

## TAIT EUROPE LIMITED TERMS OF SALE

### DEFINITIONS

**Acceptance Test Plan** means the plan setting out test procedures designed to verify substantial conformity of the Products with the Specifications, and agreed between the Parties in writing prior to Delivery, or failing such agreement Tait's standard test procedures and "Acceptance Testing" shall be construed accordingly.

**Affiliate(s)** means in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party from time to time.

**Business Day** means a day on which banks in London are open for over the counter banking business, excluding Saturday, Sunday and any public holiday in United Kingdom.

**Confidential Information** means all financial, business, technical or other data and all other information (whether written, oral or in electronic form or on magnetic or other media) concerning the business and affairs of a Party including but not limited to: any business methods, financial information, prices, discounts; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software know-how or other matters connected with the Products or other products or Services manufactured for, marketed, provided or obtained by either Party; information concerning either Party's relationships with actual or potential clients or customers and the needs and requirements of such persons.

**Customer** means the customer named in the Scope of Supply.

**Defect(s)** means defects caused by defective material, workmanship or design which result in a failure of the Products to substantially conform to the Specification.

**Delivery** means, in the case of Products the date the item leaves the Tait Distribution Centre, for shipment, and in the case of Services the date the Services are provided to Customer (which may be in stages).

**DPA Legislation** means any applicable law in the territory of the Parties relating to privacy and the collection, storage, use, protection, disclosure and processing of personal data as applicable to the Party including Data Protection Act 2018 or the General Data Protection Regulation (EU) 2016/679.

**FAT** means Factory Acceptance test as detailed in clause 8.

**Force Majeure** means events, circumstances or causes beyond a Party's and/or its Affiliates reasonable control which by its nature could not have been foreseen or if it could have been foreseen was unavoidable including but not limited to, acts of God, flood, fire, drought, storms, earthquake or other natural

disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; reduction in or unavailability of power at any manufacturing plant, breakdown of plant or machinery, or shortage or unavailability of materials from normal sources of supply, any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and collapse of buildings, fire, explosion or accident.

**IPR** means all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names and business names (in each case including rights in goodwill attached thereto), service marks, design rights, rights in and/to internet domain names and website addresses; copyright (including future copyright); database rights; rights in and to confidential information (including know how and trade secrets); and other proprietary rights in or relating to the Products; including any adaptations, corrections, decompilations, disassemblies, emulations, enhancements fixes, modifications, developments, translations and updates to or derivative works from, the Products, whether made by Tait or another party, or any improvements that result from Tait processes or, provision of information services and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending application or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and (ii) any similar or analogous rights to any of these rights, whether arising or granted under any jurisdiction.

**IS** means Intrinsically Safe.

**Operations Team** means the email address: operations.emea@taitcommunications.com.

**Party** means either Tait or the Customer and "Parties" means both Tait and the Customer.

**Products** means goods, equipment and/or software to be delivered by Tait and specified in the Scope of Supply.

**SAT** means System Acceptance Test as detailed in clause 8.

**Scope of Supply** means an order, statement of work, quotation, contract change note or any other relevant documentation agreed in writing by both Parties, incorporating these Terms to form the contract for the sale of Products and/or Services by Tait to Customer.

**Services** mean such services as Tait agrees to provide under the Scope of Supply.

**Specification**, means Tait's standard Product specification. The Specification as may be amended as agreed in writing by the Parties in the Scope of Supply.

**System Acceptance** means in the case of standard Products with no configuration services the date of Delivery, and otherwise on the later of SAT or FAT.

**Tait** means Tait Europe Limited (company number 01453444) with registered office at Unit A, Buckingway Business Park, Swavesey, CB24 4UQ United Kingdom.

**Tait Distribution Centre** means a factory or warehouse from which the Products are distributed by Tait or its Affiliates.

**Terms** means these terms of sale.

**Warranty Period** means in the case of Products manufactured by Tait or its Affiliates, 24 months from the date of Delivery excluding batteries and accessories, which carry a warranty of 12 months from the date of Delivery. Any other items which by their nature have a shorter shelf life will only be warranted for the period on the Products or as notified by Tait in writing. All other Products shall only have such warranty period as Tait has received from the manufacturer or licensor and is able to pass on

Words used in the singular shall include the plural and vice versa. References to any gender shall include all other genders. References to legal persons shall include natural persons and all other legal entities. Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms. Any reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 1. APPLICATION AND ACCEPTANCE OF TERMS:

1.1. These Terms shall apply to all purchases by Customer of Products and Services from Tait unless otherwise agreed in writing and signed by a duly authorised signatory of Tait. These Terms shall be deemed to be included in all Scope of Supply entered into between the Parties for the sale and purchase of the Products and/or Services, unless agreed otherwise in writing and signed by a duly authorised signatory of Tait.

1.2. Requests for delivery of Products and/or Services either verbally or in writing by Customer shall represent acceptance of these Terms and accordingly the contract between Tait and Customer shall be deemed to be binding. Tait has the right to amend these Terms from time to time.

1.3. In the case of conflict or ambiguity between any provisions contained in any document forming part of the agreement between the Parties concerning the Products and/or Services, the order of precedence shall be, in descending

order: any special conditions agreed in writing between the Parties, these Terms, the Scope of Supply, any other document.

- 1.4. Where the Terms require notice in writing, an email to the most recent contact details exchanged between the Parties, (and in the case of notice given to Tait, a copy sent to [temalegal@taitcommunications.com](mailto:temalegal@taitcommunications.com)), will suffice to comply with this formal requirement.
- 1.5. All Customer's standard terms including but not limited to standard terms of purchasing are expressly rejected by Tait and shall not apply to any sale between Tait and the Customer regardless of any wording to the contrary included in Customers' standard purchasing documentation, purchase orders or similar, unless Tait provides an updated Scope of Supply or order confirmation expressly confirming the acceptance of Customer's standard procurement terms in writing.
- 1.6. The Customer may make and Tait may accept an order transmitted by the Customer by means of the postal service, e mail, by Tait's internet sales service or over the telephone. The order shall only be accepted when Tait issues a written acceptance of the order incorporating these Terms by a sales order acknowledgement at which point a contract shall come into existence.
- 1.7. Any typographical, clerical or other error or omission in any quotation, sales literature, acceptance of an offer, letter, invoice or any other document whatsoever and howsoever transmitted to the Customer shall be subject to correction without any liability on the part of Tait.
- 1.8. No information, including statements, descriptions, particulars of weights and/or dimensions, warranties, conditions or recommendations contained in any catalogue, price list, advertisement or any other written statement or verbal communication whatsoever or howsoever transmitted shall be incorporated into the Scope of Supply nor shall any such information be deemed to vary or override these Terms in any way.
- 1.9. Each Party acknowledges that these Terms or each Scope of Supply together with any written variations and/or qualifications made pursuant to these Terms contains the whole agreement between the Parties and that it has not relied upon any oral or written representation made to it by the other Party or the other Party's employees or agents. Tait shall have no liability for any advice or recommendation given by its employees, representatives, agents or sub-contractors to the Customer as to the storage, application or use of Products or for any statement whatsoever on any matter whatsoever relating to Products or Services which has not been confirmed in writing.
- 1.10. Tait has the right to impose a minimum order charge at its discretion.
- 1.11. A credit check may be carried out by Tait and such a search will show in the records of individuals. For the purposes of credit checks, Tait may check the following records

relating to the Customer: i) Tait's own records relating to the Customer; ii) business records at credit reference agencies ("CRAs"). (When CRAs receive a search, they will place a search on the Customer's business credit file that may be seen by other lenders. These agencies supply business and fraud prevention information); and iii) records at fraud prevention agencies. Tait also reserve the right to make further periodic searches at the aforementioned agencies and records as it considers appropriate.

## 2. PRICE AND PAYMENT:

- 2.1 The price payable shall be the list price of Tait at the time of despatch unless otherwise agreed between the Parties.
- 2.2 Tait has the right, by giving notice to the Customer at any time before Delivery, to increase the price of the Products and/or Services to reflect any increase in the cost to Tait which is due to any factor beyond its control including but not restricted to alteration of duties, fluctuation in exchange rates, significant increase in the costs of labour, materials or other costs including, without limitation, any increase in the prices charged to Tait by its suppliers. Tait accordingly reserves the right to adjust the invoice price by the amount of any increase in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- 2.3 Any amendments to the list price for Products and Services shall be as specified in the Scope of Supply. Unless otherwise specified in writing by Tait, the price of the Products is exclusive of the costs of packaging, freight, insurance, delivery charges and all applicable taxes, duties, tariffs and charges of any nature whatsoever imposed in any country or territory, either directly or indirectly, in respect of the sale or supply of the Products, or payments for them. In particular, without prejudice to the generality of the foregoing, the price of the Products is exclusive of Value Added Tax. All such additional costs shall be payable by Customer in addition to the price for the Products.
- 2.4. Where Customer has received approval from Tait following completion of Tait's standard credit account application, Customer shall pay the appropriate percentage of the price as invoiced by Tait from time to time including all applicable taxes without deduction within 30 days of date of invoice. Unless otherwise specified in writing by Tait, the terms of payment shall be 30% of the total order value due on placing the order, and the remaining 70% due prior to shipment from the Tait Distribution Centre, Tait will issue the corresponding invoices according to these terms or any other payment terms as specified by Tait in writing.
- 2.5. If Customer fails to make a payment due to Tait under these Terms by the due date then without limiting Tait's remedies under these Terms Customer shall pay interest on the overdue sum from the due date for payment until payment in full in cleared funds of the overdue sum, whether before or after judgment.
- 2.6. Interest under clause 2.5 will accrue from due date for

payment until date of actual payment at a rate equal to 5% above the Bank of England's base rate from time to time, but at a rate of 5% for any period when that base rate is below 0%.

- 2.7. Tait has the right to suspend contractual performance and/or exercise a lien over un-shipped Products until Customer has paid in full and the exercise of any such suspension or lien shall not affect Customer's obligation to pay any amounts due in respect of Delivery or any other invoice due prior to suspension.
- 2.8. Where Tait carries out on the instruction of Customer any services which are not services included in the Scope of Supply ("Additional Services"), Tait shall be entitled to charge for Additional Services in accordance with its standard charging rates on a time and materials basis (or such other basis as is agreed in writing by the Parties). Wherever reasonably practical the value or likely value of charges for Additional Services shall be notified to Customer in advance of the provision of the Additional Services. For any work to be charged on a time and materials basis Tait shall invoice Customer monthly in arrears, invoices payable 30 days from date of invoice, unless otherwise agreed in writing. System Acceptance shall not be delayed pending completion of such Additional Services.

## 3. DELIVERY, TITLE AND RISK:

- 3.1 Any Delivery dates stated by Tait are estimates only and do not have any contractual effect. Delivery timelines are subject to change due to factors including but not limited to Product and personnel availability and shipping timelines at the time of order.
- 3.2 Tait has the right to deliver Products in more than one consignment and to invoice each consignment separately. Where Delivery is by instalments or where Products are held by Tait to be called off by the Customer as required then, if Tait fails to deliver any one or more of the instalments or Products called off in accordance with any agreed dates or if the Customer makes any claim whatsoever in respect of any one or more instalments or Products called off, the Customer shall not be entitled to repudiate these Terms.
- 3.3 All Products will be delivered CIP or FCA (Incoterms 2020) from the Tait Distribution Centre by the carrier of Tait's choice unless a specific carrier is nominated by Customer and agreed by Tait in writing prior to Delivery, or as mutually agreed otherwise in writing.
- 3.4 Risk in any Products supplied by Tait to a Customer shall pass when such Products are delivered to Customer or delivered to a specific carrier nominated by Customer in accordance with clause 3.3.
- 3.5 Subject at all times to clause 13.2 with respect to software (which for the avoidance of doubt shall take precedence over this clause 3.5) title to Products (both legal and equitable) is retained by Tait until full payment in cleared funds is made for such Products. The Customer

acknowledges these Terms creates a security interest in favour of Tait in Products supplied by Tait to the Customer which have not been paid for in full, as security for payment of all monies payable from time to time to Tait by the Customer and for the performance of all the Customer's other obligations from time to time to Tait. The Customer shall do anything reasonably required including signing and delivering any documents Tait reasonably requires to ensure Tait has a perfected security interest in Products supplied.

- 3.6 If Customer fails to take Delivery of the Products or fails to give to Tait adequate Delivery instructions when notified that the Products are ready for Delivery then Tait may store the Products until actual Delivery and charge to Customer the costs associated with storage including insurance.
- 3.7 Customer is responsible for obtaining any import licences which are required for the country for which the Products are destined.
- 3.8 Customer is required to give Tait notice of shipment shortages or damage no later than 2 (two) days after the date Delivery of the Products. Packing slip number(s) must be quoted with all notifications, complaints or returns. No Products are to be returned without prior written authorisation and shipping instructions from Tait.

#### 4 SEPARABLE PARTS OF THE PROJECT:

- 4.1 Where the project can be broken up into separable parts then it is possible for those separable parts to be handed over to Customer on an individual basis. In this case once Customer takes possession of any part of the project then that part will be deemed to have commenced the Warranty Period of the project. Notwithstanding the requirement for Tait to complete some finishing of works the separable part will be deemed to have reached final completion and payment will be required accordingly unless mutually agreed otherwise in the Scope of Supply. Any additional work required to provide separate parts of the project, beyond that required for the Scope of Supply, to meet Customer requirement will be to Customer's account.

#### 5 CUSTOMER OBLIGATIONS:

- 5.1 Customer shall promptly undertake and complete all actions identified as Customer's responsibilities in the Scope of Supply, or in any project plan or Specification, and shall:

5.1.1 make available such Customer personnel as may be reasonably required for Tait to comply with its obligations under these Terms including the provision of a designated representative who is suitably qualified, informed and able to make decisions and provide approvals on behalf of Customer;

5.1.2 obtain any frequency licences, permits or other consents and procure any necessary construction permits, building permits, zoning

variances or other consents required;

- 5.1.3 prepare the installation site(s) and have such sites available for commissioning by Tait;
- 5.1.4 provide Tait with all information, data, document approvals, materials, assistance, access, power and other utility supplies as required and facilities;
- 5.1.5 provide a safe working environment which at least meets the requirements of all applicable health and safety laws and regulations; and

In each case without undue delay, in accordance with the project schedule and as reasonably required from time to time, to facilitate the proper and timely performance of the Scope of Supply.

- 5.2 All prices for project work are based on Customer fulfilling the above obligations unless specifically agreed otherwise by the Parties in writing. Unavailability of access to the sites will be reasonable grounds for Tait to both (a) extend the contract completion timetable; and (b) recover any additional costs and expenses incurred. If access to the required sites is not obtainable then Customer is responsible for any additional costs incurred in developing alternate sites including any subsequently necessary changes to project design. In this event any delays in obtaining the licences will be cause for the extension of the project completion date. In addition Product Delivery times will be quoted from allocation of the licences referred to in this clause 5.2. Any additional costs incurred by Tait caused by the required frequencies not being available will be at Customer's cost.

#### 6 INTERFERENCE:

While every effort will be made by Tait to minimise any radio interference experienced on a Customer site any additional costs incurred by Tait in investigating and reducing or eliminating interference problems will be at Customer's cost. This additional work could include but is not limited to coordination with the frequency allocation authority, and on site work to discover the source of any interference. Any additional work carried out by Tait due to interference problems including but not limited to reprogramming of radio equipment, provision of additional filtering, rearrangement of antennae will be at Customer's cost. System Acceptance shall not be delayed on account of interference.

#### 7 COMMISSIONING:

Where Customer makes a request to be present at commissioning of the Products, Tait will make reasonable efforts to meet any Customer required schedule. However Customer will not impose unreasonable schedule requirements on Tait. Any rescheduling required due to Customer's inability to attend may result in additional cost to Customer's account.

#### 8 ACCEPTANCE TESTING:

- 8.1 If stated in the Scope of Supply, the Products shall be

subject to acceptance tests described in the Scope of Supply or agreed Acceptance Test Plan as applicable. Unless agreed otherwise in writing, such tests may comprise FAT and /or SAT.

8.2 The FAT is intended to be an internal Tait test and carried out for Tait's benefit prior to Delivery. Notwithstanding this, Customer shall be notified of the dates on which the FAT is to be carried out and shall be invited to attend and to receive details of the test results.

8.3 Tait shall notify Customer when the Products are ready for SAT. Customer supported by Tait (if required) will commence SAT within ten (10) Business Days after receiving such notification in accordance with the Acceptance Test Plan. If Acceptance Testing is delayed for reasons within the control of Customer or its contractors, agents and consultants for more than fifteen (15) Business Days after notification and a commercially reasonable revised schedule is not agreed between the Parties, payment of the outstanding payment milestones will become due and the Warranty Period will commence.

8.4 During SAT:

8.4.1 if the Acceptance Test Plans include separate tests for individual sites or subsystems, Tait shall prepare and Customer shall promptly sign an acceptance certificate classified as a "Pass" upon the successful completion of testing of such site or subsystem, and the payment milestones in the Scope of Supply may be applied to each site or subsystem separately;

8.4.2 minor omissions or variances in performance which do not materially affect the operation of the Products will not postpone acceptance; and

8.4.3 Customer supported by Tait will jointly prepare a list of such omissions and variances which Tait will correct according to an agreed upon schedule.

8.5 If the Products (or a relevant site or subsystem) fail the SAT(s) but such failure would not prevent the Products being put into operation (such failures being "Minor Defects") Tait shall prepare and Customer shall promptly sign an Acceptance Test Certificate classified as "Conditional Pass" with a list of identified Minor Defects and Tait shall be entitled to invoice Customer for any payment corresponding to System Acceptance referred to in these Terms and Tait shall use commercially reasonable efforts to remedy such identified Minor Defects within 30 Business Days of the issue of the Conditional Pass Acceptance Certificate.

8.6 If the Product fails the SAT(s) and such failure is not for Minor Defects, Tait shall endeavour to remedy the substantial non-conformities and shall notify Customer when the remedy for the identified substantial non-conformities is ready for testing whereupon the SAT(s) shall be repeated with particular attention to the previously identified substantial non-conformities and the provisions of clauses 8.4 and 8.5 shall apply to the

repeated tests.

8.7 Tait may, but is not obligated to, issue written authorisation for Customer's use of the Products or a subsystem(s) for limited training, testing or live use purposes, prior to the completion of testing by Tait. Any use of the Products without prior written authorisation by Tait shall constitute System Acceptance.

## 9 **HANOVER:**

Once a system supplied by Tait is accepted or is in operation by Customer (without having first been accepted), the system shall be deemed to be handed over to Customer. Handover shall be the date at which the Warranty Period commences for any parts of the system for which the warranty period has not already started and the date at which final completion invoices can be issued.

## 10 **CUSTOMER INITIATED CHANGES:**

Any change or addition to the Scope of Supply must be agreed in writing between the Parties. Changes or additions are subject to quotation by Tait which may result in changes to both the cost of the project and completion time.

## 11 **SPECIFICATIONS:**

Tait has the right to modify the Specifications of Products, provided that the modification does not materially affect performance. Tait will use all reasonable endeavours to ensure that Products are accurately described in Tait publications. However, no responsibility can be assumed by Tait as a result of any inaccuracy or error.

## 12 **WARRANTY:**

12.1 No claim for shortage, out-of-box failure, or damage in respect to Products delivered will be considered unless notice is received in writing by Tait within 3 days from the earlier of the date of receipt of the Products by Customer, or by a third party on Customer's behalf.

12.2 Tait provides an express limited warranty during the Warranty Period to Customer with respect to the Products (excluding third party components) that such Products will materially conform to Tait's published Specifications in effect as at the date of manufacture and be free from material defects in material and workmanship. To the maximum extent permitted by law any and all implied warranties with respect to Products or parts sold by Tait including but not limited to implied warranties of merchantability, fitness for a particular purpose or non-infringement, are hereby excluded. Subject to clause 18.8, the Customer must give written notice to Tait during the Warranty Period within 14 days of discovering that some or all of the Products and/or Services do not comply with the warranties set out in this clause 12. Tait shall be given a reasonable opportunity of examining such Products or Services; and the Customer shall return such Products to Tait's place of business at the Customer's cost.

12.3 Tait warrants that it shall repair or replace any Product covered by the warranty exhibiting Defects under normal

use and service during the term of this warranty, at no charge for parts or labour.

**12.4** Customer acknowledges that any software supplied cannot be tested in every possible permutation and accordingly Tait does not warrant that software supplied will be free of all Defects or that its use will be uninterrupted or error free or that software will interoperate with other software unless stated otherwise in the agreed Specification.

**12.5** Any Products replaced shall become the property of Tait. In the event that it is not commercially feasible to dispatch repaired or replacement or substitute Products within a reasonable time (being not less than 30 Business Days from the Defect being logged with the Operations Team and if applicable, receipt by Tait of the relevant Product), and Tait is unable to provide Customer with an alternative reasonably acceptable solution, Tait shall at Customer's request accept the return of the Products not useable in consequence of the warranted Defect and refund to Customer that part of the price attributable to the same.

**12.6** Tait shall not be liable for a breach of the warranty to the extent that:

**12.6.1** the Defect arises and/or is exacerbated as a result of misuse, neglect (including without limitation failure to notify Tait of the failure within a reasonable time), alteration, mishandling, attempted repair, maintenance or unauthorized manipulation by any person other than Tait authorized personnel; or

**12.6.2** the Defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or

**12.6.3** the Defect arises because Customer failed to follow Tait's instructions as to the storage, installation, use or maintenance of the Product or (if there are none) good trade practice; or

**12.6.4** Customer alters or repairs such Products without the written consent of Tait; or

**12.6.5** the serial number or labelling on Products has been defaced, changed or removed.

**12.7** Where Products are submitted for warranty services but are found to be ineligible for service, Tait may, at its option, provide a quotation for the repair which Customer may accept. Timelines for completion of the repair shall be subject to parts and resource availability at the time.

**12.8** Repaired and replacement Products provided pursuant to the provisions of this clause shall have the benefit of a warranty in the terms of this clause for the remainder of the Warranty Period for the original Product or 3 months from provision of the repair or replacement, whichever is longer.

**12.9** For third party products, Customer shall only be entitled to such warranty or other benefit as Tait has received from

the manufacturer or licensor and is able to pass on. Except as provided in this clause, no warranty (whether express, statutory or implied) is given to Customer by Tait or any licensor of Tait in respect of the whole or any part of a third party product, and such suppliers and licensors disclaim all such warranties including without limitation any warranties of merchantability, non-infringement or fitness for a particular purpose.

**12.10** Any work carried out by Tait at Customer's request which is not required to satisfy Tait's warranty obligations under this clause shall be charged as Additional Services. Tait shall be entitled to dispose of any Products that have been sent to Tait for repairs or upgrades which remain uncollected and in respect of which Customer has incurred charges that remain overdue for more than 30 days.

**12.11** The Products are not designed, tested, manufactured or intended for operation or use in relation to any:

**12.11.1** on-line control of aircraft, air traffic, aircraft navigation or aircraft communications;

**12.11.2** potentially explosive environments (unless IS equipment is specifically ordered and supplied and used in accordance with the supplied instructions);

**12.11.3** operating nuclear reactor or its control infrastructure; or

**12.11.4** any inherently dangerous, life-endangering or life-support applications.

If Customer (or Customer's users) uses the Products for any such use, then such use is at Customer's (or Customer's user's) own risk without any recourse against or with respect to Tait and Customer shall indemnify and hold Tait and its third party licensors harmless from any claims for loss, cost, damage, expense or liability arising out of or in connection with any such use and performance.

### **13 SOFTWARE:**

**13.1** Any software provided by Tait as a distributor or licensor to Customer, Customer will be bound to the terms of the licence as detailed in these Terms regardless of whether the software is already installed on a Product, provided by a compact disk, downloaded from the Tait website or supplied to Customer on a "Software-as-a-Service" basis. Use of the software constitutes Customers acceptance of these Terms.

**13.2** Software and the IPR in the Products shall at all times remain the exclusive property of Tait or its suppliers. All IPR arising under the Scope of Supply including without limitation IPR arising from the supply of the Products, except to the extent that they comprise or incorporate IPR supplied by Customer, shall vest in and be owned by Tait or its suppliers absolutely, and Customer shall acquire no right, title or interest therein.

**13.3** Third Party software and software in third party products

may be subject to separate terms and restrictions and if so these shall be notified to Customer in writing or contained in any "box" or "on-screen" licence supplied with such third party products (copies available on request), and Customer shall comply with the same.

13.4 Subject to clause 13.2, in consideration for Customer paying the relevant fees hereunder Tait shall grant to, or procure the grant to, Customer of a worldwide, non-exclusive, non-assignable, non-transferable licence to use the software (in executable form only) and the Products for the installation, configuration and use, for normal business purposes, of the software in connection with the Products to which it relates or for the purpose identified in, and subject to any restrictions contained in, the Scope of Supply or user documentation (including without limitation restrictions on the numbers of users or copies), for the duration of the licence set out in the Scope of Supply, and in accordance with the provisions of this clause 13.

13.5 Customer shall be entitled to grant a sub-liscence to any person installing, configuring or using the Products in the terms and subject to the conditions of the licence granted to Customer under this clause 13.

13.6 If the software licensed or sub-licensed under these Terms contains or is derived from open source software, the terms and conditions governing the use of such open source software are in the open source software licences of the copyright owner and not in these Terms. If there is a conflict between these Terms and the terms and conditions of any applicable open source software licences, the terms and conditions of the open source software licences will take precedence. For information about Open Source Components contained in Products and the related Open Source licences, see: <http://support.taitradio.com/go/opensource>.

13.7 Customer may make copies of any software for reasonable back-up purposes and, upon request, shall advise Tait of the location of any software and its back-up copies.

13.8 Subject to clause 13.7, Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble, lease, sell, assign, modify or create derivative works of any software in whole or in part except:

- 13.8.1 as specifically permitted by law; or
- 13.8.2 with Tait's prior written consent.

The restrictions in these licence conditions are made for the benefit of Tait and its suppliers and may be enforced by such suppliers to the extent that they relate to any software and IPR supplied by such suppliers.

13.9 The licence granted under clause 13.4 (and any sub-liscence granted under clause 13.5) shall be for the term detailed in the Scope of Supply subject to the licence fee payments being made), but Tait may immediately terminate such licence (and the right to continue any sub-licences) to use the relevant software and/or Products by

notice in writing to Customer if Customer or any sub-licensee breaches any terms of the licence or sub-liscence (and such breach is incapable of remedy or is not remedied within a reasonable time of a request to do so), whereupon Customer shall, at Tait's direction, immediately return to Tait or destroy the software and any back-up copies (and procure that sub-licensees do the same) and certify in writing to Tait that this has been done.

13.10 Customer represents and warrants that it has the necessary rights or licences to provide any Customer materials, information or system access to Tait as may be required under these Terms.

13.11 The licence terminates automatically without notice from Tait in the event that Customer fails to comply with the Terms.

13.12 Software provided by Tait to Customer shall be provided subject to compliance with any licence agreement to be executed by Customer for non-exclusive use of the software.

#### 14 CONFIDENTIALITY AND DATA PROTECTION:

14.1 Each Party undertakes to keep all Confidential Information disclosed by the other Party strictly confidential, in a safe and secure place using reasonable technical and organisational security measures to prevent unauthorised access, destruction or loss and to only disclose Confidential Information to its Affiliates, employees, agents, advisers or sub-contractors on a "need to know" basis. A Party may only use the Confidential Information in performing its obligations under these Terms and not for its own benefit or the benefit of any third party. Each Party undertakes to the other to make all relevant employees, agents, advisers and sub-contractors aware of the confidential nature of the Confidential Information disclosed by the disclosing Party.

14.2 The confidentiality obligations do not apply to information that is or becomes public knowledge other than by breaching the confidentiality obligations, or that come into the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party, or that are received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, or is independently developed without access to any Confidential Information disclosed by the disclosing Party, or where disclosure is required by law.

14.3 In connection with the performance by the Parties of their obligations under these Terms, the Parties may exchange personal data, each Party remaining a data controller. The Parties shall always comply with DPA Legislation.

14.4 If the Customer acting as data controller entrusts to Tait processing of personal data as data processor the Parties shall include details of processing and processor's responsibilities in the Scope of Supply to comply with DPA Legislation.

## 15 NO WAIVER:

The Parties may only waive rights or remedies in writing. Any waiver in writing by Tait of any breach of these Terms by the Customer shall be considered as a waiver of that breach and not a waiver if that breach happens again in the future or a waiver of any other breach whatsoever.

## 16 ASSIGNMENT:

Neither Party may assign their rights or obligations applicable to these Terms or the Scope of Supply without the written consent of the other Party. Such consent shall not be unreasonably withheld or delayed.

## 17 FORCE MAJEURE:

17.1 Tait shall not be liable for delay in Delivery, nor for any failure to perform these Terms, or for loss or damage to the Products directly or indirectly caused by Force Majeure.

17.2 If either Party is prevented or delayed from performing any of their obligations under the Scope of Supply by Force Majeure, that Party will notify the other Party of the circumstances constituting the Force Majeure incident and of the performance which is thereby delayed or prevented. The Party giving the notice shall thereupon be excused the performance or punctual performance (as the case may be) of such obligations for so long as the circumstances of prevention or delay may continue. Notwithstanding that either Party may have been granted an extension of the time for the completion of the Scope of Supply by way of a notification of a Force Majeure incident, either Party shall be excused the performance of any obligation for continuous period of 120 days, then either Party may at any time thereafter and provided that such performance or punctual performance is still excused, by notice to the other terminate the Scope of Supply.

17.3 If the Scope of Supply is so terminated then Customer shall pay to Tait in so far as the same shall not already have been included in certificates of payment made by Customer or be the subject of an advance payment, the contract value of the works executed prior to the date of termination. Tait shall also be entitled to have included in such payment:

17.3.1 the cost of materials or Products reasonably ordered for the Scope of Supply or for use in connection to the Scope of Supply which have been delivered to Tait or for which Tait is legally liable to accept Delivery. Such materials or Products shall become the property of Customer when paid for by Customer;

17.3.2 the amount of any other expenditure which in the circumstances was reasonably incurred by Tait in the expectation of completing the whole of the Scope of Supply;

17.3.3 the reasonable cost of removal of Tait's

equipment and the return thereof to Tait's office;

17.3.4 the reasonable cost of repatriation of all Tait staff and subcontractors employed at Customer's site on or in connection with the Scope of Supply at the date of such termination.

## 18 LIMITATION OF LIABILITY:

18.1 Customer warrants that it has not relied on any representation made by Tait or upon any catalogues or publicity material produced by Tait which has not been stated expressly in these Terms and no statement made or agreed to and no liability undertaken orally shall be binding upon Tait unless confirmed by Tait in writing.

18.2 Background to the limits and exclusions on Tait's liability: Tait has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims. The limits and exclusions in this clause 18 reflect the insurance cover which Tait has been able to arrange, or the fact that it has not been able to arrange insurance cover in respect of certain types of liability on commercially reasonable terms. Customer is responsible for making its own arrangements for the insurance of any excess liability.

18.3 Unless otherwise provided by applicable law, Tait's liability, if any, for any allegedly defective Product shall be limited to repair or replacement of the relevant Product (or part of a Product if the alleged defect only affects part and that part is capable of repair or replacement), at Tait's option. In the event a Product cannot be repaired or replaced Tait shall refund to Customer that part of the price attributable to that defective Product. All claims must be made within 6 months of the Customer becoming aware of circumstances giving rise to the claim.

18.4 Neither Party's liability for any of the following is excluded or limited by these Terms:

18.4.1 death or personal injury caused by that Party's negligence or the negligence of its employees agents or sub-contractors;

18.4.2 fraud or other criminal act;

18.4.3 fraudulent misrepresentation;

18.4.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

18.4.5 breach of any confidentiality obligations; and

18.4.6 for anything else in relation to which, under the law governing these Terms, liability cannot be excluded or limited.

18.5 Subject to clause 18.4, neither Tait, nor any supplier or licensor of Tait, shall be liable under or in relation to these Terms (whether the liability arises for breach of contract, negligence, under an indemnity, obligation to refund, under any other theory of law or for any other reason) for

any:

- 18.5.1 loss of profits, turnover, anticipated savings, use, production or any increase in operating costs;
- 18.5.2 loss of use of, loss of or corruption of data, information or software;
- 18.5.3 loss of or damage to goodwill or reputation, business, bargain, or revenues;
- 18.5.4 loss or liability in relation to any other agreement or contract; or
- 18.5.5 indirect, special or consequential loss or damage whatsoever.

For the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

18.6 Subject to clauses 18.4 and 18.5, Tait's total liability in connection with these Terms or any Scope of Supply subject to these Terms (whether the liability arises from breach of contract, warranty, negligence, under an indemnity, obligation to refund, under any other theory of law or for any other reason) shall be limited to the direct damages recoverable under law but not to exceed the total amount paid by Customer under a Scope of Supply for the Products or Services with respect to which the liability arises.

18.7 Customer shall take reasonable precautions (relative to the importance to Customer of the Products concerned), including without limitation backing up software and data at reasonable intervals, implementing back-up systems or redundancy and maintaining suitable numbers of spare units at suitable locations (at a minimum to the Tait's recommended spares levels). Subject to clause 18.4, Tait shall have no liability for any losses suffered by Customer to the extent that the loss concerned would have been prevented by the taking of such reasonable precautions.

18.8 Notwithstanding anything in these Terms Tait will not be liable for any claim for breach of warranty, damages, losses malfunctions or failures caused by the following:

- 18.8.1 Customer's failure to comply with reasonable directions of Tait with respect to operation of the Products;
- 18.8.2 Computer programs not supplied by Tait;
- 18.8.3 Modification, revision, variation, translation or alteration of the Products not authorised by Tait;
- 18.8.4 Incorrect use of the Products;
- 18.8.5 Incorrect or unreliable information supplied to Tait by Customer or persons under the control of Customer;
- 18.8.6 Improper installation of the Products by Customer;

- 18.8.7 Malicious or reckless abuse of Products by users;
- 18.8.8 the Customer makes any further use of such Products after giving notice in accordance with clause 12.2;
- 18.8.9 the defect arises because the Customer failed to follow Tait's instructions as to the storage, commissioning, installation, use and maintenance of the Products or good trade practice regarding the same;
- 18.8.10 the defect arises as a result of wilful damage, negligence or abnormal storage or working condition;
- 18.8.11 the Customer has failed to pay in full for the Products or Services which are the subject of any claim.

## 19 INTRINSICALLY SAFE PRODUCT SALES:

19.1 If the Scope of Supply is for the purchase of IS Products (both IS radios and IS accessories) the following terms shall apply:

19.1.1 Tait IS portable radios are certified to the standards and ratings specified in the relevant IS certificate as held by the certification body;

19.1.2 The Customer confirms that the IS rating of the ordered IS Product is appropriate for the conditions of use required by the Customer. The Customer further confirms that the functional requirements for the IS Products have been agreed with Tait and are as set out in the Specification, Scope of Supply or other agreed requirements document. Where no Specification, Scope of Supply or agreed requirements are specified then the Customer acknowledges that the standard Specification applies (available at <https://www.taitcommunications.com/products/spec-s-brochures>);

19.1.3 It is a condition of use of a Tait IS radio that the radio is only used with compatible IS accessories. Compatible IS accessories must:

- (i) comply with Tait interface entity parameters; and
- (ii) be certified to the applicable IS rating. An IS Product must be serviced in accordance with Tait repair policy and at Tait authorised facilities in order to maintain the IS Product's IS rating;

19.1.4 Tait shall not be held liable for any loss or damage resulting from the incorrect storage, charging, maintenance, use or servicing of IS Products;

19.1.5 If the Customer is acquiring the IS Product under a Scope of Supply for resale and is not the end user, the Customer shall maintain accurate records of all Tait IS Product sales made including product serial numbers and end user details. In the event that Tait

identifies a safety critical defect the Customer shall make such information available to Tait immediately upon request.

## 20 TERMINATION AND SUSPENSION:

20.1 Customer may not terminate the whole or any part of a Scope of Supply for convenience without the prior written consent of Tait. If Tait agrees in writing to the termination of the whole or any part of a Scope of Supply, work on the whole or any part of a Scope of Supply shall be stopped as quickly as is practical and Customer will pay to Tait the payments required under clause 21.1.

20.2 Tait or Customer may terminate a Scope of Supply immediately at any time by written notice to the other if:

20.2.1 the other commits a material breach of these Terms which it fails to remedy within thirty (30) days of receiving written notice requiring it to do so; or

20.2.2 the other becomes insolvent, has an administrator, receiver or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its winding-up dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or any event occurs in a foreign jurisdiction analogous to, or comparable with, any of the above.

20.3 Tait may terminate a Scope of Supply immediately in the following circumstances:

20.3.1 it reasonably believes continued performance of its obligations under a Scope of Supply would result in Tait being in breach of applicable laws or regulation; or

20.3.2 if payment by the due date of the full amount of any invoice correctly levied by Tait on the Customer has not been made; or

20.3.3 where credit terms have been agreed and Tait reasonably believes that Customer may be unable to pay Tait for the Products and/or Services due to financial difficulty including, but not limited to, the submission of a petition to wind up the Customer.

20.4 If any appropriate instructions, information, technical documents, design approval, letters of undertaking, licenses or authorizations required to be provided by Customer have not been provided, or Customer is otherwise in breach of any of its obligations under a Scope of Supply and Tait has provided Customer of at least 14 days written notice of its intention to exercise such right, Tait has the right to suspend contractual performance or withhold any relevant shipment until each of the same have been satisfied.

20.5 Tait has the right to terminate the whole or any part of a Scope of Supply or these Terms for convenience on thirty

(30) days notice at any time.

## 21 CONSEQUENCES OF TERMINATION:

21.1 If:

21.1.1 Customer terminates a Scope of Supply under clause 20.1 (Customer convenience); or

21.1.2 Tait terminates a Scope of Supply under clause 20.2 or 20.3;

then Customer shall pay Tait:

(i) the value of the proportion of the Products and Services provided but not paid for by Customer when the Scope of Supply is terminated;

(ii) for work in process, a percentage of the price payable for the Products and/or Services based on the work undertaken up to the time of termination, and work is stopped;

(iii) the cost of materials and equipment properly ordered for the Project for which Tait has paid or is legally bound to pay, provided that the value of such items is not included in the amount payable under clauses 21.1.2(i) or 21.1.2(ii); and

(iv) for Services a percentage of the price for all Services performed up to the date of termination which for the avoidance of doubt may include Additional Services required to demobilize the work.

21.2 If a Party terminates for Force Majeure the terms of clause 17.3 shall apply.

21.3 As soon as reasonably practicable after termination each Party shall return to the other all Confidential Information, documents, equipment and materials belonging to the other Party.

21.4 Any termination of a Scope of Supply (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into force or continue in force on or after that termination. Notwithstanding the foregoing, the equitable remedy of specific performance of either Party is hereby expressly excluded.

## 22. COMPLIANCE WITH LAWS:

In performing its obligations under these Terms both Parties shall comply with all applicable laws, statutes and regulations from time to time in force. Breach of this clause 22 shall constitute a material breach of these Terms.

## 23. EXPORT CONTROL AND SANCTIONS COMPLIANCE:

23.1 In particular and without limiting the generality of the foregoing clause 22, Customer shall comply with all

applicable export control and sanctions laws and regulations including but without limitation those of New Zealand, the United States of America, the United Kingdom and the European Union (including local laws and regulations implemented by the individual European Union countries), and the United Nations. In particular Customer shall:

- (a) not export, re-export or otherwise transfer or use the Products or Services to or with any party listed on any restricted or denied party list maintained by the abovementioned jurisdictions (a **Prohibited Party**);
- (b) not export, re-export or otherwise transfer or use the Products or Services to or in any country or region subject to a comprehensive embargo imposed by the abovementioned jurisdictions;
- (c) not use the Products for any prohibited purpose and
- (d) immediately notify Tait in writing in the event the Customer or any director, officer, employee or member of its organisation becomes a Prohibited Party.

#### **24. ANTI-BRIBERY AND CORRUPTION COMPLIANCE:**

Both Parties shall during the term of these Terms comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010.

#### **25. GOVERNING LAW AND RESOLUTION OF DISPUTES:**

These Terms, Scope of Supply and any non-contractual matters arising out of them or in connection with them, shall be governed by and construed in all respects in accordance with English law and each Party shall submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under these Terms. Notwithstanding the foregoing the Parties shall attempt to resolve in good faith any disputes arising between them and shall give due consideration to the use of mediation or alternative dispute resolution techniques and reference to independent experts prior to the issue of court proceedings.

#### **26. LOCATION BASED SERVICES:**

To provide location-based services on Products, Tait may collect and use precise location data, including real-time geographic

location of Products. This location data is collected anonymously in a form that does not personally identify individuals and is used by Tait to provide and improve location-based products and services. In the event Tait provides Services that necessitate the processing of personalized location data and contact details, Tait's processing of this data is subject to clause 14 of these Terms.

#### **27. GENERAL:**

27.1 If any court or competent authority finds that any provision or part of any provision of these Terms is invalid, illegal or unenforceable then that provision or part of a provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of these Terms shall not be affected.

27.2 If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some or any part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

27.3 Where samples or prototype of Products are supplied to the Customer and an order(s) is subsequently placed for these same items and/or such items are accepted by the Customer subsequent to the receipt of the samples or prototype then the Customer is reliant entirely on its own judgment of the samples or prototype and the sale of these Products shall not be considered to be a sale by sample or prototype. Tait shall have no liability whatsoever for any claim that these Products are not fit for the purpose for which they are intended but this shall not affect the Customer's right to claim for defect, loss, damage or non-Delivery as provided under these Terms

27.4 Nothing in these Terms is to be construed as establishing or implying any partnership or joint venture between the Parties or as appointing a Party as agent or employee of the other Party. No Party shall hold out the other Party as its partner or joint venturer. Except and to the extent these Terms expressly state otherwise, no Party may incur any expense or negotiate on behalf of the other Party or commit that Party in any way to any person without that other Party's prior written consent.

27.5 Except as set out in these Terms, a person who is not a Party to these Terms has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms.