

Elmer Yazılım Danışmanlık ve Ticaret Limited Şirketi

Terms and Conditions of Sale

The Customer's attention is particularly drawn to the provisions of Clause 12 (Limitation of Liability).

1. Interpretation

1.1 Definitions:

Elmer Yazılım Danışmanlık ve Ticaret Limited Şirketi is a company registered in the Republic of Turkey with headquarters located at the address of Rasimpaşa Mah.Tayyareci Sami Sk.Demirli İşhani N.18/2 Kadikoy / Istanbul and registered with the Istanbul Trade Registry under registration number 375826-0 ("ELMER").

"Business Day" means a day other than a Saturday, Sunday or public holiday in Türkiye when banks are open for business.

"Business Hours" means 9.00am to 5.00pm Monday to Friday.

"Conditions" means these terms and conditions as amended from time to time.

"Confidential Information" means, all information, disclosed by the Disclosing Party, or its Representatives pursuant to the Contract, including but not limited to, financial, business or technical or other data, know how, proprietary information and all other commercially sensitive information (whether written, oral, visual or in electronic form or in magnetic or other media):

- a) concerning the business and affairs of a Party including their respective sub-contractors, suppliers, customers, clients or other contacts (as applicable) that the other Party obtains or receives; or
- b) which it has access to as a result of any discussions or dealings or which is learned by a Party through observations made during visits to any premises of the other Party.

"Contract" means the contract between ELMER and Customer for the sale of Products and/or the supply of Services consisting of the Order, these Conditions, and any other documents (or parts thereof) specified in the Order and expressly agreed to by ELMER is writing.

"Customer" the person, company or other body purchasing the Products and/or Services from ELMER pursuant to the Contract.

"Data Protection Legislation" means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.

- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider

- c) To the extent the Turkish Data Protection Law applies, the law of the Republic of Türkiye which relates to the protection of Personal Data.

is subject, which relates to the protection of personal data.

"Data Processing Agreement" has the meaning set out in the UK GDPR or within the meaning of the Turkish Data Protection Law, including all relevant documents for complying with the Data Protection Legislation for the transfer of Personal Data, as applicable.

"Data Subject" has the meaning set out in the UK GDPR or in the Turkish Data Protection Law, as applicable.

"Disclosing Party" means a party to the Contract who discloses Confidential Information.

"Documentation" means documentation, if any, required or supplied for the use of the Products and/or Services.

"End User" means a person or entity which acquires Products and/or Services through either ELMER or the Customer for use in the regular course of their business and not with a view towards further distribution.

"ESD" means Software that is delivered by electronic means including, but not limited to, by download from a website.

"EU GDPR" means the General Data Protection Regulation ((EU) 2016/679).

"Fees" means the aggregate of the price paid by the Customer to ELMER for the supply of Products and/or the fees paid by the Customer to ELMER for the supply of Services.

"EULA" means the end user licence agreement (or any agreement performing a substantially similar function to an end user licence agreement) applicable to the relevant Product entered into between the Manufacturer of that Product and its End User.

"Hardware" means information technology, computer and communications hardware, peripheral hardware and hardware accessories to be supplied to the Customer by the ELMER pursuant to the Contract.

"Intellectual Property Rights" means rights of any nature whatsoever, whether registered or unregistered, including any patent, right in a design, copyright, trade mark, utility model, design right, service mark, database right and other intellectual property right whether or not capable of registration as may exist anywhere in the world, now or in the future.

"Order" means a written or oral offer, quotation, agreement and/or delivery relating to the supply of products by or on behalf of ELMER.

“Manufacturer” means:

- a) In relation to Hardware, its manufacturer; and
- b) In relation to software, its publisher or licensor.

“Party” means a party to the Contract and “the Parties” means both parties to the Contract.

“Personal Data” has the meaning set out in the UK GDPR or in the Turkish Data Protection Law, as applicable.

“Processed” has the meaning set out in the UK GDPR or in the Turkish Data Protection Law, as applicable.

“Product(s)” means any Hardware, Software, or other goods supplied by ELMER to the Customer pursuant to the Contract.

“Receiving Party” means a Party that receives or obtains Confidential Information, directly or indirectly, under or in connection with the Contract.

“Representatives” means employees, officers, advisers, agents or representatives.

“Services” means any services provided by ELMER, the Manufacturer or a third party on behalf of ELMER to the Customer or End User pursuant to an Order.

“Software” means the pre-packaged software or the means to download and/or activate ESD supplied to the Customer by ELMER pursuant to the Contract, including the renewal of any Software and the Manufacturer’s maintenance and support of any Software as specified in a Contract from time to time.

“Subscription Software” means Software that is provided by ELMER to the Customer on the basis that the price of the Software will be based upon number of users and/or usage and the licence fees will be invoiced by ELMER to the Customer monthly or otherwise periodically with supplementary invoices where there is excess usage.

“Specification” means the specification for the products and services set out in an Order and/or the EULA.

“Third Party” means any person, company or other body not being ELMER or the Customer.

“Turkish Data Protection Law” means the Personal Data Protection Law of the Republic of Türkiye numbered 6698.

“TCC” means the Turkish Commercial Code numbered 6102.

“UK GDPR” as the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Interpretation – other

- a) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- b) A reference to a party includes its personal representatives, successors and permitted assigns.
- c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- d) Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- e) A reference to “writing” or “written” includes email.
- f) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- g) Headings are for ease of reference and are not intended to affect the interpretation of any clauses.

2. Terms and conditions of sale

These Conditions apply to all Contracts between ELMER and a Customer except the licensing of ELMER’s own proprietary software (of which ELMER is the Manufacturer) to licensees. Save where otherwise expressly agreed by ELMER in writing, they apply to the exclusion of all other terms and conditions irrespective of the date of any alternative terms and conditions which may be sent to ELMER or otherwise purportedly applied.

The Conditions shall become binding on the Customer on the earlier of:

- a) The Customer signing or agreeing in writing to these Conditions (which may include email or acceptance through electronic method or deemed acceptance through the Customer’s conduct);
- b) The Customer placing an Order with ELMER;
- c) An Order from the Customer being accepted by ELMER;
- d) The Customer paying any amount towards any item specified in an Order; or
- e) ELMER delivering, installing or facilitating access to the use or control (where applicable) of any Product or Service.

3. Basis of contract

3.1 These Conditions apply to all Contracts:

- a) To the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate

(including any standard terms and conditions of the Customer); and

- b) To the fullest extent permitted by law, to the exclusion of any other terms and conditions which are implied by law, trade custom, practice or course of dealing.

3.2 Acceptance of an Order by ELMER does not constitute acceptance of any terms and conditions set out or referred to in the Order.

3.3 ELMER's policy is to supply Products and Services only to business customers (being those customers who are not private consumers). In accepting these Conditions, the Customer warrants that it is not purchasing the Products or Services as a private consumer or for resale to a private consumer and it shall keep ELMER held harmless for all claims may be raised by such private consumers.

3.4 Each Order constitutes an irrevocable offer by the Customer to purchase the Products or Services in accordance with these Conditions, the use of any Software regulated by the Manufacturer's EULA. The Customer is responsible for ensuring that the terms of the Product or Service specification submitted by the Customer in or with the Order is correct, complete and accurate, and shall ensure each End User enters into the EULA and uses the Product in accordance with the EULA.

3.5 An Order shall only be deemed to be accepted when ELMER issues a written acceptance of the Order signed by or issued by an authorised person.

3.6 All Orders for ESD and for any Products not held in stock by ELMER are accepted subject to the availability of the relevant Product at normal pricing. ELMER shall not be liable for failure to fulfil an Order where this is attributable to the Manufacturer or any other supplier to ELMER declining or failing to supply either at all or on normal commercial terms.

3.7 A quotation for the Products given by ELMER shall not constitute an offer and shall not bind ELMER to accept any Order. A quotation shall be valid on the Business Day of issue only unless withdrawn or amended by ELMER prior to an Order being made.

4. Further conditions

4.1 Unless otherwise specified in the Contract, ELMER shall only deliver non-modifiable and executable run-time versions of any Software. Upgrades and the latest versions of all Software is subject to availability by the Manufacturer, and furthermore subject to the Customer, where applicable, procuring a maintenance subscription.

4.2 Products shall be supplied by ELMER subject to the Manufacturer's EULA and/or the terms and conditions of use for such Products as defined by the Manufacturer at the time of delivery. The Customer acknowledges that the Manufacturer may unilaterally amend the EULA and/or terms of service from time to time, whether during the subscription period or not, the use of Software being subject to the End

User accepting the EULA and/or terms of service as and when updated.

4.3 ELMER may accept an Order subject to the customer accepting "pass through" of additional terms and conditions stipulated by the Manufacturer ("Pass Through Conditions"). Where this applies, the Customer may be advised by ELMER that Pass Through Conditions apply and ELMER shall, upon the request of the Customer advise in writing where a copy may be obtained and the Customer:

- a) Shall be bound by the Pass Through Conditions as if they were part of these Conditions; and
- b) Shall only resell the relevant Products on terms that the Customer's customer is bound by the Pass Through Conditions and that the Customer's customer can only itself resell the relevant Products on the same terms as if it were the Customer for the purposes of this clause 4.3.

4.4 ELMER may accept an Order subject to the Customer accepting a requirement from the Manufacturer to obtain and retain and/or supply ELMER or the Manufacturer with documentation evidencing that the End User has accepted the EULA and/or any applicable Pass Through Conditions (a "Documentation Requirement"). Where a Documentation Requirement applies, the Customer will be advised and the Customer shall supply any documentation needed by ELMER to satisfy the Documentation Requirement and/or procure that the End User does so.

4.5 The Customer will use all reasonable endeavours to ensure that the End User enters into any EULA that applies to the Product(s).

4.6 Unless ELMER expressly agrees in writing to provide Services whose scope expressly includes advising a Customer and/or End User on the Products and/or Services which it recommends to meet a particular requirement, the Customer acknowledges that it is relying solely upon its own skill and judgement and/or that of the End User, and not that of ELMER, in determining the suitability of any Products and/or Services and their fitness for any general or specific purpose. ELMER does not, to this extent, warrant that the Product and/or Service it fit for use, and/or will result in the outcome for which the Product and/or Service was procured by or through ELMER.

4.7 The Customer shall maintain complete and accurate records of all Products and services sold or returned or traded in (where permitted to do so by ELMER or the Manufacturer) and the names and addresses of all Third Parties to whom software has been resold and shall provide such information (including, but not limited to activity reports) in connection with the sale of the Products and Services as ELMER shall reasonably request from time to time. Failure to do so shall constitute a material breach of these Conditions, in which case, ELMER may procure that the Manufacturer revoke the End User's access to, and use of the Products.

4.8 Services

4.8.1 Where ELMER agrees to provide Services, any estimate or indication by ELMER as to the number of days or hours required by ELMER or any Third Party provider of the Services to undertake a specific task shall be construed as being an estimate only. ELMER shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature suffered or incurred by the Customer where such estimate or indication is incorrect.

4.8.2 Unless expressly agreed otherwise, the Fees agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which ELMER shall charge the Customer at its or at the Third Party provider's (as applicable) then current rates, which ELMER shall confirm to the Customer on request.

4.8.3 ELMER will normally carry out the Services during Business Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises or procure access to the End User's premises at other times.

4.8.4 At the Customer's request, ELMER may agree to (but unless otherwise expressly agreed in writing shall not be bound to) provide Services outside Business Hours. However, ELMER shall have the right to charge reasonable additional Fees for complying with such request.

4.8.5 The Customer warrants that it has adequate inspection, testing and approval processes in relation to any Services provided and it shall, on completion of the provision by ELMER of any Services, confirm to ELMER that the rendering of the Services has been completed. This confirmation by the Customer shall be considered the Customer's absolute acceptance of the satisfactory completion of such Services. In the event that the Customer has not confirmed its acceptance of the Services, nor raised any concerns about them, within 7 days of ELMER notifying the Customer that the rendering of the Services is complete, customer acceptance of the Services, including acceptance that they have been completely rendered, will be deemed to have occurred.

4.8.6 Should the Customer become dissatisfied with the performance of any personnel assigned by ELMER or by any Third Party providing Services on behalf of ELMER to perform the Services, the Customer shall notify ELMER in writing with details of the unsatisfactory performance and, provided that ELMER is satisfied that the Customer's dissatisfaction is reasonable, ELMER shall re-assign personnel as soon as reasonably practicable.

4.8.7 No liability shall accrue to ELMER as a result of any defects in the delivery of the Services unless:

- a) A reasonably detailed inspection and testing procedure has been undertaken by the Customer to ascertain whether the Services had been undertaken correctly and in full, and
- b) Such inspection either identified or confirmed the defect-causing loss or could not have been expected

to identify or confirm the defect-causing loss due to the latent and uncheckable nature of such defect.

4.8.8 ELMER will only be responsible for providing support and/or maintenance Services in respect of Products supplied to the Customer where it has expressly agreed to do so in writing in the Contract. Unless otherwise set out in the Contract, this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the Customer's or the End User's personnel. If ELMER is unable to resolve the query during a telephone call, the Customer may be required to contact the Manufacturer of the Product directly, the Manufacturer's resolution being determined by the EULA.

4.8.9 The Customer may from time to time wish to vary the scope of a Service. ELMER will use reasonable commercial endeavours to accommodate any such variation request. Any changes in the Fees and/or timescales as a result of such variation shall be negotiated between the Customer and ELMER, and where such negotiation has not concluded at the time the Customer confirms the variation is required, the Customer accepts any increase in work required pursuant to the variation shall be provided on a time and materials basis at ELMER's or its Third Party provider's (as applicable) then current rates for the same, which ELMER shall confirm to the Customer on request.

4.8.10 Although Services are undertaken with reasonable skill and care, ELMER cannot guarantee the accuracy of any advice, design or report.

4.9 ELMER shall have the option to require the Customer to engage directly with the Manufacturer or its authorised representative in circumstances where it is required to do so by the Manufacturer to fulfil its contractual obligations. The Customer agrees to cooperate with the Manufacturer in such circumstances, including providing necessary access and information, provided that such engagement is limited to the scope of the affected Products or Services.

5 Delivery

5.1 Where requested, ELMER shall ensure that each delivery of the Products is accompanied by a delivery note (the "Delivery Note") that shows the date of the Order, all relevant Customer and ELMER reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.

5.2 If ELMER fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. ELMER shall have no liability for any failure to deliver the Products to the extent that such failure is caused by the Customer's failure to provide ELMER with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

5.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

5.4 If the Customer fails to accept delivery of the Products within three Business Days of ELMER notifying the Customer that the Products are ready, then, except where such failure or delay is caused by ELMER's failure to comply with its obligations under the Contract:

- a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which ELMER notified the Customer that the Products were ready; and
- b) ELMER shall store the Products until delivery takes place and charge the Customer for all related costs and expenses (including insurance and storage costs).

5.5 If ten Business Days after the day on which ELMER notified the Customer that the Products were ready for delivery the Customer has not accepted actual delivery of them, ELMER may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.

5.6 ELMER may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.7 The Customer shall note any claim for short delivery and/or damage to components or packaging on the delivery schedule at the time of delivery and shall confirm such claims in writing to ELMER within 7 days from the date of delivery. All Products are deemed delivered and completed if such notice is not received within such period.

5.8 ELMER shall be entitled to assume that any person signing a delivery note or sending a delivery receipt by email in respect of the Products on behalf of the Customer or the Customer's customer (if ELMER has agreed to deliver direct) appearing or claiming to have authority to accept delivery on behalf of the Customer or the End User (as the case may be) shall in fact have the authority. In relation to deliveries of ESD by e-mail, ELMER shall be entitled to assume that a delivery receipt and/or email read receipt appearing to have been issued from the Customer's or the End User's email system has been so issued.

5.9 Hardware and other physical Products

5.9.1 ELMER shall procure that:

- a) The Delivery Note shows any special storage instructions; and
- b) If ELMER requires the Customer to return any packaging materials to ELMER, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection

at such times as ELMER shall reasonably request. Returns of packaging materials shall be at the ELMER's expense.

5.9.2 ELMER shall deliver the Products to the location set out in the Order or such other location as the parties may agree (the "Delivery Location") at any time after ELMER notifies the Customer that the Products are ready.

5.9.3 ELMER will deliver as near as possible to the delivery premises as safe hard road permits and to the ground floor only of such premises. The Customer shall provide at its own expense the labour for unloading and the Customer shall unload with reasonable despatch. Where such labour is not made available ELMER shall be entitled to charge the cost of labour in unloading. Damage caused due to inadequate delivery access or careless unloading shall be at the Customer's risk.

5.9.4 Delivery is completed on the completion of unloading of the Products at the Delivery Location.

5.10 ESD (including Subscription Software)

5.10.1 ELMER will deliver:

- a) The Software electronically;
- b) Download instructions and activation key(s) which together enable the software to be downloaded from an internet website and activated or renewed to an e-mail address specified in the Order. ELMER shall not be liable for any loss caused by the Customer's failure to provide a correct, working e-mail address that will accept delivery of the Product(s); or
- c) Deliver instructions and activation key(s) which together enable the Software to be downloaded from an internet website and activated or renewed to a Customer procurement manager who shall distribute the activation key(s) to the End Users.

5.10.2 The Customer undertakes to provide ELMER with an email delivery and read receipt for any email that delivers ESD.

6 Warranty for Products

6.1 ELMER warrants it has the right to provide or procure the provision of the Products and Services but does not warrant that the Customer's or the End User's use of any Products or Services will be uninterrupted and error-free. Save in relation to Hardware assembled by ELMER from component parts ("ELMER Assembled Hardware"), the Customer acknowledges that ELMER is not the Manufacturer of the Products and that, save as set out in this clause, does not offer any warranty or guarantee in relation to the Products. To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or general law into these Conditions or relating to the Products or the Services are excluded. Other than in relation to ELMER Assembled Hardware, the only warranties/guarantees that are available are as follows:

- a) No warranty is given in respect of any Documentation or Products or Services not provided by ELMER;
- b) A warranty or guarantee may be provided by the Manufacturer directly to the End User. This is the normal situation and where such warranties/guarantees are provided ELMER shall have no responsibility beyond advising the Customer upon request of the details of the warranties/guarantees provided by the Manufacturer or of where such details can be obtained; and
- c) If ELMER itself has the benefit of any warranty or guarantee provided by the Manufacturer or any other supplier to ELMER of the relevant Product(s), ELMER will provide the Customer with a warranty or guarantee in terms identical mutatis mutandis with the warranty or guarantee ELMER receives on the Product(s).

6.2 ELMER offers a warranty on ELMER Assembled Hardware (the "Warranty") as follows:

6.2.1 To the maximum extent permissible by law, all conditions and warranties which are to be implied by statute or general law into these Conditions or relating to the Products or the Services are excluded.

6.2.2 Subject to this clause 6.2, ELMER warrants to the Customer that the ELMER Assembled Hardware will be free from defects in material and workmanship for a period of twelve (12) calendar months from the date of delivery.

6.2.3 ELMER shall not have any direct liability to End Users customers under the Warranty.

6.2.4 At ELMER's option, its liability under the Warranty shall be limited to the repair or replacement of defective ELMER Assembled Hardware or parts returned by the Customer. Replacement ELMER Assembled Hardware or parts supplied by ELMER under this clause will be guaranteed for the remainder of the Warranty period on the ELMER Assembled Hardware or parts being replaced. Where ELMER is liable under the Warranty and it provides replacement ELMER Assembled Hardware or parts under this clause, ELMER will bear the cost of returning the defective ELMER Assembled Hardware or parts and shipping the replacement ELMER Assembled Hardware or parts to the Customer's or the End User's premises, and will bear any taxes, duties or fees, and the Customer shall account to ELMER for any rebated taxes, duties or fees arising from the return to ELMER of any ELMER Assembled Hardware or parts that are to be replaced under this Clause 6.2.

6.2.5 ELMER shall have no liability under the Warranty if

- a) The ELMER Assembled Hardware has been used otherwise than in the ordinary manner it is intended to be used; or

- b) The ELMER Assembled Hardware has been used for an application other than that for which it is intended; or
- c) The ELMER Assembled Hardware has been modified by the Customer or any Third Party (otherwise than strictly in accordance with the written approval of ELMER); or
- d) The ELMER Assembled Hardware has failed due to installation, service or repair work undertaken by or on behalf of the Customer; or
- e) The ELMER Assembled Hardware has suffered accidental or malicious damage.

6.2.6 The Warranty shall be the only warranty given by ELMER in relation to any ELMER Assembled Hardware. To the fullest extent permissible by applicable law, no other warranty shall be given by ELMER as to the merchantability of any ELMER Assembled Hardware or its fitness for purpose, and ELMER shall have no liability for the quality and performance of any ELMER Assembled Hardware other than the Warranty, provided that nothing in this Clause 6.2.5 shall limit any liability for death, personal injury, wilful misconduct or gross negligence.

6.3 The Customer acknowledges that Products (including ELMER Assembled Hardware) are by their nature susceptible to imperfections in operation and subject to clause 6.1 and 6.2 no warranty is given in respect thereof.

6.4 ELMER's obligations and liabilities in respect of the Products shall be limited to those set out expressly herein and ELMER specifically excludes without limitation the implied conditions of satisfactory quality and fitness for any particular use or purpose. Save and to the extent expressly agreed in writing in a specification for the provision of Services contained in an Order which is incorporated into a Contract, ELMER shall to the fullest extent permitted by law have no liability in respect of any advice and/or information which may be given to the Customer by ELMER relating to Products, configuration or otherwise.

6.5 The Customer shall ensure that any warranty and maintenance service performed on Products (including ELMER Assembled Hardware) is performed by a qualified representative authorised by the Manufacturer to offer warranty and maintenance on those Products.

6.6 Except in respect of death or personal injury of any person caused by ELMER's negligence, ELMER's liability in respect of any warranty provided under clause 6.1 or 6.2 above for defects in or failure of Products (including ELMER Assembled Hardware) or for the loss or damage attributable thereto or to the negligence of its employees in connection with the performance of their duties hereunder, shall be limited to the making good by replacement or repair of such Products which upon inspection by ELMER appear to be defective and in any event ELMER's maximum aggregate liability arising in respect of the supply of Products or Services shall be limited to the original VAT exclusive price for such Products.

6.7 Save as may be expressly agreed in writing, ELMER makes no representation and gives no warranty in respect of the sources of origin of manufacture or production of any Hardware or any parts thereof.

7 Title and risk

7.1 The risk in the Products shall pass to the Customer on completion of delivery.

7.2 Title (i.e right of access) to ESD shall pass on delivery.

7.3 Title to Hardware and other physical Products shall not pass to the Customer until:

- a) ELMER receives payment in full (in cash or cleared funds) for all monies due from the Customer, in which case title to the Products shall pass at the time of payment of all such sums; or, if earlier
- b) the Customer resells the Products.

7.4 Whilst any amount remains outstanding to ELMER from the Customer in relation to any Hardware and/or other physical Products which have not been resold by the Customer:

- a) The Customer shall keep the Hardware and/or other physical Products as fiduciary bailee for ELMER and shall store the Hardware and/or other physical Products separately from its other chattels and in a manner that clearly shows that they are owned by ELMER;
- b) The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Hardware and/or other physical Products that remain the property of ELMER;
- c) In the event that payment for the relevant Hardware and/or other physical Products is overdue, the Customer will deliver up or have delivered up to ELMER the Hardware and/or other physical Products upon demand and ELMER may without limiting any other rights or remedies available to it at law in equity or by statute seize repossess and/or resell the Hardware and/or other physical Products at its discretion and in exercise of such rights ELMER may enter any premises in which it reasonably believes from time to time any Hardware and/or other physical Products are located;
- d) The Customer may only sell transfer or otherwise dispose of the Hardware and/or other physical Products to its customers in the ordinary course of its business and in accordance with the provisions of these Conditions; and
- e) The Customer shall take all due care (or ensure that all due care is taken) of the Hardware and/or other physical Products and the Customer shall bear the sole liability for insurance of the Hardware and/or other

physical Products and shall indemnify ELMER for any loss whatsoever suffered or incurred by ELMER arising out of any failure to insure such Hardware and/or other physical Products.

8 Price and payment

8.1 Products other than Subscription Software

8.1.1 Subject to Clauses 3.4, 3.5 and 3.7, the price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in ELMER's published price list in force as at the date of delivery.

8.1.2 Where applicable, the relevant Value Added Tax will be added to the price of the Products or Services.

8.1.3 Any other indirect taxes, customs duties, tariffs or similar fees or charges arising on the sale and/or delivery by ELMER to the Customer of the Products or Services shall be the responsibility of the Customer.

8.1.4 ELMER may, by giving notice to the Customer at any time up to one Business Day before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- a) Any factor beyond ELMER's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) Any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the specification of the Products; or
- c) Any delay caused by any instructions of the Customer or failure of the Customer to give ELMER adequate or accurate information or instructions.

8.1.5 Subject to Clause 8.1.6, ELMER may invoice the Customer for the Products on or at any time after the completion of delivery.

8.1.6 If the Customer is not a credit account holder approved in writing by ELMER, ELMER may issue an invoice or a pro forma invoice and such invoice or pro forma invoice shall be payable in full before delivery of the Products.

8.1.7 If the Customer is an approved credit account customer, all invoices are payable in full within 30 days net of the date of invoice or within such other period as may otherwise be expressly agreed in writing in advance.

8.1.8 ELMER reserves the right to withdraw or alter the terms of any credit account arrangement with the Customer for any Products delivered with effect from the date ELMER notifies the customer of such withdrawal or alteration.

8.1.9 Amounts payable to ELMER under clause 8.1.5 and 8.1.6 above shall be paid in cleared funds and in the currency stipulated in the Contract to a bank account nominated by ELMER.

8.1.10 Time is of the essence with regard to payment of any sums due to ELMER.

8.1.11 The Customer shall not be entitled to withhold payment of any amount due to ELMER in respect of any claim for damage to Products or any alleged breach of contract by ELMER, nor shall the Customer be entitled to any right of set-off.

8.1.12 Without prejudice to ELMER's other rights if the Customer fails to pay any amount on the due date:

- a) ELMER shall have the right to cancel any Contract made with the Customer and/or to suspend deliveries;
- b) ELMER reserves the right to charge interest on a daily basis on overdue amounts at the rate of 4% above Barclays Bank base rate until payment;
- c) The Customer shall indemnify ELMER and keep it indemnified in respect of all costs (including legal fees) reasonably incurred in attempting to recover such overdue amounts;
- d) The whole of the balance then outstanding to ELMER by the Customer on any account whatsoever shall become immediately due and payable; and
- e) Notwithstanding any agreed credit arrangements, ELMER reserves the right to require the Customer to pay for any Products in advance and/or to recharge any discount or rebate previously agreed and/or to cancel any agreed rebate or discount arrangement with immediate effect.

8.2 Subscription Software

8.2.1 Subject to Clauses 8.2.2 and 8.2.3 and subject to Clauses 3.4, 3.5 and 3.7, the initial pricing of the Products and the basis for determining the future pricing of the Products shall be as set out in the Order.

8.2.2 The period of subscription to the Product(s) and any termination or cancellation provisions shall be as set out in the Order.

8.2.3 Save and to the extent otherwise expressly agreed in writing, ELMER may, by giving 7 Business Days' notice to the Customer, increase the price of the Products to reflect any increase in the cost of the Products that is due to:

- a) The Manufacturer or other supplier to ELMER increasing its pricing;
- b) Any other factor beyond the ELMER's control (including foreign exchange fluctuations, increases in taxes and duties, and increases any other costs); or
- c) Any delay caused by any instructions of the Customer or failure of the Customer to give ELMER adequate or accurate information or instructions.

8.2.4 ELMER shall be entitled to recover from the Customer any excess usage charges that are applicable under the pricing formula set out in the Order. The amount of such excess usage charges will be based on the agreed pricing in the Order and information about excess usage provided to ELMER by the Manufacturer.

8.2.5 Unless otherwise expressly agreed in writing:

- a) Subscription charges shall be invoiced and be payable in advance for the full initial subscription period;
- b) Excess usage for each month shall be calculated by ELMER and invoiced during the following month along with the next monthly subscription;
- c) Following any reported excess usage, ELMER may increase the subscription amount to reflect the level of continuing excess usage; and
- d) ELMER may issue further invoices from-time-to-time for excess usage or any other applicable extra charges that have not been included on the regular monthly invoice.

8.2.6 Unless the Customer is an approved credit account customer, all invoices are payable by direct debit on the first day of the month or such other date in the month as may be agreed between ELMER and the Customer.

8.2.7 If the Customer is an approved credit account customer all invoices are payable in full within 30 days net of the date of invoice or within such other period as may otherwise be expressly agreed in writing in advance.

8.2.8 The provisions of clauses 8.1.14 to 8.1.12 shall be applicable to payment of Subscription Software mutatis mutandis.

8.2.9 To ensure uninterrupted access to the Products or Services, invoicing for subsequent subscription periods may be initiated at the earlier of: (i) the anniversary of the initial subscription Order being fulfilled; or (ii) a date that ensures that the Manufacturer's payment requirements for the subsequent subscription period are fulfilled and payment is received prior to the commencement of the next subscription term.

8.3 Services other than Subscription Software

8.3.1 Subject to Clauses 3.4 and 3.5 the fees for the provision of any Services shall be the amounts set out in the Order, or, if no fees are set out, the amounts determined in accordance with the charging scale set out in the Order.

8.3.2 Unless otherwise expressly agreed in writing:

- a) If any fixed fee or fixed element of a fee is set out in the Order, that fixed fee or fixed element of the fee will be invoiced by ELMER to the Customer in

advance of the rendering of the Services it relates to; and

- b) Any fees in addition to any fixed element will be invoiced by ELMER to the Customer monthly in arrears or at such less frequent intervals as ELMER shall determine.

8.3.3 If the Customer is not a credit account holder approved in writing by ELMER, any invoice issued by ELMER to the Customer under clause 8.3.2 shall be payable in full on presentation.

8.3.4 The provisions of clauses 8.1.14 to 8.1.12 shall be applicable to payment of Services other than Subscription Software mutatis mutandis.

8.3.5 To ensure uninterrupted access to the Products or Services, invoicing for subsequent service periods may be initiated at the earlier of: (i) the anniversary of the initial subscription Order being fulfilled; or (ii) a date that ensures that the Manufacturer's payment requirements for the subsequent subscription period are fulfilled and payment is received prior to the commencement of the next subscription term.

9 Returns Policy

9.1 ELMER does not accept return of any Products unless:

- a) They are faulty and incapable of being repaired under the Manufacturer's warranty or, in the case of ELMER Assembled Hardware, the Warranty; or
- b) They are faulty and the Manufacturer's warranty policy provides for a replacement or refund via ELMER; or
- c) The returns policy of the Manufacturer or other supplier to ELMER permits returns and the Products are returned to ELMER within such timescale and in such condition that they can be returned by ELMER to the Manufacturer or supplier; and
- d) The Products are returned in accordance with the further provisions of this clause 9.

9.2 Products shall be deemed accepted by the Customer unless rejected by notice in writing to ELMER within 7 days of delivery. Any such notice shall give detailed reasons for such rejection.

9.3 Save where otherwise required by applicable law, any payment, credit or refund following return of such rejected Products to the Customer shall only be given once a corresponding refund of the cost price has been received by ELMER from the Manufacturer, supplier or insurer as the case may be.

9.4 Before returning any Products which the Customer is seeking to reject in accordance with Clause 9.1, the Customer shall comply with ELMER's returns procedure (details of which

ELMER will provide on request) and in particular, but without limitation, shall obtain from ELMER a designated return merchandise authorisation number ("RMA Number") and which, in the case of Hardware and other physical Products shall be affixed by the Customer to the packaging of the Products to be returned in a prominent position. The issue of an RMA number is solely for administrative purposes and shall not be taken as an admission of any fault and/or liability whatsoever on the part of ELMER in relation to the Products being returned.

9.5 No Hardware or other physical Products shall be returned without prior arrangement with ELMER. In such event the Customer agrees that ELMER shall be entitled to a handling charge of an amount equivalent to 10% of the selling price of the goods returned.

9.6 If ELMER has agreed to accept the return of any Hardware or other physical Products other than for the purpose of carrying out repair or replacement of those Products, they must be returned in their original packaging and in a clean resalable condition, failing which ELMER may refuse to accept their return.

9.7 Where expressly agreed in writing, ELMER may accept the receipt of Products from a Customer in connection with a trade-in offer from a Manufacturer. Where ELMER accepts such Products, it does so as agent for the Customer and at the Customer's risk and expense.

10 Data protection

10.1 Details of ELMER's Privacy Policy is available upon request.

10.2 Each Party undertakes to comply with the Data Protection Legislation (where applicable to such Party) when performing its respective obligations under the Contract.

10.3 Each Party will:

- a) Operate appropriate safety and security measures and procedures for the prevention of unauthorised access or damage to any and all locations in which Personal Data is stored and/or Processed by that Party; and
- b) take appropriate technical and organisational measures to protect Personal Data Processed by that Party against unauthorised or unlawful Processing and accidental loss, destruction, alteration or disclosure and ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to (a) the harm that might result from such Processing, loss, destruction or damage; and (b) the nature of such Personal Data.

10.4 Where the Customer intends to, or might, include Personal Data in its use of the Products and/or Services purchased from ELMER, it shall inform ELMER at the time a quote is requested. Where so informed, ELMER will identify whether ELMER, the Customer or a Third Party is the Data

Processor for the purposes of the Processing, communicate that to the Customer, and:

10.4.1 To the extent that either Party Processes Personal Data on behalf of the other Party, the Party who Processes the Personal Data shall:

- a) Enter into a Data Processing Agreement with the other Party where required by the Data Protection Legislation;
- b) Process such Personal Data only in accordance with the other Party's instructions in that Data Processing Agreement, or as required by law or regulation; and
- c) Promptly inform the other Party if it receives a request or notice from a Data Subject seeking to exercise their rights under the Data Protection Legislation in respect of such Personal Data, and (at the Customer's cost) comply with the Customer's reasonable instructions with respect to that request or notice; or

10.4.2 To the extent that a Third Party, being a Manufacturer or supplier to ELMER, performs Processing activities as the result of a purchase by the Customer from ELMER of the Products or Services, ELMER will:

- a) Require that Third Party to meet the obligations set out in clause 10.3;
- b) Where required by the Data Processing Legislation, enter into a Data Processing Agreement with the Third Party and/or
- c) Use reasonable endeavours to facilitate the conclusion of a Data Processing Agreement between the Third Party and the Customer and/or End User or

10.4.3 To the extent that a Third Party, being a customer of the Customer or an End User, performs Processing activities as the result of a purchase by the Customer from ELMER of the Products or Services, the Customer will:

- a) Require that Third Party to meet the obligations set out in clause 10.3;
- b) Where required by the Data Processing Legislation, enter into a Data Processing Agreement with the Third Party and/or
- c) Use reasonable endeavours to facilitate the conclusion of a Data Processing Agreement between the Third Party and ELMER.

10.5 Each Party undertakes to the other Party that, where required by the Data Processing Legislation, it will obtain the necessary informed consent to share any Personal Data with the other Party.

10.6 Each Party will promptly inform the other if:

- a) It has reason to believe that the activities of the other Party are in breach of the Data Protection Laws; and/or
- b) It suspects or uncovers any breach of security in any respect which could impact the Personal Data for which the other Party has responsibility, and the Party which has been breached will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

10.7 Each Party will promptly, but no later than 18 hours, inform the other in case it suspects or uncovers that the Personal Data for which the other Party has responsibility are obtained by others by unlawful means, and will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach and to make required filings with the relevant data protection authority as per the applicable Data Protection Legislation.

10.8 The obligations in this clause 10 shall survive the termination of the Contract.

11 Intellectual property rights

11.1 The title to and the Intellectual Property Rights in the Products and in the media containing such Products does not pass to the Customer or End User unless otherwise specified in the EULA. The Customer or the End User is licensed to use such Products in accordance with these Conditions and the EULA applicable to the relevant Products.

11.2 The Customer and End User shall ensure that they are aware of any opensource software provision in the applicable EULA, and shall use the Software cognisant of, and subject to the opensource software provisions. Any Intellectual Property Rights created in terms of opensource software is subject to the EULA terms regulating same. The Customer shall have no claim against ELMER with respect to opensource software and the Intellectual Property Rights created and/or transferred and/or assigned and/or ceded in respect thereof.

11.3 Each Party grants to the other Party a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for the other Party to perform its obligations under the Contract. The Parties agree that all Intellectual Property Rights which existed prior to the date of the Contract in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights.

11.4 Subject to clause 11.5, ELMER (and/or ELMER's supply chain and subcontractors) shall own and be fully entitled to use in any way ELMER deems fit any Intellectual Property Rights, including skills, techniques, materials, concepts or know-how acquired, developed or used in the course of providing any Services and any improvements made or developed during the course of providing the Services. For the avoidance of any doubt, this shall include any improvements or modifications to Products during the duration of the Contract.

11.5 Nothing in clause 11.4 shall be construed or shall give effect to any transfer of right, title or interest in the Customer's or ELMER's Intellectual Property Rights.

11.6 The Customer shall not, without ELMER's prior written consent, copy or reproduce in any way the whole or a part of the user manual or any other documentation which has been supplied to the Customer relating to any Products or Services.

11.7 The Customer undertakes not to violate the Intellectual Property Rights of the Manufacturer in the Products or assist anyone else to do so or to breach the terms of the EULA. The Customer shall indemnify and hold harmless ELMER from any claims from the Manufacturer that the Manufacturer's Intellectual Property Rights have been breached or the EULA has been breached where such breach is attributable to the actions or omissions of the Customer.

11.8 In relation to Products or Services supplied by ELMER to the Customer, the Customer undertakes promptly to notify ELMER if it becomes aware of any infringement of Intellectual Property Rights of ELMER or the Manufacturer by any Third Party (including, but not limited to, any breach of the EULA by the End User) and shall use all reasonable endeavours to assist ELMER and/or the Manufacturer in safeguarding their Intellectual Property Rights in the Products and Services.

12 Limitation of liability – The Customer's attention is particular drawn to the provisions of this clause.

12.1 Nothing in the Contract shall limit or exclude any liability for:

- 12.1.1 death or personal injury caused by negligence;
- 12.1.2 fraud or fraudulent misrepresentation; or
- 12.1.3 any other liability which by law cannot be limited or excluded.

12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with any Contract or the supply by ELMER of any Products or Services including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 The Parties agree that the limitations on liability in these Conditions are reasonable, given the Parties' respective commercial positions and their option to purchase appropriate insurance in respect of arising risks. Subject to clause 12.1 and 12.4, the total liability which either Party shall owe to the other in respect of all claims arising under or in connection with Contracts or the supply by ELMER of any Products and/or Services shall not exceed 100% of the Fees paid by the Customer in respect of the Products or Services to which the claim(s) relate.

12.4 Subject to clause 12.1, neither Party shall have any liability to the other Party the following types of loss in

connection with any Contracts or the supply by ELMER of any Products:

- 12.4.1 loss of profits;
- 12.4.2 any account of profits;
- 12.4.3 loss of sales or business;
- 12.4.4 loss of agreements or contracts;
- 12.4.5 loss of anticipated savings;
- 12.4.6 loss of use or corruption of software, data or information;
- 12.4.7 loss of or damage to goodwill; and
- 12.4.8 indirect or consequential loss.

12.5 This clause 12 shall survive termination of the Contract.

12.6 The Customer shall indemnify and hold harmless ELMER and its suppliers and/or Manufacturers against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable legal fees) arising out of or in connection with any act or omission of the Customer and/or the End User or affected third party. This indemnity shall survive termination or expiry of the Contract.

13 Termination

13.1 ELMER shall be entitled to terminate any Contract and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and on written notice to the Customer shall be entitled to cancel the undelivered or unperformed portion of any Contract and deem that the whole of the Fees due under the Contract or any other agreement shall be payable immediately in the event that:

13.1.1 the Customer commits a material breach of any term of the Contract (including if the Customer fails to pay any amount due under the Contract on the due date for payment) and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so or in the event that the Customer commits repeated material breaches of Contracts;

13.1.2 the Customer takes any step or action in connection with its entering administration, concordatum, provisional liquidation, liquidation, or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

13.1.4 the Customer's financial position deteriorates so far as reasonably to justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.2 Without limiting its other rights or remedies, ELMER may suspend provision of Products and Services under the Contract or any other contract between the Customer and ELMER if the Customer becomes subject to any of the events listed in clause 13.1, or ELMER reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 On termination of the Contract by ELMER under Clause 13.1 above:

- a) The Customer shall immediately pay to the ELMER all of ELMER's outstanding unpaid invoices and interest and, in respect of Products and Services supplied but for which no invoice has been submitted, ELMER shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- b) Should the Customer have failed to make payment in full for any Software, the Customer shall immediately cease to use all such Software and, at its own expense, remove from all computers, communications systems and other electronic devices under its control all copies of such Software and return or destroy them (certifying in writing to ELMER that such destruction has taken place).

13.4 Termination or expiry of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.5 Any provision in any Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14 Force majeure

Neither Party shall be liable to the other Party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under any Contract (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the Party in question, which for the avoidance of doubt (and without prejudice to the generality of the foregoing) shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, pandemic, labour disputes including labour disputes involving the work force or any part thereof of the Party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable

materials, currency restrictions and acts of God. Neither non-payment of Fees by the Customer, nor non-payment of the Customer by their customers, shall be considered a force majeure event for the purposes of this clause 14.

15 Embargoed territories

The Customer hereby undertakes that it shall not:

- a) Export or re-export any Products to any country or territory where such export or re-export may be prohibited by the laws and regulations of that country or territory or by the laws and regulations of England and Wales, any other part of the United Kingdom, the European Union, the United States of America, the Republic of Türkiye or by international law ("Embargoed Territories"); or
- b) Re-sell the Products to any third party unless such re-sale is made on the condition that the Third Party will not export or re-export the Products and Services to any of the Embargoed Territories.

16 General

16.1 Assignment and other dealings.

- a) ELMER may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under any Contract or delegate the burden of any Contract.
- b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under any Contract without the prior written consent of the ELMER.

16.2 Confidentiality

- a) Each Party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party ("Confidential Information"), except as permitted by clause 16.2(b).
- b) Each Party may disclose the other Party's Confidential Information:
 - (i) To its Representatives who need to know such information (each a "Permitted Disclosee") for the purposes of considering opportunities for the Parties to enter into Contracts, negotiating the terms of any Contract, the Representative(s) performing their duties in relation to any Contract or exercising a Party's rights or carrying out its obligations under any Contract (each a "Permitted Purpose"). Each Party shall ensure each Permitted Disclosee to whom it discloses the other Party's Confidential Information is aware of the confidentiality obligations set out in this

this clause 16.2 and shall procure that each Permitted Disclosee complies with them as if the Permitted Disclosee were a Party to the Contract; and

- (ii) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Neither party shall use the other party's Confidential Information for any purpose other than a Permitted Purpose.

16.3 Non-solicitation

The Customer undertakes that it will not, save as permitted by this clause 16.3, solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of ELMER professionally or otherwise directly associated with ELMER during the term of the Contract or for 12 months thereafter. This shall not prevent the Customer employing any person who is employed or acting for ELMER where that person responds to a bona fide public advertisement for employees.

16.4 Entire agreement

- a) The Contracts (including these Conditions) together constitute the entire agreement between the Parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each Party agrees that, to the maximum extent permitted by law:
 - (i) It shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in a Contract; and
 - (ii) It shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in any Contract.

16.5 Relationship of the Parties

Save as may be expressly agreed in writing, nothing in any Contract is intended to, or shall be deemed to:

- a) Establish any partnership or joint venture between the Parties;
 - b) Constitute either Party the agent of the other Party;
 - c) Authorise either Party to make or enter into any commitments for or on behalf of the other Party; or
 - d) Create any licence over any Intellectual Property Rights and on any resale of a Product or

Service by the Customer, such resale shall be made by the Customer as principal.

16.6 Variation

No variation of any Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives). Notwithstanding the foregoing, ELMER reserves the right to alter these Conditions at such time and in such manner as it sees fit and shall publish the then-current version of these Conditions at <https://www.elmer.com.tr/en/terms-and-conditions>. The version of the Conditions which is current at the time of the commencement of a Contract shall apply to that Contract, unless otherwise agreed in writing. ELMER will supply a hard copy of these Conditions to the Customer on request.

16.7 Waiver

No failure or delay by a Party to exercise any right or remedy provided under any Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.8 Severance

If any provision or part-provision of any Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of any Contract is deemed deleted under this clause 16.6 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.9 Notices

16.9.1 Save as otherwise is required as per article 18/III of the TCC, any notice or other communication given to a Party under or in connection with any Contract shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b) sent by email to the address specified in the Order.

16.9.2 Any notice or communication shall be deemed to have been received:

- a) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or, if later, at the time recorded by the delivery service; or
- b) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt or falls on a public holiday in the place of

receipt, when Business Hours (not falling on a public holiday in the place of receipt) resume.

16.9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.10 Third party rights

Unless it expressly provides otherwise, a Contract does not give rise to any rights under the Contracts to Third Parties to enforce any term of the Contract.

16.11 UN Convention

The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded.

16.12 Governing law

Each Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of the Republic of Türkiye.

16.13 Jurisdiction

Each Party irrevocably agrees that any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any Contract or its subject matter or formation shall be finally settled through arbitration under the Istanbul Arbitration Centre Arbitration Rules. The seat, or legal place, of arbitration shall be Istanbul, Turkey. The language of the arbitration shall be English.