

RESELLER/CUSTOMER AGREEMENT – TERMS AND CONDITIONS

1. Terms and Conditions

1.1 The terms and conditions ("Terms and Conditions") set out below govern all of the supply of Products and Services from Infinitate (UK) Limited (Company number: 04279704) ("Infinitate (UK)") to the reseller or the customer (as the case may be) as specified in the Order Confirmation (as defined below) ("you", "your"). They will replace all earlier Infinitate (UK) Ltd terms and conditions, and any conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any Products from Infinitate (UK) indicates your acceptance of these Terms and Conditions.

1.2 Definitions

In these conditions, "Software" includes all relevant documentation, manuals, printed and written matter as supplied to you from time to time; "Supplier(s)" means Infinitate (UK)'s suppliers; "Order Confirmation" means Infinitate (UK)'s confirmation of your order in respect of the Products; "Products" means computer hardware, peripherals, accessories, Software and other goods or services ("Services") of any kind which are supplied by Infinitate (UK).

1.3 Your terms and conditions are not acknowledged even if Infinitate (UK) has not expressly objected to these. By placing an order at Infinitate (UK) for any product or service you expressly accept these Terms and Conditions and are waiving your right to rely on any other terms or conditions (including, for the avoidance of doubt, your standard terms and conditions). Any deviations, supplements and / or additional agreements to these Terms and Conditions always require an express written agreement with Infinitate (UK) to become effective. Any other conditions not included in these Terms and Conditions are only binding if Infinitate (UK) has acknowledged and agreed to them in writing, in which case Infinitate (UK)'s Terms and Conditions apply to complement such conditions and if there are any inconsistencies between such conditions and these Terms and Conditions, then these Terms and Conditions shall prevail to the extent of such inconsistencies.

1.4 All orders, contracts and any specific assurances from Infinitate (UK) require written confirmation by Infinitate (UK). Also, the waiver of the written form can only be made under a written agreement and no failure or delay by Infinitate (UK) to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

2. Prices and Quotations

2.1 The price of the Products shall be the price set out in the Order Confirmation.

2.2 Prices and pricelists may be amended by Infinitate (UK) without notice to you prior to Infinitate (UK) sending you the Order Confirmation. After Infinitate (UK) sends you the Order Confirmation the provisions of paragraph 2.6 below shall apply.

2.3 The only prices binding on Infinitate (UK) and you are the prices displayed in the Order Confirmation for each order by you.

2.4 Prices are exclusive of VAT or other applicable sales taxes, and you shall, on receipt of a valid VAT / sales tax invoice from Infinitate (UK), pay to Infinitate (UK) such additional amounts in respect of VAT / sales tax as are chargeable on the supply of the Products.

2.5 The commercial packaging of the Products supplied by Infinitate (UK) to you is included in the prices set out in the Order Confirmation. Other ancillary services or costs, including (without limitation) in relation to freight, toll, insurance, environmental, handling and transportation charges will be invoiced to you separately.

2.6 Infinitate (UK) reserves the right to increase the price from that set out in the Order Confirmation at its discretion if, after confirming the order, cost increases occur, including (without limitation) as a result of agreed changes in the specifications between Infinitate (UK) and you, or changes in any taxes, duties or levies charged on or in relation to price increases by Suppliers or exchange rate fluctuations.

3. Contract of Sale

3.1 Any information provided by Infinitate (UK) to you or any representative of you from time to time in promotional materials and / or on-line shall be construed at law as an invitation to treat only, and shall be non-binding on Infinitate (UK). Such information

may be valid only for a limited time. In no way shall such information be construed as an offer to conclude a contract of sale / purchase agreement.

3.2 A contract is only concluded with a written – i.e. by letter, fax or e-mail - Order Confirmation sent by Infinitate (UK) to you.

3.3 Content and scope of Products to be delivered by Infinitate (UK) are determined in the Order Confirmation sent to you by Infinitate (UK). Infinitate (UK) is not obliged to provide any installation, configuration and data back-up services unless the rendering of such services is agreed in writing between Infinitate (UK) and you.

3.4 Infinitate (UK) or its Suppliers reserve the right to change the Products (including, without limitation, the description of the Products), at its/their discretion, especially in the course of product improvements / developments, provided that this does not detrimentally affect the performance of the Products as agreed between Infinitate (UK) and you.

4. Payment

4.1 Infinitate (UK) may invoice you for the Products (including, without limitation and for the avoidance of doubt, for any Software) at any time upon or after sending you the Order Confirmation.

4.2 Unless Infinitate (UK) has agreed to extend credit to you, you must pay Infinitate (UK) in the currency set out in the invoice, either by cash or by bank transfer into Infinitate (UK)'s bank account as Infinitate (UK) will notify to you in writing (including, without limitation, by email) or by credit card, as soon as reasonably practicable after Infinitate (UK) has sent you the Order Confirmation and, in any event, in advance of the Products being delivered to you.

4.3 Where Infinitate (UK) has agreed in writing to extend credit to you, you must pay in full within 14 days of delivery of the Products to you. Your payment is made only when funds have fully cleared through the banking system into Infinitate (UK)'s bank account.

4.4 You agree to pay for the Products in full and cleared funds without deduction or set-off and to pay VAT pursuant to paragraph 2.4 and to pay any other government duties, levies and/or taxes in respect of the Products.

4.5 If payment is not made in full by the due date pursuant to either paragraph 4.2 and/or paragraph 4.3, Infinitate (UK) is entitled to charge you interest on the unpaid overdue balance at the rate of 3% per annum above the current overdraft rate charged by Infinitate (UK)'s bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Infinitate (UK), and Infinitate (UK) may charge you costs incurred (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further Services until the outstanding account is fully settled. Infinitate (UK)'s right to claim further damages remains unaffected by this paragraph.

4.6 Infinitate (UK) is entitled to offset payments against the oldest debt first, even if any terms and conditions that you may have in place from time to time state otherwise. In case costs are already incurred due to being in default and interest on late payments apply, Infinitate (UK) is entitled to offset payments first against such cost, followed by interest incurred and only last against the principal debt.

4.7 Subject to the remainder of this paragraph 4.7, you are only entitled to offset your claims against Infinitate (UK)'s liabilities if your claims against Infinitate (UK) are undisputed or recognised by a court of competent jurisdiction. If any Product that you have ordered is faulty, and Infinitate (UK) agree in writing that there is such a fault, then you may withhold payment in respect of the invoice in relation to that particular Product only, and only to the extent that such a fault remains unresolved and/or unremedied by Infinitate (UK).

4.8 Infinitate (UK) has sole discretion to determine the amount of credit it will extend to you at any time.

4.9 Notwithstanding paragraphs 4.2 and 4.3 above, all payments shall immediately become due by you to Infinitate (UK) if Infinitate (UK) reasonably believes that the information which you have given Infinitate (UK) in your application for credit is incorrect or no longer correct and you have failed to give Infinitate (UK) correct information satisfactory to Infinitate (UK) within 5 days of Infinitate (UK)'s request, if you become subject to any of the events listed in paragraph 12.2 or if you fail to comply with any of the provisions of these Terms and Conditions.

5. Project Specific Provisions

5.1 Subject to approval by the relevant Supplier(s), Infinitate (UK) may from time to time offer special quotes and/or prices to you for a specific project with you (where you are a reseller) in turn then agreeing to supply any Products under the project to named end customers (this is subject to the Supplier clearly identifying the scope of the project from the outset and clearly naming all end customers (or naming you as the end customer, where you are a customer and not a reseller). Any such discounted prices will be set out in the Order Confirmation and, for the avoidance of doubt, shall be subject to the terms set out in paragraph 2.

5.2 You undertake to (a) comply with all terms in regards to the specific project (including, without limitation, these Terms and Conditions and the Order Confirmation) and, in particular, keep all related end customer documents such as delivery notes and invoices available for a minimum period of 12 months after receipt of such information from the end customer (or keep such information about yourself for a minimum period of 12 months where you are the end customer) and to submit these on request of Infinitate (UK) and/or the Supplier to Infinitate (UK) and/or the Supplier (as the case may be), (b) (where you are a reseller) sell only to the authorised end customer, as provided by the Supplier at the start of the project, and (c) not to exceed the maximum retail price agreed for the Products in relation to the specific project.

5.3 Where approval from the Supplier has not been or cannot be obtained or where you breach any terms and conditions that the Supplier has in place from time to time, Infinitate (UK) has the right, at its sole discretion and without prejudice to its right to further claims, to charge you for the difference between the special price confirmed for the specific project and the regular purchase price of the Products invoiced.

6. Delivery

6.1 Infinitate (UK) will use reasonable endeavours to ensure that delivery of Products and performance of Services is on time, however, delivery dates and deadlines are always subject to change and are given as guidelines only, without being binding on Infinitate (UK).

6.2 Partial deliveries of Products by Infinitate (UK) are allowed and can be invoiced separately to you.

6.3 For the avoidance of doubt, time shall not be of the essence in relation to any estimated delivery dates given by Infinitate (UK) to you.

6.4 Delivery and performance dates shall be reasonably extended for the benefit of Infinitate (UK) in case of disturbances due to force majeure and other reasons beyond the reasonable control of Infinitate (UK), including (without limitation) disruptions in the delivery by Suppliers, strikes, lockouts, operational disruptions or inclement weather. Infinitate (UK) reserves the right to and you are entitled to withdraw from the contract if delivery delay caused by such events lasts for longer than six weeks.

6.5 Infinitate (UK) will not be liable to you for any claim, loss, expense or damage arising in any way from any delay in delivery or performance.

6.6 You are responsible for insurance and risk in the Products from the time they are handed to the carrier to when they are received by you from the carrier, or from when they are collected by you or your agent and/or other authorised representative from Infinitate (UK)'s premises (as notified to you in writing prior to your collection of the Products). For the avoidance of doubt, where the Products are collected by you from Infinitate (UK)'s premises, delivery is deemed to take place from your collection of the Products, and if the Products are being delivered to you by a carrier then delivery shall take place from when the Products are handed by Infinitate (UK) to the carrier for transportation to you at a location as agreed in writing between Infinitate (UK) and you prior to delivery.

6.7 You agree to pay and/or reimburse (as the case may be) Infinitate (UK) for all delivery costs.

6.8 Where you ask Infinitate (UK) to deliver goods directly to another person and that person takes possession of the goods for you as your agent and/or authorised representative, you are nevertheless still directly responsible to Infinitate (UK) under these Terms and Conditions.

6.9 The risk of damage or loss of the Product (other than Software) shall be transferred from Infinitate (UK) to you at the time the Product is handed over to the carrier in preparation for transportation of the Product to you.



- 6.10 The delivery of Software shall be deemed to have taken place upon Infinate (UK) sending you a licence key in order to download and/or use the Software (any Software will include the Suppliers' terms and conditions of use and you will be deemed to accept any such terms and conditions of use upon your use of the Software).
- 7. Retention of Title**
- 7.1 Infinate retains property, title and ownership to all Products supplied to you, whether in their original form or incorporated in or attached to another product, until receipt of full payment in cleared funds by Infinate (UK) from you of the price for the Products and all related amounts owed, including (without limitation) future receivables and/or any amounts owed by you to Infinate (UK) pursuant to paragraph 2.5 and / or 4.5.
- 7.2 (This paragraph 7.2 only applies where you are a reseller. For the avoidance of doubt, where you are an end customer, you will not be permitted to resell the Products). You may resell the Products in the ordinary course of business even if title to the Products has not passed to you. You must assign all future claims arising from the distribution and/or sale of such Products to Infinate (UK) until full payment of all outstanding amounts for the relevant Products has been received from you by Infinate (UK). You are authorised to collect any claim from the distribution and/or sale of any such Products even after assignment. Infinate (UK)'s right to collect the claim itself remains unaffected. If any of the aforementioned is the case you are obliged to disclose to Infinate (UK), at Infinate (UK)'s request, the names and addresses of your customers to which you sold the Products as well as the nature and scope of your existing claims against these customers. A copy of all related documents must be handed by you to Infinate (UK) and you must also notify the purchasers of the assigned Products of Infinate (UK)'s right to claim any outstanding amounts from such purchasers.
- 7.3 You must not pledge or transfer ownership of Products where title has not fully passed to you pursuant to paragraph 7.1. If you become subject to any of the events listed in paragraph 12.2, you will inform all relevant parties about Infinate (UK)'s ownership in such Products and notify Infinate (UK) immediately in writing.
- 7.4 Where Infinate (UK) reasonably believes you are or will be in breach of any part of paragraphs 4 and / or 7 of these Terms and Conditions, Infinate (UK) or Infinate (UK)'s agent may without notice enter any premises under your control to remove any Products which are the property of Infinate (UK), whether or not those Products are installed in or attached to any other goods, and without prejudice to any other of Infinate (UK)'s rights. You shall indemnify Infinate (UK) against all losses, costs and / or claims in respect of Infinate (UK)'s exercise of Infinate (UK)'s rights under this paragraph 7.
- 7.5 You are obliged to treat the Products for which title has not passed pursuant to paragraph 7.1 with all reasonable care, in particular you are obliged to insure them (with a reputable insurer) at your own expense against fire, water and theft at replacement value. Products delivered for testing and demonstration purposes shall remain the property of Infinate (UK). You are obliged to handle the Products with proper care and store them in a manner to enable them to be identified and cross referenced to particular invoices provided to you by Infinate (UK). You are allowed to use such Products only within the terms agreed.
- 7.6 Quotations, system analysis, project documents, drawings, samples, drafts and other documents of Infinate (UK) provided to you before a contract is concluded, may not be copied, used by you nor otherwise disclosed to any third party.
- 8. Your Obligations and Responsibilities**
- 8.1 It is your sole responsibility to ensure that you are clear as to the functionality, design and/or other features of the requested Products, and (where you are a reseller) it is your sole responsibility to meet any needs or requirements of your end customers in respect of the Products. For the avoidance of doubt (subject to paragraph 10.1) Infinate (UK) shall have no liability in respect of any one or more of these matters.
- 8.2 You must check the Products (or, in the case of Software, test the relevant Software to ensure that it is working) immediately upon receipt for completeness, compliance with the delivery documents and defectiveness. If no written complaint within seven (7) days from the delivery date has been made by you, the Products are considered as irrevocably accepted by you, unless it concerns a manifest defect which was not detectable at the time of first inspection by you.
- 8.3 If the delivered Products show visible damages or missing parts then you must record them on the notice of receipt of the transport company in writing upon delivery. The note must clearly state the damage or the shortfall.
- 8.4 In case Services have to be provided within your business environment and/or your premises, you must ensure that such services can be provided properly (including, without limitation, that the relevant area is clear and safe for any installations required in respect of the Services). If this is not the case and for this reason the Services cannot be provided as expected, you shall bear sole responsibility. You will support Infinate (UK) by ensuring, using your best endeavours and at your own expense, that the agreed Services can be provided by Infinate (UK) and provide Infinate (UK) with all information and documents necessary for the provision of the relevant Services. Should you not comply with your obligations under this paragraph 8.4, Infinate (UK) is not obliged to perform the relevant Services.
- 8.5 If you are in default of any of your obligations under these Terms and Conditions or you provide any relevant information or carry out any action as required under these Terms and Conditions, then you are obliged to indemnify Infinate (UK) for any costs, losses and/or expenses incurred by Infinate (UK) due to any default, delay or omission on your part.
- 9. Warranties**
- 9.1 Infinate (UK) does not manufacture any of the Products and therefore, to the fullest extent permitted by law (and subject always to paragraph 10.1), all warranties, conditions and other terms in respect of quality, defects in design, workmanship, conformity with description and / or fitness for purpose are excluded and Infinate (UK) makes no representations in respect of the same. Instead, Infinate (UK) will use reasonable endeavours to pass on the benefit of any warranties of any Supplier in respect of the Products onto you, and you and your customers shall use any Software in accordance with the terms of any end user licence agreements that any Supplier may have in place from to time.
- 9.2 Upon receipt of written notice from you as to defects in quality, workmanship or otherwise in respect of the Products, Infinate (UK) shall use its reasonable endeavours to contact the Supplier(s) of the relevant Products and provide them with reasonable details of the relevant defect for them to respond to you directly. For the avoidance of doubt, Infinate (UK) shall not be liable or responsible for any response (or failure to respond) on the part of any such Supplier.
- 9.3 Infinate (UK)'s obligations under paragraph 9.2 do not apply where the relevant Products have been altered, modified and/or otherwise changed by you and / or a third party without the prior written consent of Infinate (UK), where you have not used the Products in accordance with either Infinate (UK)'s or the Supplier's instructions, where the issue with the Products is caused by fair wear and tear, where you have used parts and / or accessories with the Products that have not been approved by Infinate (UK) and / or the Supplier, and/or where Infinate (UK) has had to alter the Products pursuant to paragraph 3.4. In addition, Infinate (UK)'s obligations do not apply to Software that is not used by you and / or a third party in the agreed system environment (as Infinate (UK) may notify you in writing from to time).
- 9.4 You undertake that you shall not bring any warranty claims against Infinate (UK) directly (as you acknowledge that Infinate (UK) does not manufacture any of the Products) whether in relation to defects in the Products or otherwise.
- 9.5 You acknowledge that Infinate (UK) has no control over the actions of the Supplier in relation to any defective Products; therefore, you undertake that you will not bring any claim against Infinate (UK) for any failures or inaction on the part of any Supplier to repair and/or replace any such Products.
- 9.6 Furthermore, you acknowledge that in any case a defect is existent only when it is notified in detail immediately after discovery by you in writing to Infinate (UK) and comprises a relevant and reproducible error. Any warranty by the Supplier is excluded for defects which are caused by:
- insufficient maintenance of the Products by you;
 - failure to observe the operating or installation instructions in relation to Product;
 - inappropriate use of the Products;
 - use of non-approved parts and accessories;
 - common wearing of any Product;
 - improper handling or transportation of the any Product;
 - modifications or repair attempts in relation to any Product; and / or
 - external influences, in particular, force majeure (e.g. failure of the power supply or the air-conditioning, natural hazards) and other reasons for which neither Infinate (UK) nor manufacturer / supplier are responsible for.
- 9.7 Where Infinate (UK) and / or the Supplier replaces any faulty Product for you then you must, at your own cost, within 30 days after receipt of the replacement Product, send to Infinate (UK) the faulty Product. In the case of Software, copies of Software may not be retained by you. Upon Infinate (UK) and/or the Supplier receiving the faulty Product, if Infinate (UK) and/or the Supplier (as the case may be) deem the Product not to be faulty, then Infinate (UK) will be entitled to charge you for the replacement Products.
- 9.8 If you have made any warranty claims and no defect existed, you are liable for its claim and must reimburse Infinate (UK) for any costs incurred (whether in relation to contacting the Supplier or otherwise). Additionally Infinate (UK) can claim reimbursement of costs incurred on such claims made by you where you have not provided any evidence of any such defect.
- 9.9 The assignment of any claims by you under this paragraph 9 is not permitted, unless Infinate (UK) expressly approves such assignment in writing.
- 10. Liabilities**
- 10.1 Nothing in these Terms and Conditions shall limit or exclude Infinate (UK)'s liability for:
- death or personal injury caused by Infinate (UK)'s negligence, or the negligence of any of Infinate (UK)'s employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - defective products under the Consumer Protection Act 1987; or
 - any other matter in respect of which it would be unlawful for Infinate (UK) to exclude or restrict liability.
- 10.2 Subject to paragraph 10.1:
- Infinate (UK) shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms and Conditions and/or the Order Confirmation; and
 - Infinate (UK)'s total liability to you in respect of all other losses arising under or in connection with these Terms and Conditions and/or the Order Confirmation, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products and/or labour costs incurred in respect of any Services.
- 11. Data Protection Act**
- 11.1 In this clause "Data Protection Legislation" means i) the Data Protection Act 2018 (ii) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and any national implementing laws, regulation and secondary (as amended or re-enacted from time to time). The parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Data Controller and Infinate (UK) is the Data Processor of any Personal Data processed under these Terms and Conditions (where "Data Controller", "Data Processor" and "Personal Data" have the meanings as defined in the Data Protection Legislation). "Agreed Purpose" means for each party to meet their respective obligations as set out in these Terms and Conditions and any Order Confirmation (including but not limited to the supply of Goods and Services); to comply with a legal obligation that each party is subject to; and where it is necessary for the legitimate interest of a party (or those of a third party) and the other party's interests and fundamental rights do not override those interests.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation and where there are inconsistencies between the contents of this paragraph 11 and the Data Protection Legislation, then the provisions under the Data Protection Legislation shall always prevail to the extent of such inconsistencies
- 11.3 Orders are processed within the Infinate group of companies with the help of automatic data processing. You hereby warrant that you have all necessary consents and notices in place in order to enable the lawful transfer and processing of the Personal Data by Infinate (UK) which it has obtained in the course of its business with you (including without limitation under these Terms and Conditions) and particularly in the context of contractual relations that are necessary for the correct processing of orders (including, without limitation, names, telephone numbers, email addresses and other identifiers). Each party warrants that it will only use Personal Data for the Agreed Purpose and, Infinate (UK) shall whenever required in the ordinary course of business, be entitled to pass these on to the Suppliers of the Products.
- 11.4 Without prejudice to the generality of clause 11.1, Infinate (UK) shall, in relation to any Personal Data processed in connection with the performance by Infinate (UK) of its obligations under these Terms and Conditions:
- process Personal Data only on the written instructions of the Supplier unless Infinate (UK) is

- required by any applicable law of England and Wales to otherwise process that Personal Data.
- 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.
- 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:
- either party has provided appropriate safeguards in relation to the transfer;
 - the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - Infingate (UK) complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - Infingate (UK) complies with reasonable instructions notified to it in advance by the Supplier with respect to the processing of the Personal Data;
- e) assist the Supplier, at the Supplier'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 Supplier without undue delay on becoming aware of a Personal Data breach;
- g) at the written direction of the Supplier, delete or return Personal Data and copies thereof to the Supplier on termination of the contract unless required by law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- 11.5 Infingate (UK) reserves the right to request and collect data about you from commercial credit reporting agencies or credit insurers to obtain information regarding your creditworthiness and to report back data - in case of non-contractual settlement, e.g. filing of court order for undisputed claims, issued enforcement order or enforcement actions. The data will only be shared with members of the Infingate group of companies for the Agreed Purpose. In any case Infingate (UK) will comply with the relevant Data Protection legislation.
- 12. Termination**
- 12.1 If you become subject to any of the events listed in paragraph 12.2, Infingate (UK) may terminate these Terms and Conditions and any contract Infingate (UK) has in place with you from time to time with immediate effect by giving written notice to you.
- 12.2 For the purposes of paragraph 12.1, the relevant events are:
- you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (if you are a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) you have any partner to whom any of the foregoing apply;
 - you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
 - (if you are a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up;
 - (if you are a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;
 - (if you are a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - (if you are an individual) you are the subject of a bankruptcy petition or order;
 - a creditor or encumbrancer of you attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in paragraph 12.2a) to paragraph 12.2j) (inclusive);
 - you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
 - your financial position deteriorates to such an extent that in Infingate (UK)'s opinion your capability to adequately fulfil your obligations under these Terms and Conditions and/or any contract that is in place between you and Infingate (UK) from time to time has been placed in jeopardy; and
 - (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or becomes a patient under any mental health legislation.
- 12.3 Without limiting Infingate (UK)'s other rights or remedies, Infingate (UK) may suspend provision of the Products (whether pursuant to these Terms and Conditions or otherwise) if you become subject to any of the events listed in paragraph 12.2a) to paragraph 12.2j), or Infingate (UK) reasonably believes that you are about to become subject to any of them, or you fail to pay any amount due under these Terms and Conditions on the due date for payment.
- 12.4 Notwithstanding any other provisions in this paragraph 12, Infingate (UK) may terminate these Terms and Conditions and any other contractual arrangements Infingate (UK) may have in place with you from time to time with you without cause by giving you one week's notice (whether oral or in writing).
- 12.5 On termination of these Terms and Conditions for any reason you shall immediately pay Infingate (UK) all of Infingate (UK)'s outstanding unpaid invoices and interest.
- 12.6 Termination of these Term and Conditions, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.7 Paragraphs which expressly or by implication survive termination of these Terms and Conditions (if any) shall continue in full force and effect.
- 13. Intellectual Property**
- 13.1 All intellectual property in relation to the Products shall remain the property of Infingate (UK) or any Supplier entitled to it (for the avoidance of doubt, in practice, virtually all the intellectual property rights in respect of the Products shall be owned by the Supplier), and neither Infingate (UK) nor any of Infingate (UK)'s Suppliers transfer any right, title or interest in any intellectual property to you.
- 13.2 You are not permitted to alter any Software, copy it, adapt it for use on non-compatible hardware or edit it in any other way, and you shall indemnify Infingate (UK) against any costs, expenses and/or other losses incurred in respect of any breach by you of this paragraph 13.2 and/or of any other provisions in this paragraph 13 generally.
- 13.3 The use of each Product (whether software or hardware) is subject to the relevant licence terms and conditions of the relevant Supplier. You undertake to comply with those licence terms and conditions and (where you are a reseller) to pass on a corresponding obligation to your customers. You must (where you are a reseller) report any breaches to Infingate (UK) by a customer of any such obligations without delay. In addition you undertake to comply with the general terms and conditions of each relevant Supplier, especially its marketing and sales obligations with special attention to the valid national and international export and compliance regulations including (without limitation) anti-corruption provisions.
- 13.4 You agree to dispatch the Products only under the trade marks under which they are supplied by Infingate (UK), and under no circumstances shall apply any other trade marks to any Product which is not a trade mark supplied by Infingate (UK). Any notes on the Products in regards to copyright, trademark or other intellectual property rights may not be removed, altered, concealed or made otherwise invisible by you. You are authorised only with prior written consent of Infingate (UK) to translate supplied documentations for any commercial purpose.
- 13.5 You will inform Infingate (UK) immediately if a third party raises any claims of infringement of any intellectual property rights (whether in relation to infringement of trade marks, copyright or otherwise) against you as a result of the use and/or sale of the Products and/or Services delivered. You will not acknowledge the alleged infringement of intellectual property rights and shall leave any dispute, including any extrajudicial settlement either to Infingate (UK) or conduct any action in consultation with Infingate (UK) or Infingate (UK)'s Suppliers.
- 14. Export / Import**
- 14.1 All contractual Products and technical expertise are delivered by Infingate (UK) in compliance with the currently valid Export Control Act 2002 and/or EC Dual-Use Regulation and the US export regulations, and shall be used and remain in the country agreed with you according to your sales order information. If you intend to re-export any Products, you must comply with US, European and UK export regulations.
- 14.2 If you intend to export products supplied by Infingate (UK), you are required to enquire about the rules and regulations currently in force (including without limitation the Department for Business, Innovation and Skills, the US Department of Commerce and Office of Export Administration, Washington, DC 20230). Regardless of whether you indicate the final destination of the contractual Products supplied, it is your responsibility to obtain necessary approval of the relevant foreign trade authorities before exporting such Products. Infingate (UK) has no obligation to provide any such information to you.
- 14.3 Any delivery of Products by you to a third party, with or without the knowledge of Infingate (UK), requires the simultaneous transfer of the export license conditions. You are liable to the full extent of non-compliance with the relevant provisions and/or regulations.
- 14.4 Without prior administrative approval, you – and (where you are a reseller) your customers – are not allowed to deliver the supplied products directly or indirectly to any country subject to US embargo, or to natural or legal persons of these countries as well as to natural or legal persons on US, European or national ban lists (e.g. "entity list", "Denied Persons List", "Designated Nationals and Blocked Persons SPECIFICALLY"). It is prohibited to supply Products to natural or legal persons who are in any way connected to the support, development, production or use of chemical, biological or nuclear weapons of mass destruction.
- 15. Purchase Tax / Import Turnover Tax**
- 15.1 If you have headquarters outside the United Kingdom, you must comply with the provisions of purchase tax and/or import turnover tax rules of the relevant Economic Area when purchasing the Products, in particular you must disclose the sales tax identification number as well as any other information necessary. You must indemnify Infingate (UK) against any costs, expenses or other losses suffered or incurred by Infingate (UK) pursuant to or as a result of your non-compliance with this paragraph 15.1.
- 16. General**
- 16.1 Infingate (UK) reserves the right to alter these Terms and Conditions at its sole discretion from time to time by giving you written notice of the same.
- 16.2 You may not assign any rights or obligations under these Terms and Conditions.
- 16.3 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of these Terms and Conditions.
- 16.4 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified, pursuant to this provision to the party giving the notice.
- 16.5 No waiver by Infingate (UK) of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 These Terms and Conditions are governed by the laws of England and any dispute under it shall be subject to the exclusive jurisdiction of the courts of England. The Vienna UN Convention (UNCITRAL) on the International Sale of Goods is excluded.
- 16.7 No party shall have any rights to enforce the terms contained within these Terms and Conditions other than you or Infingate (UK).