

# Powervault Limited - General Terms & Conditions

Edition: June 2018

These General Terms & Conditions set out the terms upon which the Company provides Goods & Services. A copy of these General Terms & Conditions is available at [www.powervault.co.uk/](http://www.powervault.co.uk/)

These General Terms & Conditions shall be incorporated by reference to a completed Company "Contract Details".

Together the Contract Details and these General Terms & Conditions shall form the Contract between the Company and the Customer.

## 1. DEFINITIONS

### 1.1. In these Conditions

"Company" means **Powervault Limited** registered in England with number 08313356 of 29 Shand Street, London SE1 2ES United Kingdom or a Group company thereof;

"Conditions" means the terms and conditions of sale set out below and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Customer and the Company including any special terms set out in the Company's Confirmation of Order or otherwise approved in writing by the Company;

"Confidential Information" means proprietary information and/or any information obtained from the other party in connection with these Conditions which is: (i) reasonably identified by either party as commercially sensitive or confidential; (ii) obviously confidential in nature; or (iii) given in circumstances giving rise to an obligation of confidence;

"Contract" means the contract for the provision of the Goods;

"Contract Details" means the Company's confirmed sales order or Company's invoice or other Company's document which document sets out details of Goods & Services ordered by the Customer, prices and other commercial terms;

"Customer" means the Person for whom the Company has agreed to provide the Goods in accordance with these Conditions; this can include either the End User, Approved Powervault Installer or Distributor;

"Data Protection Legislation": the Data Protection Act 1998 and (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

"Goods" means the goods or services (including any instalment of the Goods or services or any parts of them) which the Company is to supply in accordance with these Conditions and as described in the Contract Details;

"Group" means in respect of a party, any company which is

a subsidiary or a holding (including ultimate holding) company of that party, and any company which is a subsidiary of such holding company, (the terms subsidiary and holding company having the meanings given in Section 1159 of the Companies Act 2006 as amended),

"Person" means an individual or a body corporate or a limited partnership or other partnership and "Persons" shall be construed accordingly;

"the Premises" means the premises in which the Goods are to be installed or to which they may be supplied;

"Writing" includes facsimile transmission and e-mails.

## 2. PARTIES

The parties to these Conditions are the Company and the Customer. All transactions as between the Company and the Customer are as between principal and principal and are subject to these Conditions.

## 3. VARIATION

The Contract Details between the Company and the Customer cannot be varied, altered or cancelled unless such variation, alteration or cancellation is agreed in Writing between the authorised representatives of the Company and the Customer (being in the case of the Company a director of the Company) and signed by or on behalf of the parties. The Company may amend the General Terms & Conditions by means of written notice to the Customer or by means of publication of altered General Terms & Conditions on the Company's website, in which case the altered General Terms & Conditions shall take effect within 28 days of their publication.

## 4. WAIVER

Any concession, latitude or waiver allowed by the Company at any time shall apply only to the extent specifically covered by such concession, latitude or waiver and shall not prevent the Company otherwise exercising its full rights under the Contract and these Conditions.

## 5. ACCEPTANCE OF ORDERS

5.1 All quotations made, and price or product lists supplied, by the Company are subject to withdrawal and alteration without notice and do not constitute an offer to supply goods or services.

5.2 No order submitted by the Customer shall be deemed accepted, and the Contract shall not come into force, until the Company has despatched a confirmation in Writing, signed by a duly authorised representative of the Company, to the Customer stating that it has accepted the order concerned.

5.3 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in Writing of the Company, signed by a duly authorised representative of the Company, and in terms that the Customer shall indemnify the Company in full against all loss, costs, damages, charges and expenses incurred by the Company.

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

5.4 The Company reserves the right to accept or refuse orders. The Company also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of the Customer's commitments (including the payment on the due dates for Goods delivered) with the Company not being met.

5.5 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company the necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

5.6 The quantity, quality and description of, and any specification for, the Goods shall be those set out in the Contract Details or failing this then in the Company's quotation. In the event of any inconsistency the former shall prevail.

5.7 The Company reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

## 6. REPRESENTATIONS

6.1 The Company's employees or agents are not authorised to make a legally binding representation concerning the Goods or the Contract and no representation binds the Company unless the same shall have been put into Writing and signed by a director of the Company.

6.2 In entering into the Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of any representations which are not confirmed in Writing as provided in clause 5.1.

6.3 The Company may at any time correct without liability any typographical, clerical or other error or omission in the sales literature, quotations, price list, acceptance of offer, invoice or other document or information issued by it.

6.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to installation, storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

## 7. SPECIFICATION

7.1 With a view to improving the Goods at all times the Company reserves the right to vary the specification of the Goods without reference or liability to the Customer.

7.2 It is incumbent upon the Customer to satisfy itself absolutely that the Customer fully understands the specification of the Goods that the Customer is purchasing.

7.3 Subject to the generality of clause 6.1 the specification of the Goods to be supplied to the Customer by the Company shall be in accordance with the description of such goods indicated on the confirmation of acceptance of the order by the Company subject always to all and any amendments or variation whatsoever which may be agreed in Writing between the

Company and the Customer subsequent to the confirmation of acceptance of the order and before delivery.

7.4 If sold to a Customer (e.g. Approved Powervault Installer or Distributor) who stores the goods in a warehouse for any period of time, the Customer must ensure the goods are:

7.4.1 stored in a secure and safe location;

7.4.2 stored in an environment that adheres to the Goods' environmental specifications;

7.4.3 sold or returned to base within the specified 're-charge by' date displayed on the packaging (at the Customer's own cost);

7.4.4 handling and transportation is made per the package instructions and in the original packaging.

## 8. CARRIAGE AND PACKAGING

8.1 Unless expressly stated in Writing by the Company all prices quoted exclude postage, packing and delivery which shall be payable by the Customer.

8.2 The packaging of the Goods is at the sole discretion of the Company which shall have the right to pack the Goods in such manner and with such materials as it thinks fit.

## 9. PRICE

9.1 All prices shall be exclusive of Value Added Tax and any other taxes from time to time in force.

9.2 The price shall be such quoted price as stated by the Company (and, subject to clause 8.3, valid for thirty days).

9.3 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

## 10. PAYMENT

10.1 Except as otherwise agreed in Writing by the Company the price shall be paid in full upon receipt by the Customer of the Company's notice that the Goods are ready for delivery, unless the Customer is an account customer, in which case payment is required in accordance with the payment terms agreed by the Company.

10.2 Payment shall be deemed to be made only when cleared funds have been received by the Company and the Company's bank account credited.

10.3 Where the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

10.4 If the Customer fails to make any payment on or before the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

10.4.1 suspend or cancel any further deliveries to the Customer; and/or

10.4.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer).

10.5 If the Customer fails to make any payment on or before the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to either:

10.5.1 cancel the Contract and claim from the Customer by way of liquidated damages a sum equal to the costs, direct losses, loss of profit and an appropriate amount in respect of administrative overheads, in each case related to the Contract, but giving credit for any sums paid to the Company; or

10.5.2 bring an action for the invoice value (less any amount of it previously paid to the Company).

10.6 In the event of late payment of any sum due from the Customer to the Company, the Company may charge the Customer interest (both before and after any judgment) on the amount unpaid, on a daily basis and on the basis of a year of 365 days at the rate of 18% per annum above Bank of England base rate from time to time, compounding with quarterly rests until payment in full is made).

10.7 The Customer shall not withhold or reduce the amount due on account of any complaint unless such complaint has been received in Writing by the Company and the Company has issued a credit note in satisfaction of such complaint.

## 11. COLLECTION

11.1 If the recovery of any sums outstanding from the Customer to the Company is passed to a debt collection agency, the Customer shall pay, on an indemnity basis, the Company's costs incurred in instructing the said debt collection agency and all legal and other costs ancillary thereto.

11.2 Without prejudice to clause 11.1, the Company reserves the right to charge the Customer for any costs incurred in collecting sums outstanding from the Customer to the Company, including lawyer's fees and bank charges for returned cheques.

## 12. DELIVERY

12.1 Save where the Customer collects the Goods from the Company's premises (in which case delivery shall take place at the Company's premises) delivery shall take place at the Customer's premises or such other actual location of which the Customer shall have notified the Company in Writing at or before the time when the order is made.

12.2 The Company shall endeavour to complete on any delivery dates stipulated, but such dates are approximate only and the Company shall not be liable to the Customer for any loss, damage, injury, penalty, claim or any other matter of whatsoever nature arising from any delay in delivery and time for delivery shall not be of the essence of the Contract.

12.3 The Company shall be entitled to deliver Goods by instalments. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

12.4 The Company reserves the right to withhold delivery of Goods to the Customer at any time when the Customer is exceeding or upon delivery would exceed any credit limit with the Company, either in relation to such Goods or otherwise.

12.5 A delivery or collection note or acceptance or satisfaction note signed by the Customer or by the Company or other 3<sup>rd</sup> party as the duly authorised agent of the Customer is deemed to be absolute evidence of delivery or collection of the Goods specified in the note.

12.6 In the event that the Customer postpones or in any way delays a delivery and/or installation date and the Company has to re-programme such delivery and/or installation, the Company reserves the right to charge the Customer for any additional expenses thereby incurred.

## 13. INSTALLATION

13.1 No work or materials other than as set out in the Contract, and specification will be supplied or fitted. The Company does not undertake to determine if the Premises or any part of the existing structure are suitable for the installation. The Customer is responsible for making the Premises good after any work undertaken by the Company at the Premises, including without limitation replacing and re-siting items and for re-decorating.

13.2 The area where the Goods are to be installed must be cleared by the Customer and made ready for the installation on the due date. Where the Customer fails to clear the area and it is necessary for the Company to provide labour to do this, the Customer shall pay the Company's proper charges for the work.

13.3 The Company does not undertake to widen any existing brick apertures of windows or doors or carry out any structural alteration or building work.

13.4 The Company shall not be responsible for and will not undertake any wiring, electrical, plumbing or heating work except to the extent that any such work is necessary for the proper installation of Goods.

13.5 The safety of all materials left on site and part completed installation shall be the responsibility of the Customer who shall be liable to the Company for any theft, accidental, malicious or negligent damage and the Customer shall ensure the provision of adequate insurance to cover any loss thereby caused.

13.6 Unless and except to the extent expressly agreed otherwise by the Company in Writing, the Company will not undertake any decorating work and will not be responsible for any damage caused to plastering, tiling or decorations.

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

- 13.7 The Customer will give access to the Premises to the Company, its sub-contractors and their respective servants and workmen at all reasonable times so that the Company may complete the installation in accordance with the Contract.
- 13.8 The Customer agrees to allow the free use of any services supplied to the Premises for the purpose of carrying out the installation.
- 13.9 Notwithstanding that the Company may have agreed to install the Goods for the Customer the Goods shall nevertheless be considered as delivered to the Customer when the Goods are delivered in accordance with clause 12.
- 13.10 If the Goods are sold to a Distributor Customer, the Distributor Customer must ensure that the Goods are installed in accordance with Clause 13 and by an Approved Powervault Installer who has signed the Company's Approved Installer Agreement. On failure to comply with this requirement, the Distributor Customer shall be responsible for any damages or claim if it related to poor installation and workmanship.

## 14. DELEGATION

The Company may employ sub-agents or sub-contractors or otherwise delegate to any third party the performance of any of its obligations under the Contract. Every act or omission of such a sub-agent, sub-contractor or third party shall for the purposes of the Contract and these Conditions be deemed to be the act or omission of the Company.

## 15. STORAGE CHARGES

- 15.1 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at or before the time stated for delivery (otherwise than by reason of default of the Company, its employees or agents) then, without prejudice to any other right or remedy available to the Company, the Company may:

15.1.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

15.1.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## 16. CLAIMS AND DAMAGES

- 16.1 The Company shall use its reasonable endeavours to deliver or provide the Goods in accordance with any specification agreed with the Customer and, unless otherwise agreed in Writing between the Company and the Customer, the Company warrants that the quality and finish of the Goods shall be reasonable in compliance with the general recognised standards in the trade for the class of work and type, quality and finish of the Goods concerned. Unless otherwise agreed, the Goods (including any equipment and hardware) is subject to the manufacturer's warranty.
- 16.2 The Company undertakes, except as excluded by or in these Conditions, to make good, free of charge, any defects which

under proper use appear in the Goods, components or parts subject to the Contract, within a period of one year after installation at the Premises and which are due to faulty materials, provided there has been no maltreatment thereof and provided further that the Company is notified in Writing immediately such defects appear. Under no circumstances shall this provision replace any maintenance services to be provided by the Company (whether provided under this Contract or a separate maintenance agreement) and the obligation at this Clause 16.2 shall be limited to a breach of warranty as set out at this Clause 16.2.

- 16.3. Notwithstanding clause 16.2 (but subject to clause 16) the Company shall have no liability at any time:

16.3.1 in respect of any defect arising from any drawing, design or specification supplied by the Customer;

16.3.2 in respect of any defect appearing in the Goods, or any component part of the Goods, which is due, or partly due, to the material of which the same is made, its design or any method of manufacture or process of treatment applied thereto by any person other than the Company, or as specifically requested by the Customer, in which case the Customer shall be entitled to the benefit of such warranty or guarantee only as is given by the manufacturer to the Company; or

16.3.3 in respect of any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by the Customer or any third party, use otherwise than as recommended by the Company, maltreatment or alteration, or repair of the Goods without the Company's approval in Writing; or

16.3.4 in respect of any alleged defect in the Goods following discovery of which the Customer continues to use the Goods.

- 16.4. Except as excluded by clause 17.3, where the Goods are defective for any reason, including negligence, the Company's liability (if any) shall be limited (subject to clause 17) at its sole discretion to:

16.4.1 replacing the Goods;

16.4.2 rectifying such defects at its own expense; or

16.4.3 granting the Customer a full or partial refund or credit note for the appropriate part of the purchase price; in which case (subject to clause 17.5) the Company shall have no further liability to the Customer.

- 16.5. Notwithstanding clause 16.4, but subject to clause 16.1, no liability will be accepted by the Company for any claim by the Customer which is based on any defect in the Goods unless the Customer notifies the Company in Writing within seven days of receipt of the Goods or where the defect was not apparent on reasonable inspection, within a reasonable time after discovery of the defect; and then provided only:

16.5.1 that if required by an authorised representative of the Company, the defective parts or the Goods complained of, are returned to the Company at the Customer's risk and expense; and

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

- 16.5.2. that the Goods returned, where possible, are returned in their original packaging.
- 16.6. Subject to clause 16.1, but without prejudice to clause 12.2, the Company shall not be liable for indirect loss or third party claims occasioned by delay in delivering the Goods or for any loss to the Customer arising from delay in transit, whether as a result of the Company's negligence or otherwise.
- 16.7. Advice of damage, delay or partial loss of Goods in transit, non-delivery or of quantity shortages or excess must be given in Writing to the Company within three days of delivery or performance (or, in the case of non-delivery, within seven days of despatch of the Goods) and any such claim must be made in Writing to the Company within seven days of delivery or performance (or in the case of non-delivery within fourteen days of despatch). All other claims must be made in Writing to the Company within three days of delivery or performance. Without prejudice to clauses 12.2 and 16.6, but subject to clause 16.14, the Company shall not be liable in respect of any claim unless these requirements have been complied with except in any particular case where the Customer proves that (i) it was not possible to comply with the requirements and (ii) advice (where required) was obtained and the claim made as soon as reasonably possible.
- 16.8. All Goods must be stored by the Customer in suitable conditions and the Company will not be liable to the Customer for any defects brought about by the Customer storing the Goods in unsuitable conditions.
- 16.9 Subject to clause 16.14, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract or these Conditions, or by reason of any breach of any of the foregoing, for:
- 16.9.1 any loss of profits or anticipated savings, or any loss of revenue, data, contracts or goodwill or any downtime costs; nor
- 16.9.2 any special, indirect or consequential loss, damage, costs or expenses or other claims for special, indirect or consequential compensation whatsoever (whether or not the Company has or shall have been advised of the possibility of any such loss, damage, costs, expenses or other claims occurring); nor
- 16.9.3 any sum or sums to the extent that they exceed the value of the fees paid by Customer for the twelve (12) months immediately preceding the date of the last act or omission giving rise to the liability thereunder.
- 16.10 The Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person or any claim of libel or illegality which results from the Company's use of any specification, materials or information supplied by the Customer, provided that such information is used by the Company as agreed and/or directed by the Customer.
- 16.11 The Customer shall indemnify the Company against all loss or damage incurred by the Company, including any liability to any third party incurred by the Company, during or as a result of or in connection with the installation of the Goods save to the extent that such loss or damage was caused by the negligence or other fault of the Company, its servants or agents in or about the installation.
- 16.12. Subject to clause 16.14, the Company shall be under no liability whatsoever in respect of any advice it has given or views it has expressed whether or not such advice is given or such views are expressed at the Customer's request.
- 16.13. Any suggestions or recommendations by the Company for any Person to act as an installer of the Goods are made in good faith but without any responsibility on the part of the Company. No such installer shall be regarded as an agent of the Company for any purposes whatsoever.
- 16.14. Nothing in these Conditions shall exclude the Company's liability for death or personal injury as a result of its negligence or its liability resulting from its fraud or any other liability which cannot be excluded by law.
- 17. RETENTION OF TITLE**
- 17.1 The Customer acknowledges that before entering into the Contract it has expressly represented and warranted to the Company that it is not insolvent and has not committed any act of bankruptcy or being a Company with limited or unlimited liability no resolution for its winding up has been passed or proposed and there are no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or entitle any Person to petition for winding up of the Customer or exercise any other right over or against the Customer or its assets and no administration order in respect of the Customer has been made or petitioned for.
- 17.2 Risk in the Goods shall pass to the Customer on delivery and the Customer shall insure the Goods accordingly. In the event of any loss or damage to the Goods prior to the Company receiving payment in full for the Goods or in respect of any sums owed by the Customer to the Company, the Customer shall hold the proceeds of any such insurance on behalf of the Company as trustee for the Company provided that in the event that payment is still outstanding from the Customer as at the date of receipt of any such proceeds, such proceeds shall be applied for the payment of the Goods.
- 17.3 Notwithstanding the delivery and passing of risk in the Goods or any other provision of these Conditions, the legal and beneficial property and title in the Goods shall remain in the Company and shall not pass to the Customer until:
- 17.3.1 the purchase price of all Goods comprised in the Contract has been paid in full to the Company in cleared funds; and
- 17.3.2 any other sums due from the Customer to the Company have been paid in full to the Company in cleared funds.
- 17.4 So long as the property in the Goods remains vested in the Company the Customer shall keep the Goods as the Company's fiduciary agent and bailee and shall owe to the Company the normal fiduciary obligations of a bailee by way of custody of the Goods and shall insofar as may be possible store them in such a way that they are identifiable as the

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

property of the Company and separate from all other Goods in the Customer's possession.

- 17.5 In so far as the Customer shall, or shall purport to, offer for sale and sell any of the Goods, it shall do so only at the best obtainable price in the ordinary course of its business as principal and not as agent for the Company. The Company shall, by reason of the said relationship of bailment between the Customer (as bailee) and the Company (as bailor) referred to above, be and remain legally and beneficially entitled to the proceeds of sale and the Customer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of the Customer in a separate and identifiable form. The proceeds shall not be paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Customer shall discharge the debt due to the Company and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.
- 17.6 Until such time as the legal ownership in the Goods passes to the Customer, the Company may at any time enter upon any of the Customer's premises and remove the Goods there from and the Customer irrevocably permits the Company access to the said premises to do so. The Customer shall indemnify the Company on a full indemnity basis against all loss, damage, costs or expenses so arising including loss, damage, costs or expenses in respect of third party claims.
- 17.7 The Customer may attach or fix the Goods to other property belonging to the Customer but, provided that the Goods may be removed without causing damage (other than superficial damage) to the property of the Customer, such attaching or fixing shall not affect the ownership of the Goods.
- 17.8 In the event that the price for the Goods is not paid by the due date the Company shall at its absolute discretion be at liberty either to recover the Goods or maintain an action for the price and/or damages and related costs & expenses.
- 17.9 No provision of these Conditions shall prejudice the Company's right to exercise any alternative remedies whatsoever in default of payment by the Customer or any other breach.

## 18. TERMINATION

- 18.1 Save as appears in these Conditions the Customer shall have no right to cancel the whole or any part of the Contract and if notwithstanding this clause, the Customer shall purport to cancel the whole or any part of the Contract, the Company may, by notice in Writing to the Customer, elect to treat the Contract as repudiated and the Customer shall thereupon be liable to pay the Company by way of liquidated damages a sum equal to the costs, direct losses, loss of profit and an appropriate amount in respect of administrative overheads, in each case related to the Contract, but giving credit for any sums paid to the Company.
- 18.2 The Company's reasonable estimate for the costs, losses and overheads incurred by it on repudiation by the Customer as referred to in clause 19.1 shall be final and binding on the parties.
- 18.3 If the Company for whatever cause is unable to make delivery of the Goods on the delivery date set out in the Contract or if the Company is unable to perform any of its other obligations under the Contract, the Company may, by notice in Writing to the Customer, terminate the Contract or suspend the Contract

without liability for any loss or damage thereby incurred by the Customer.

- 18.4 In addition to the right to cancel any uncompleted order or to suspend delivery thereof, pursuant to clause 6.4, the Company shall have a similar right of cancellation of any uncompleted order in respect of any orders where the delivery of such Goods would result in the amount of monies outstanding to the Company from the Customer for those Goods and for any other goods supplied by the Company, exceeding the Company's credit limit to the Customer.
- 18.5 If the Customer shall not comply with any of its obligations under the Contract and these Conditions, the Company shall have the right to terminate the Contract forthwith but without affecting any other claim, right or remedy it may have under the Contract and/or these Conditions against the Customer.
- 18.6 If the Customer shall have a bankruptcy order made against it or him or commit any act of bankruptcy or on the death or mental incapacity or insolvency of the Customer or if an order or resolution for winding up of the Customer is made or if a receiver or administrator of the Customer's assets or undertaking or any part thereof or of the Customer is appointed:
- 18.6.1 the Company may at its option cancel the Contract in relation to future deliveries;
- 18.6.2 the price of all Goods delivered to the Customer to date and all expenses incurred by the Company in performance or part performance of the Contract or any other contract with the Customer and any sums due to the Company from the Customer under the Contract or on any other account shall immediately become due and payable from the Customer to the Company;
- 18.6.3 the Company shall have the right to cancel any other contract made with the Customer;
- 18.6.4 the Company shall have the right, without notice, to enter upon the Customer's premises and remove any Goods and materials which are the property of the Company; all such rights to be without prejudice to the Company's right to recover the amount due to the Company for Goods delivered to date and any loss sustained.

## 19. FORCE MAJEURE

- 19.1 Insofar as the performance of the Contract by the Company may be affected by any lack of available transport or materials, any restriction, regulation or decree by any local or municipal authority or government departments or by any strike, commotion, riot, act of God, any refusal by a supplier to supply the Goods or for any other cause or reason of whatsoever nature beyond the Company's control, the Company may elect at its absolute discretion either:
- 19.1.1 to terminate the Contract; or
- 19.1.2 to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances and with such reasonable variation as shall be appropriate in the circumstances. In either instance the Company shall not be liable to the Customer for

CONFIDENTIAL

# Powervault Limited - General Terms & Conditions

Edition: June 2018

any loss or damages or expenses whatsoever suffered or incurred by the Customer.

## 20. CONSENTS

It shall be the responsibility of the Customer (and not the Company) to obtain all the consents necessary for the installation and storage of any Goods and satisfy itself that the installation and storage of such Goods is in accordance with the provisions of any relevant by-laws, regulations or statutes.

## 21. SEVERABILITY

Should any, or any part, of these Conditions be found by a court or other competent authority to be void or unenforceable such Condition or part shall be deemed to be deleted from these Conditions and the remaining provisions of these Conditions shall continue in full force and effect.

## 22. ASSIGNMENT

The Contract is personal to the Customer who may not assign, transfer, declare a trust in respect of or otherwise dispose of any of its rights under the Contract without the prior consent in Writing signed by a director of the Company.

## 23. NOTICES

Save as otherwise provided above in these Conditions, any notice required or permitted to be given by the Customer under these Conditions shall be in Writing, addressed to the Company at its trading address shown in the documents forming the Contract. Any notice required or permitted to be given by the Company to the Customer under these Conditions shall be in Writing, addressed to the Customer at the address shown for the Customer in the documents forming the Contract.

## 24. RIGHTS OF THIRD PARTIES

Nothing in these Conditions is expressly or impliedly intended to confer on any third party any right to enforce any of its provisions pursuant to the Contracts (Rights of Third Parties) Act 1999 (as the same may be amended, re-enacted or extended from time to time).

## 25. CONFLICT

To the extent of any conflict between these Conditions and any terms and conditions of the Customer either on the Customer's order form or otherwise, these Conditions shall take precedence. The Company shall not be bound by the Customer's terms and conditions or any of them unless expressly agreed to in Writing by a director of the Company.

## 26. INTELLECTUAL PROPERTY

26.1 Title to, and all intellectual property rights in the goods and services provided by the Company including in any software or associated documents and all parts thereof will be and remain vested in and be the absolute property of the Company or in the case of End User Licensed software, then the owner of the copyright in such software or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of these Conditions relating to the Customer's use of that software, associated documents and all parts thereof, directly against the Customer.

26.2 All information or materials exchanged between the Company and the Customer in connection with these conditions, together with the copyright therein, will remain the property of the Company, the Company's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Contract, if requested by such party.

## 27. CONFIDENTIALITY

27.1 Neither party will divulge Confidential Information to any third party except such of its contractors, suppliers and agents as may need to know the same for the purposes of the implementation and/or performance of these Conditions and in each case who agree to be bound by the provisions of this clause 27.1.

27.2 The obligation of confidence set out in clause 27.1 of these Conditions shall not apply to any material or information which is:

- in the public domain (other than as a result of a breach of these Conditions);
- already known to the receiving party prior to the commencement date of these Conditions;
- lawfully received from a third party; or
- required to be disclosed pursuant to the order of a court or other tribunal or regulatory authority of competent jurisdiction.

27.3 The obligation of confidence set out in this clause 27 shall apply in the period commencing on the commencement date and ending three years after the termination or expiry of these Conditions.

## 28. LIABILITY FOR THIRD PARTIES

The Company shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by the Company as subcontractors or assignees in respect of the performance of the Company's obligations under these Conditions.

## 29. DATA PROTECTION

Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Company is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of the Contract.

The Company shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Customer unless the Provider is required by the laws of any member of the European Union or by the laws of the

# Powervault Limited - General Terms & Conditions

Edition: June 2018

European Union applicable to the Provider to process Personal Data (**Applicable Laws**). (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:-

(i) the Customer or the Company has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (f) notify the Customer without undue delay on becoming aware of a Personal Data breach; and (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data.

The Customer consents to the Company appointing a third-party processor of Personal Data under this Contract. The Company confirms that it will enter any third-party processor agreement in a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Customer and the Company, the Company shall remain fully liable for all acts or omissions of any third-party processor appointed by it.

The Company may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms.

## 30. PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT

The agreement between the parties is recorded in the following documents:

- (a) the Contract Details;
- (b) these General Conditions;

In the event of any conflict between provisions of the documents making up the agreement between the parties, the order of precedence shall be as set out above (in order of decreasing precedence) unless explicitly stated otherwise.

## 31. PROPER LAW

These Conditions and the Contract shall be construed in accordance with and be governed by English Law and the Company and the Customer hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

CONFIDENTIAL