provisions of these Conditions, title to the Products shall not pass to the Customer until AMABETI has received in cleared funds payment in full of the Products

9.3 Until such time as title to the Products passes to the Customer the Customer shall:-

9.3.1 hold the Products as AMABETI's fiduciary agent and bailee; and

9.3.2 keep the Products separate to those of the Customer and third parties; and

9.3.3 keep the Products properly stored protected and insured, and identified as AMABETI's property; and

9.3.4 accept that Products may be labelled as being AMABETI's property until AMABETI is paid.

9.4 Until such time as the title in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) AMABETI shall be entitled at any time to require the Customer to deliver up the Products to AMABETI and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.



9.5 The Customer's right to possession of the Products or performance of Services shall terminate immediately if:-

9.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

9.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between AMABETI and the Customer or is unable to pay its debts within the meaning of the Ireland Insolvency Act or the Customer ceases to trade; or

9.5.3 the Customer encumbers or in any way charges any of the Products.

9.6 Customer is entitled to resell the Products in the ordinary course of business. Customer is not able or entitled to offer the Products as collateral or otherwise grant a charge in respect of the Products until title has passed to the Customer in accordance with these Conditions. Customer shall inform its customers that title to the Products is retained by AMABETI until Customer has paid AMABETI, and shall ensure that its customer has agreed with the Customer that any unpaid Products shall be returned to AMABETI in the event of Customer's failure to pay AMABETI's invoices when they fall due. The Customer shall upon AMABETI's request provide AMABETI with all details and information necessary for AMABETI to collect the Products.

## **10. WARRANTIES AND LIABILITY**

10.1 AMABETI does not manufacture the Products (or where the Products comprise computer software does not publish or license the software) and subject to the conditions set out below in this Clause 10 AMABETI only sells the Products with the benefit of the manufacturer's warranty. Warranties are offered from the manufacturer on a pass-through basis to the end user or directly by the manufacturer to the end user.

10.2

10.2.1 AMABETI will accept liability for defective Products only to the extent that AMABETI is entitled to make a claim under the manufacturer's Dead on Arrival (DOA), warranty or other defective goods terms and actually obtains from the manufacturer a refund credit repair or replacement in respect of the defective Products. Processing of these defective Products shall be made according to the manufacturer's procedure and the instructions set out in Clause 10.4 below. AMABETI cannot and shall have no obligation to accept a return of and/or grant a credit for Product not compliant with the manufacturer's procedures.

10.2.2 AMABETI shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow AMABETI's or the manufacturer's or publisher's instructions (whether oral or in writing) misuse or alteration or repair of the Products without AMABETI's approval.

10.2.3 AMABETI shall be under no liability under the above warranty if the total price of the Products has not been paid

10.3 All warranties, conditions or other terms implied by common law or statute, or otherwise in connection with the sale or supply of goods or goods or services (save, in the case of goods, as to title) are excluded to the fullest extent permitted by law.

10.4 Any claim by the Customer which is based on a defect in the quality or condition of the Products shall be notified to AMABETI's Customer Services Department. Upon notification of any such claim by the Customer AMABETI shall either notify the Customer whether the policy of the manufacturer of the Products is to deal with the Customer direct (in which case the Customer shall deal with the manufacturer direct provided AMABETI gives sufficient details to enable the Customer so to do) or shall provide the Customer with an RMA number (in which case the Customer shall return the Products to AMABETI in their original UNMARKED packaging together with details of the RMA number and the Customer's name and address). If AMABETI issues an RMA number to the Customer AMABETI shall not send any replacement Products to the Customer until after the original Product



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has been returned to AMABETI. This Clause 10.4 shall only apply to Products the Customer is entitled to return to AMABETI as provided in these Conditions.

10.5 AMABETI shall not be liable to the Customer for any economic or financial loss or damage (including without limit any loss of profits, loss of revenue, liabilities incurred by the Customer to third parties relating to Products delivered or Services rendered by AMABETI, or additional expenses incurred or the cost of time spent) or any consequential, indirect, or special loss or damage costs expenses or other claims for consequential compensation whatsoever (including without limit loss of or damage to data or loss of goodwill) incurred or suffered by the Customer and in every case howsoever caused or arising (and whether caused by the negligence of AMABETI its employees or agents or otherwise).

10.6 AMABETI's liability for direct loss or damage arising from damage to tangible property for which AMABETI is liable shall be limited to the VAT exclusive price of the relevant Product or Service. In no event shall AMABETI's liability exceed the maximum amount of AMABETI's insurance cover.

10.7 Nothing in these Conditions shall in any way exclude or limit any liability AMABETI may have for death or personal injury caused by its negligence.

10.8 AMABETI shall not be liable to the Customer or be deemed to be in breach of any Contract by reason of any delay in performing or any failure to perform any of AMABETI's obligation in relation to the Products or Services if the delay or failure was due to any cause beyond AMABETI's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond AMABETI's reasonable control:-

10.8.1 Act of God explosion flood tempest fire or accident;

10.8.2 act of terrorism war or threat of war sabotage insurrection civil disturbance or requisition;

10.8.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental or parliamentary or local authority;

10.8.4 import or export regulations or embargoes;

10.8.5 strikes lock outs or other industrial actions or trade disputes (whether involving employees of AMABETI or a third party);

10.8.6 difficulties of AMABETI's supplier in obtaining raw materials labour fuel parts or machinery.

10.9 If Customer is selling Products or Services purchased from AMABETI to a Consumer the Customer shall ensure the Consumer is given sufficient and appropriate information and descriptions as to the Product's or Services' fitness for the purpose for which the Products or Services are normally used and any particular purpose the Consumer has required or agreed with the Customer. Customer shall not remove or replace any labelling, user manuals, components or other material from the Product as supplied by the manufacturer or AMABETI, and shall not in its advertising, marketing or labelling provide any public statements on the specific characteristics of the Products or Services on behalf of AMABETI, the manufacturer or their representatives.

10.10 Customer accepts liability for the Products' conformity with the Customer's Consumer contract ('conformity' as defined by the EU Directive 1999/44/CE of May 25, 1999 and legislation implementing the Directive), and Customer shall not offer any warranties or representations to the Consumer as to the quality, fitness for purpose of the Products without the manufacturers' express consent. Customer agrees to hold harmless and indemnify AMABETI and the manufacturers against any loss, costs, and damages caused by the Customer's acts or omissions, and non-compliance with the obligations set forth in Clause 10.9, Clause 10.10 and Clause 10.11. If Customer is held liable to the Consumer caused by a Product's lack of conformity resulting from an act or omission by the manufacturer or AMABETI, or any other intermediary, Customer may by law or statute be entitled to pursue remedies against AMABETI, the manufacturer or any other person liable in the contractual chain. Provided Customer is legally entitled to pursue such remedies and AMABETI is held liable by a competent court of law, AMABETI's liability to Customer shall be limited to an amount corresponding to the Customer's original purchase price of the Product or Service giving rise to the claim by the Consumer.

10.11 Should the Product warranties offered by the manufacturers or AMABETI under these Conditions be restricted compared to the guarantees the Consumer is entitled to under law, the Customer agrees to take sole





responsibility towards the Consumer for the excess liability and waives any claim it may have against AMABETI in respect of such excess.

10.12 The Products are subject to the intellectual property rights of AMABETI's suppliers (i.e. the Product manufacturers). Customer is not authorised to alter, cover, or remove any reference to such intellectual property rights on the Products, and shall adhere to any guidelines and restrictions provided by AMABETI's suppliers if the Customer is granted a right to use such rights in the marketing and resale of Products. AMABETI shall have no duty to defend, indemnify or hold Customer harmless from and against any or all claims brought against Customer or damages and costs incurred by Customer arising from the infringement of a third party's intellectual property rights, except to the extent AMABETI's supplier is offering such defence or indemnification to AMABETI on a pass through basis. Upon threat of claim or claim of infringement, AMABETI may, at its option (i) procure the right to continue using any part of Product, (ii) replace the infringing Product with a non-infringing Product of similar performance, or (iii) refund to the Customer the purchase price paid by the Customer for the infringing Product. Notwithstanding any other terms or conditions to the contrary AMABETI's liability for infringement of intellectual property rights under these Conditions shall not exceed the Customer's purchase price for the infringing Products.

## **11. RETURNS AND REPAIRS**

11.1 Except for Special Order Products, which are expressly excluded from the terms of this Clause 11 and cannot be returned under any circumstances, if AMABETI agrees to accept the return of any Products (other than for the purpose set out in Clause 10 above) or agrees to carry out repairs to other products which have not been purchased from AMABETI or agrees to repair Products which are out of warranty the Customer shall not send the same to AMABETI unless they are accompanied by an RMA number previously advised by AMABETI's customer services department and a copy of the relevant sales invoice and are sent in their original packaging. AMABETI may at its discretion either replace a returned Products with a Product similar to the returned Product if the returned Product has been discontinued or is in short supply by the suppliers, or credit the returned Product at the lower of the original purchase price and the then current list price.

11.2 The Customer shall notify AMABETI within 5 working days of any delivery discrepancies or Product damages, other than for the purposes set out in Clause 10. If AMABETI issues a returns number (RMA), Products must be returned to AMABETI within 5 working days of the date thereof. AMABETI reserves the right to refuse return of damaged Products should the manufacturer's seal be broken or compromised and charge the Customer return freight.

11.3 If AMABETI has agreed to carry out repairs or to replace Products (or any parts thereof) other than for the purpose set out in Clause 10 above the Customer irrevocably authorises AMABETI to carry out such repairs or provide such replacements as shall place the Products in proper working order.

11.4 AMABETI shall accept no liability for any damage to or loss in transit of Products returned to AMABETI whether under this Clause 11 or under Clause 10 above.

11.5 AMABETI does not offer stock rotation rights (or sale or return rights) and Customer shall have no expectation of such rights being granted. If AMABETI has agreed to accept the return of Products, other than for the purposes set out in Clause 10 above or for the purpose of carrying out any other repair or replacement, the Products must be returned at Customer's expense in their original packaging and in a clean resalable condition, and will be subject to a re-stocking fee at AMABETI's discretion, failing which AMABETI will refuse to accept the same and the Customer shall remain liable for the price thereof. Credit for such returns will be at the price invoiced for the returned Products or the then current price, whichever is the lower.

11.6 Details of AMABETI's returns process and terms can be found on <http://www.amabeti.ie> and Customer agrees to comply with this process and abide to the terms when returning any Product to AMABETI.

## **12. INSOLVENCY OF CUSTOMER**

12.1 If:-

12.1.1 the Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation otherwise than for the purposes of a solvent amalgamation or solvent reconstruction;



12.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer; or

12.1.3 the Customer ceases or threatens to cease carrying on business; or 12.1.4 AMABETI reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

then upon the happening of any of the above, without prejudice to any other right or remedy available to AMABETI, AMABETI shall be entitled to cancel the Contract and/or suspend any further deliveries or services under the Contract without any liability to the Customer and if the Products have been delivered and not paid for then the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **13. EXPORT RESTRICTIONS**

13.1 Customer acknowledges that certain Products are subject to export and other resale restrictions. If Customer delivers the Products to any customer who may use the Products outside the United States or the European Union or EFTA countries, Customer acknowledges and shall advise its customers that some Products are controlled for resale or export by the U.S. Department of Commerce, the EU or EU/EFTA member state bodies and such Products may require authorization prior to resale or export. Customer agrees that it will not export, re-export, or otherwise distribute Products, or any direct products thereof, in violation of any dual use restrictions and export control laws or regulations of the U.S., the EU or any EU/EFTA member state. Customer warrants that it will not resell, export or re-export any Products with knowledge that the Products will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Customer has obtained prior approval from the U.S. Department of Commerce, the EU or the competent EU/EFTA member state's government agency. Customer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or resell any Products to companies or individuals restricted from purchasing Products including those listed on the Sanctioned Parties List published by the U.S. Department of Commerce and similar lists issued by the EU or EU countries.

13.2 The restrictions set out herein change from time to time. If the Customer has any questions regarding its obligations under U.S. export regulations the Customer should contact the Bureau of Export Administration, U.S. Department of Commerce, Office of Export Licensing, Washington DC, USA (202) 377 4811 or the local U.S. Consulate. Information concerning restrictions applicable to export from the EU and any intra-EU sales restrictions on dual use items and license requirements can be obtained from the European Commission or the Ireland Export Control Organisation.

13.3 It shall be the Customer's responsibility to comply with all export and other resale restrictions. Upon request the Customer agrees to reaffirm in writing its compliance and its intentions to comply with applicable export and restricted user and uses regulations

13.4 Customer acknowledges that certain Product manufacturers have limited the distribution of Products to the countries of the European Economic Area and Switzerland ("Territory") and agrees that it shall not export, deliver or otherwise dispose of Products to any customer located outside the Territory, unless Customer has obtained the explicit approval of the Product manufacturer. AMABETI shall have no duty to assist Customer in delivering Products outside the Territory, and any sales or deliveries outside the Territory including the sale of Products subject to technical and legal requirements in a non-Territory destination, shall be at the Customer's sole risk.

### **14. CONFIGURATION AND OTHER SERVICES**

14.1 If agreed in any particular case AMABETI will provide configuration Services to Customer. Configuration Services will be at the price agreed at the time the order is accepted. The Customer shall be solely responsible for the accuracy of its order, the specification of the components and their configuration and for ensuring that the configured product specified is satisfactory for the purposes for which it is required including without limit that it has sufficient overall functionality, and will support, be compatible and inter-operable with any hardware, software or middleware with which it is intended to operate.

14.2 Configuration Services will have a warranty of 14 days from the date of shipment to the Customer. AMABETI's sole liability (and the Customer's sole remedy against AMABETI) in respect of any defective Services for which AMABETI is responsible shall be the repair by AMABETI or at AMABETI's option replacement of the



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Product on which the Services have been performed. (If any alleged defect shall be attributable to defect in Product the provisions of Clause 10 shall apply). Claims in respect of defective Services must be made within 21 days of the date of delivery of the configured Product.

14.3 AMABETI may offer other Services to Customer including direct fulfilment and billing, installation and support services, storage and consolidation, and other logistics services. Such Services will be provided under these Conditions in addition to specific terms agreed upon in writing with Customer.

14.4 With respect to professional, managed or cloud Services purchased from AMABETI, the following terms will apply:

14.4.1 Use of Subcontractors. AMABETI will use its own employees and/or subcontractors to provide services. Designation and management of employees and subcontractors will be at AMABETI's sole discretion, and use of subcontractors will not require Customer's consent.

14.4.2 Use of Services. Customer agrees to indemnify and hold AMABETI harmless from any liability, costs or damages arising out of claims or suits by third parties who have received the right to access the Services.

14.4.3 Security. Should Customer's or its customers' data be lost directly due to the gross negligence or wilful misconduct of AMABETI or AMABETI's subcontractors, AMABETI will use commercially reasonable efforts, at its expense, to assist the Customer or its affected customer to restore the affected data; provided, however, that AMABETI's obligations pursuant to this section are subject to the Customer or its affected customer maintaining practices and standards used in well-managed operations with regard to the backup of their respective data and the use of corporate enterprise quality anti-virus and virus protection tools with regard to Customer's and Customer's customers' systems. Notwithstanding the aforesaid, AMABETI shall have no liability and no duty to assist Customer or its customers with respect to loss and recovery of data in the event AMABETI's or the Service provider's invoices have not been paid or AMABETI or the Service provider terminates the Services due to Customer's or its customers' non-payment of said invoices; any assistance by AMABETI shall be at will and subject to payment of AMABETI's service fees. This clause sets out AMABETI's sole obligations and Customer's exclusive remedies with respect to loss of data.

14.4.4 Warranty. AMABETI DOES NOT WARRANT THAT THE SERVICES, EXCEPT AS SET FORTH IN THE RESPECTIVE SERVICE DESCRIPTION, WILL MEET CUSTOMER'S OR CUSTOMER'S CUSTOMERS' REQUIREMENTS OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGES TO ITS OPERATIONS OR ITS CUSTOMER'S OPERATIONS THAT COULD BE CAUSED BY DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS IN THE SERVICES.

14.4.5 Limitation of Liability. CUSTOMER AGREES THAT THE LIABILITY OF AMABETI FOR DIRECT DAMAGES RELATED TO ANY MANAGED SERVICES OR CLOUD SERVICES ARISING UNDER THESE CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO AMABETI BY CUSTOMER FOR THOSE SERVICES WHICH ARE THE SUBJECT OF THE CLAIM DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE.

## **15. MISCELLANEOUS**

15.1 Customer is not allowed for any purpose whatsoever to use AMABETI's logos and trademarks without AMABETI's prior written approval from an Authorised Representative.

15.2 Customer agrees that AMABETI may use Customer data, including any personal data, for the purpose of marketing and sales of Products, and Customer agrees to AMABETI's collection, storage and use of such data for this purpose. Personal data will not be shared with third parties without the Customer's consent. Customer agrees to receive Product information and promotions and other communications from AMABETI by e-mail and other communication tools.

15.3 Customer agrees to comply with its obligations as "distributor" under the Waste Electric and Electronic Equipment Regulations 2006 including the take back of household WEEE and the information to users in private households. Customer shall have no right to return any non-household WEEE to AMABETI or its compliance system, and shall indemnify AMABETI against any costs incurred by AMABETI if such WEEE is returned to



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AMABETI. If the Customer's registered address or ship-to address is in a country other than Ireland, the Customer shall be deemed the producer in such country and assume full responsibility as producer under that country's WEEE legislation including the obligation to report imports and pay any applicable WEEE fees.

15.4 AMABETI's Code of Conduct governs the conduct by AMABETI's associates and includes inter alia a prohibition on receipt and solicitation of gifts, gratuities, entertainment and other courtesies to and from customers unless certain conditions are met. Customer agrees to observe this policy when conducting business with AMABETI. A copy of AMABETI's Code of Conduct is available on [www.amabeti.ie](http://www.amabeti.ie) or upon request.

15.5 The Customer agrees to comply with the Ireland Bribery Act and corresponding legislation applicable in the jurisdictions the Customer conducts its business (e.g. the U.S. Foreign Corrupt Practices Act). The Customer shall not make any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official or politician, or the immediate family of any such official or politician, for the purpose of influencing acts or decisions of the government or such individual in order to assist, directly or indirectly, Customer or AMABETI in obtaining or retaining business, or securing an improper advantage. The Customer's commitment to comply with the Bribery Act and other anti-bribery and corrupt practices legislation shall also extend to Customer's dealings with AMABETI and its suppliers, and the Customer's customers and any other commercial parties.

15.6 The Customer shall not engage in deceptive, misleading, illegal, or unethical practices that may be detrimental to AMABETI or the manufacturers of the Products, nor shall the Customer make any representations or warranties to its customers concerning the Products outside the scope of the warranties offered by the manufacturers without AMABETI's prior express written authorisation, or make any representations or warranties to its customers that the Products are designed or licensed for use in circumstances where the failure of the Products is likely to result in significant risks to health or safety, where fail-proof delivery of time-specific information is required, or in otherwise hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems. The Customer shall pass on to its customers all Product information including any restrictions applying to the Products and any terms and conditions pertaining to the licensing of software included in the Products.

## **16. General**

16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

16.2 No waiver by AMABETI of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If any provision of these Conditions is held by any authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

16.4 These Conditions and any Contract shall be governed by the laws of Ireland and the Customer submits to the exclusive jurisdiction of Ireland Courts.