

# General Terms and Conditions

These are the Terms & Conditions (“**Conditions**”) of ALTO MSSP Ltd of registered office, Citrus House, Greenbank Road, Aberdeen AB12 3BQ with Company Number SC364130 (hereinafter referred to as the “**Company**”) which shall apply to the **Services** (as hereinafter defined) provided by the Company to the Client.

## 1. Definitions

In these Conditions, the following terms shall have the following meanings and effect:

“ <b>Acceptance</b> ”	means the written acceptance by the Client to the Company of the Proposal.
“ <b>Amendment</b> ”	means as defined in Clause 2.6.
“ <b>Business Day</b> ”	means any day other than a Saturday, Sunday or public holiday when banks are open in Scotland.
“ <b>Charges</b> ”	means the total amount charged by the Company for the provision of and/or in connection with the Services and shall include the Price plus Disbursements plus anything in addition in respect of any Additional Services (as defined in Clause 2.6).
“ <b>Client</b> ”	means the company, firm or individual who purchases or agrees to purchase Goods and/or Services from the Company.
“ <b>Company</b> ”	shall include its successors and assignees.
“ <b>Confidential Information</b> ”	means as defined in Clause 7.1.
“ <b>Contract</b> ”	means the Proposal, Acceptance, these Conditions and any Amendment.
“ <b>Disbursements</b> ”	means any payment by the Company of any expenses or fees on the Client’s behalf including without prejudice to the generality of the foregoing all out of pocket expenses, travelling fees, stationery costs, costs of consumable items, licence fees or any other payments made on the Client’s behalf to a third party.
“ <b>Goods</b> ”	this shall include all parts, cabling, hardware, software, any other IT equipment and shall include any licences and other paperwork in respect of the same.
“ <b>liability whatsoever</b> ”	includes without prejudice to the generality of the expression all liability in delict, contract, breach of representation or implied warranty or condition or such other duties at common law including liabilities for direct, indirect or consequential losses of whatever nature and howsoever caused or arising. The term shall not apply to liabilities for death or personal injury.
“ <b>Lien</b> ”	means the Company’s right to keep all Goods, drafts, papers, documents, money or other property held or produced on the Client’s behalf until such time as all monies due under the Contract are paid in full. A Lien may be applied after the Contract expires.
“ <b>Price</b> ”	means the price for the provision of the Goods and/or the Services as set out in the Contract, or as otherwise agreed between the Company and the Client.
“ <b>Proposal</b> ”	means a written quote or proposal provided by the Company to the Client in respect of the Services.
“ <b>Services</b> ”	means the supply, fitting, commissioning, maintenance, back-up and support of all IT systems, hardware, software to include cabling, licensing and related services carried out by the Company for and on behalf of the Client and shall where applicable include Goods and the provision of Goods, as agreed between the Company and the Client and as set out on the Contract.

## 2. The Services

- 2.1 The Company agrees to undertake and use their reasonable endeavors to carry out the Services.
- 2.2 These Conditions shall apply to all Services.
- 2.3 The Company shall take all reasonable steps to complete the Services within the timescales as set out in the Contract, or as otherwise agreed in writing between the Company and the Client. However, such timescales are to be treated as an estimate only and time shall not be of the essence in respect of any of the Services or part of the Services. The Company shall not be liable for any liability whatsoever either directly or indirectly attributable from the result of the late delivery of any Goods and/or Services.
- 2.4 The provision of the Services is subject to research and technical information available and the provision of proprietary information from vendors, manufacturers and developers, which is the sole responsibility of the Client. Although the Company will use its reasonable endeavours to resolve any technical problems and carry out the Services in a timely and efficient manner, the Client accepts that the Company may not be able to resolve all technical difficulty because of this third party information requirement.
- 2.5 The Client shall be solely responsible for ensuring the full and correct identification of the Services confirming that it complies with their requirements and is correct in all respects.

- 2.6 Where the Client requires the Company to provide any additional Services or to carry out further work or duties not set out in the Contract (“**Additional Services**”), the parties shall enter into a formal written amendment “**the Amendment**”). The Company will be under no obligation in respect of the Additional Services until such time as the Amendment is signed on behalf of both parties and the Client has complied with Clause 4.2.
- 2.7 All descriptions of Goods are approximate only and the Company reserves the right to replace any Goods quoted with a similarly equipped model at their sole discretion.
- 2.8 The Company shall provide the Services only to Clients within the United Kingdom. On-site repair services are not available to Clients outside of Aberdeen City and Aberdeenshire.
- 2.9 The Company support services are for limited systems, devices, platforms and applications as notified from time to time in writing or published on the Company’s web site at <https://www.itsalto.com/technologyplatform>
- 2.10 If the Client reports a fault in the Goods or Services and the Company finds there are none or that the Client or another third party has caused the fault, the Company reserves the right to charge any additional Charges incurred by the Company in respect thereof.

### **3. Client’s Obligations**

3.1 The Client shall:

- 3.1.1 make available to the Company and/or any appointed professional adviser full instructions and complete and accurate information to allow the Services to be carried out correctly and in accordance with the Contract and the Law of Scotland;
- 3.1.2 not ask the Company to work in an improper or unreasonable manner;
- 3.1.3 not deliberately mislead the Company or their professional advisers in any way regarding the Goods or Services to be provided and will provide full information and documentation when requested by the Company to the Company, any professional adviser or such other person or body nominated by the Company;
- 3.1.4 co-operate with the Company, its staff and all professional advisers fully, provide such information and materials as is required by the Company and do all necessary things and execute all such documents to allow the Company to carry out the Services in a timely and conscientious manner and in accordance with the Contract;
- 3.1.5 ensure that an appropriate representative of the Client is available as may be required by the Company for clarification of any matters arising while carrying out the Services;
- 3.1.6 ensure that they have read and are satisfied with all information, documents or advice given by or on behalf of the Company and keep the Company, its servants and agents indemnified in respect thereof;
- 3.1.7 be responsible for ensuring that any site, building or land occupied for the carrying out of any of the Services will be with the full consent of the owners and that full licences and all other legal consents will be obtained for the use of any premises, land or buildings and that the premises are fit and suitable for the Services to be safely carried out;
- 3.1.8 immediately notify the Company of their intention to alter any registered system, provider or part thereof;
- 3.1.9 be solely responsible for the protection and back-up of any data, IT systems, software or hardware which belong to the Client and to which the Company has no access;
- 3.1.10 provide in a timely manner such access to the Client’s premises and data, and such office accommodation and other facilities as is requested by the Company to enable the Company to carry out the Services;
- 3.1.11 not provide the Client’s password to any third party or permit its use by any third party;
- 3.1.12 be solely responsible for the licencing of all software installed on its registered systems and keep the Company fully indemnified in respect of all losses and costs in respect thereof;
- 3.1.13 ensure that all software licences and anti-virus software installed remains valid, up to date and fully authorised. Any lapse or failure by the Client in this regard shall result in the termination of the Services and the Client will be responsible for any and all costs incurred by the Company in respect thereof;
- 3.1.14 be solely responsible for and indemnify the Company from the use of any system, including the viewing or downloading of any material from any website of any illegal or inappropriate nature. Upon the Company being made aware of any such viewing or downloading, the Company has the right to cease the Services until such time as the system is free of any virus infestation or other software problem as a result of such action. The Client shall keep the Company indemnified in respect of any costs and expenses in connection with a breach of this Clause;

- 3.1.15 fully comply with the Company's privacy policy applicable from time to time and is promoted on the Company's website, available at [Privacy Policy](#);
- 3.1.16 be solely responsible for making good the site after any work has been undertaken by the Company; and
- 3.1.17 be solely responsible for all costs of compliance with statutory obligations including without prejudice to the generality of the foregoing, all regulations including the Waste Electrical and Electronic Equipment Regulations 2013.

#### **4. Price, Disbursements and Charges**

- 4.1 In consideration for the Company carrying out the Services and/or supplying the Goods, the Client shall pay in advance to the Company the Charges as set out in the Contract, or as otherwise agreed in writing between the Company and the Client. The Charges shall be payable without set off or deduction of any kind whatsoever in cleared funds within seven days of the date of the Acceptance and in any event, in advance of the supply of Goods and/or provision of Services.
- 4.2 In respect of any Additional Services agreed in accordance with Clause 2.6, the Client shall make payment in full, without set off or deduction of any kind whatsoever, of any additional Charges in respect of the Additional Services within seven days of the last date of signing of the Amendment and in any event, in advance of the supply of the Additional Services.
- 4.3 If upon commencement of the Services (or where appropriate the Additional Services), further Disbursements are incurred which were not accounted for within the Charges ("Further Disbursements"), the Further Disbursements shall be paid by the Client to the Company within seven days of the Client being notified of the Further Disbursements and howsoever invoiced.
- 4.4 The Company has the right to charge interest at a rate of 10% per annum above the base rate for the time being of Barclays Bank Plc on all outstanding Charges, Further Disbursements or any other sums due by the Client to the Company, howsoever invoiced. Any interest charges shall run from the date the sum is due until the date of payment.
- 4.5 Any payments made by cheque shall not be deemed to have been made until the cheque has been honoured by the drawer's bank and cleared in the Company's bank account.
- 4.6 Failure to pay the Charges, Further Disbursements or any other sum due by the Client to the Company, or any part thereof in accordance with the Contract, will entitle the Company without prejudice to the Company's other rights or remedies, to refuse to make delivery of any further Goods and/or Services under the Contract, without incurring any liability whatsoever to the Client.
- 4.7 Payments received by the Company shall be applied first in settlement to any charge to interest or other cost or expense howsoever invoiced or incurred by the Company and thereafter in settling the Charges and Further Disbursements.
- 4.8 VAT or such other similar governmental tax or imposition at the applicable rate will be applied for all work carried out and will be paid in addition to the Charges as set out in the Contract or as otherwise agreed in writing between the Company and the Client.
- 4.9 Any Proposal issued by the Company is based on the cost at that time of materials, labour, transport and/or other charges and may therefore be subject to a fair adjustment reflecting changes in the cost of the same incurred by the Company during the period between the Proposal and Acceptance, and supply of the Goods and provision of the Services. The Company reserves the right to make changes to the Charges accordingly and where necessary any increase in the Charges shall be treated as Further Disbursements and Clause 4.3 shall apply.
- 4.10 All Goods shall remain the property of the Company until paid for in full.
- 4.11 Time shall be of the essence in respect of any payment terms in these Conditions.

#### **5. Liability and Insurance**

- 5.1 Save in respect of claims for death or personal injury arising from the Company's own negligence, in no event shall the Company be liable for any liability whatsoever including without prejudice to the foregoing any loss of data, loss of profits, loss of anticipated savings, loss of business, loss of enjoyment, nor for any other damage that is an indirect or of a secondary consequence of any act or omission of the Company whether such damage was reasonably foreseeable or actually foreseen.
- 5.2 Save in respect of claims for death or personal injury, the Company shall not be liable for any loss or damage whatsoever suffered by the Client arising out of or in connection with any breach of the Contract by the Client or any act, misrepresentation or omission made by or on behalf of the Client or arising from any cause beyond the Company's reasonable control.
- 5.3 Without prejudice to the foregoing, save in the case of death or personal injury, the Company shall have a maximum liability to the Client under the Contract or otherwise, for any cause whatsoever (whether in the form of additional costs of remedial services or otherwise) for only direct costs and damages and in any event such sum will be limited to a sum equivalent to the Price.
- 5.4 All Goods, information, documents, software, advice and Services provided by the Company and its sub-contractors are provided without warranty of any kind either express or implied including but not limited to implied warranties of merchant ability, fitness for a particular purpose or other infringement and the Company assumes no responsibilities for any errors, omissions or other inadequacies in the Goods or Services provided whatsoever.
- 5.5 The Client agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with the Contract and that the Charges have been

calculated on the basis of the limitations and exclusions in this Clause and that the limitations contained in this Clause 5 are reasonable in light of all the circumstances. The Client undertakes to procure appropriate insurance having regard to this particular Clause and the Contract as a whole.

- 5.6 The Client's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Contract is excluded.
- 5.7 These limitations in Clauses 5.1 to 5.6 will apply regardless of the form of action, whether under statute, in contract or otherwise including negligence or any other form of action. For the purpose of this Clause 5, the Company includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of the liabilities set out above in terms of the Contracts (Third Party Rights) (Scotland) Act 2017 provided that nothing in this Contract shall exclude or limit liability for fraud or fraudulent misrepresentations, personal injury or death.

## **6. Term & Termination**

- 6.1 The Contract shall continue in force until completion of the Services unless otherwise stated or, the Contract is terminated in accordance with any of the provisions of this Clause 6.
- 6.2 Either party shall be entitled to terminate the Contract immediately at any time by written notice to the other party if:
- 6.2.1 the other party commits a material breach of the Contract and if the breach is capable of remedy, fails to remedy the said breach within seven days after receipt of notice in writing to do so; or
  - 6.2.2 the other party becomes subject to insolvency proceedings, a receiver or administrative receiver or similar appointment is made or if an encumbrancer takes possession of any of the other party's property or assets or if the other party enters into an agreement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent within the meaning of the Insolvency Act 1986 or ceases to be able to pay its debts as they fall due.
- 6.3 The Company may terminate the Contract at any time by twenty-eight days' notice in writing to the Client without having to give reasons and without being liable for any liability whatsoever occasioned by the Client in respect thereof howsoever arising.
- 6.4 Termination of the Contract howsoever occasioned shall be without prejudice to any of the rights or remedies of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to continue in force on or after such termination.
- 6.5 As soon as is practicable after termination of the Contract, the Company shall return to the Client all property, materials, documentation or any Confidential Information it has belonging to the Client save that the Company's Lien in respect of unpaid Charges, Further Disbursements or any other sum due by the Client to the Company of whatever nature shall remain in place and such property shall remain in the possession of the Company until such time as payment is made in full.

## **7. Confidentiality**

- 7.1 "Confidential Information" shall mean all information disclosed by one party to the other which is not publicly known, including without limitation in any written document disclosed to or obtained by one party from the other or a third party and shall include but shall not be limited to information of any Goods, Prices, Disbursements, Charges, any other agreement between the parties, these Conditions, financial matters and any document appended thereto and all information relating to the parties' operations, processes, plans, intentions, information, know-how, designs, technology, trade secrets, software, market opportunities, customers and any other commercially sensitive information regarding business affairs.
- 7.2 Each party will take all proper steps to keep confidential all Confidential Information of the other which is disclosed to or obtained by it pursuant to the Contract and will not divulge the same to any third party except to the extent that such Confidential Information becomes public through no fault of that party or as required by law.
- 7.3 Notwithstanding the termination or expiry of the Contract for whatever reason these obligations and restrictions shall continue after termination of the Contract.
- 7.4 Each party agrees to keep the existence and nature of the Contract confidential and not to use the same with any other party, in any publicity, advertisement or other disclosure with regard to the Contract without the prior written consent of the other party.
- 7.6 Nothing in this Clause shall prevent the Company from exploiting any inventions or software or other product or service that it develops during the term of the Contract with the Client.
- 7.7 The Client consents to the Company checking all customer details with fraud prevention agencies and sharing customer information with such fraud prevention agencies.

## **8. Indemnification**

- 8.1 The Client shall indemnify the Company fully against any losses, liabilities, costs or expenses which the Company may incur as a result of any work done in accordance with the Client's express specifications as set out in the Contract, which involves or results in any infringement of any intellectual property or other rights, breach of any statute or regulation, or which in any other respect causes the Company to be liable to any third party or any government authority in respect of any breach of statutory duty, breach of contract or such other claim incurred as a result of information or requests made by the Client to the Company.

8.2 The Client undertakes that it will indemnify the Company in respect of all proceedings, costs, expenses, liabilities or damage arising out of the breach or negligent performance or failing of performance by the Client of the Contract or in respect of any act or omission of the Client, its officers, employees, agents or sub-contractors.

8.3 No provision in the Contract shall operate so as to exclude any liability of any of the parties in respect of a fraudulent misrepresentation made by that party to the other or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

**9. Agency Partnership**

The Contract shall not constitute or imply any partnership, joint venture, agency or fiduciary relationship or other relationship between the parties other than a contractual relationship expressly provided for in the Contract.

**10. Entire Agreement**

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of the Contract.

**11. Force Majeure**

11.1 Notwithstanding anything to the contrary in the Contract, the Company shall not be liable for any delay in performing its obligations under the Contract nor for any losses in respect thereof if such delay is caused by circumstances beyond its reasonable control.

11.2 Without prejudice to the generality of Clause 11.1, causes beyond the reasonable control of the Company will include but shall not be limited to:

11.2.1 acts of God, explosion, flood, lightening, tempest, fire or accident;

11.2.2 epidemic or pandemic;

11.2.3 war, hostilities, invasion, act of foreign enemies;

11.2.4 rebellion, revolution, insurrection, military or usurped power or civil war;

11.2.5 terrorist attack, riots, civil commotion or disorder;

11.2.6 acts, restrictions, regulations, bye-laws, refusals to grant licences or permissions, prohibitions or measures of any kind on the part of any governmental authority;

11.2.7 import or export regulations or embargoes;

11.2.8 failure of utility services;

11.2.9 strike, lock-outs or other industrial actions or trade disputes of whatever nature whether or not involving employees of the Company or any third party;

11.2.10 default of suppliers or sub-contractors for any reason whatsoever where such delay is beyond the reasonable control of the Company;

11.2.11 incompleteness or inaccuracies of any technical, financial, or other information or obligations which are the responsibility of the Client or any other third party;

11.2.12 any failure, default, delay or non-performance of any act or omission of any nature whatsoever on the part of the Client, its employees, agents, suppliers or sub-contractors;

11.2.13 any failure, default or delay by other suppliers including third party suppliers of electronic communication services to the Company or the Client.

**12. Notices**

12.1 All notices under the Contract shall be in writing and shall be deemed to have been duly given:

12.1.1 when delivered, if delivered by hand during normal business hours (Monday to Friday 9am to 5pm, except national and local bank and public holidays);

12.1.2 when sent, if transmitted by e-mail and a successful transmission report is generated; or

12.1.3 on the second Business Day following mailing, if mailed by national ordinary first class mail postage pre-paid.

12.2 In each case, all notices must be addressed to the most recent address or e-mail address notified to the other party.

**13. Severance**

13.1 If any provision of the Contract is prohibited by law or adjudged by a court of competent jurisdiction to be illegal, unlawful, void or unenforceable in whole or

in part then the provision shall, to the extent required, be severed from the Contract and be rendered ineffective as far as possible without modifying the remaining provisions of the Contract and shall not in any way affect any of the circumstances, validity, or the enforcement of any other provisions of the Contract.

13.2 The Client and the Company agree that should any provision of the Contract be invalid or unenforceable then they shall forthwith enter into, in good faith, negotiations to amend such provision in such a way that as amended it is valid and legal and to the maximum extent possible carries out the original intent of the parties as to the point(s) in question.

**14. Waiver**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any provision of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

**15. Sub-Contracting**

15.1 The Company shall be entitled to determine the manner of supply of the Goods and provision of any of the Services at their sole discretion.

15.2 The Company may perform any or all of its obligations under the Contract or may sub-contract any or all of the supply of the Goods or provision of the Services to agents or sub-contractors.

**16. Third Parties**

Except where expressly set out in the Contract, the parties do not intend to confer any rights to any third parties by virtue of the Contract and accordingly to that extent the Contract (Third Party Rights) (Scotland) Act (2017) shall not apply to the Contract.

**17. Law & Jurisdiction**

The Contract and any dispute arising in respect thereof or in connection therewith shall be governed and construed in accordance with the laws of Scotland and the parties prorogate the non-exclusive jurisdiction of the Scottish courts.

**18. General**

18.1 In the Contract, unless the context otherwise requires:

18.1.1 words importing the singular number includes the plural number and vice versa;

18.1.2 words importing persons include firms, companies, corporations and vice versa;

18.1.3 references to numbered Clauses are reference to the relevant Clause to these Conditions;

18.1.4 the headings of any Clause in these Conditions shall not affect their interpretation;

18.1.5 any reference to any enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or regulation made thereunder. For the avoidance of doubt, any increase in the Price, Disbursements or Charges as a result of such amendments or replacement shall be met by the Client and shall be treated as Additional Services or Further Disbursements and Clause 4.2 and 4.3 shall apply;

18.1.6 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

18.1.7 any party who agrees to do something shall be deemed to fulfil that obligation if that party procures that it is done;

18.1.8 in the case of conflict or ambiguity between any provision contained in these Conditions and the Proposal, Acceptance or otherwise, these Conditions shall take precedence;

18.1.9 nothing in these Conditions shall exclude or restrict the statutory rights of the Client who deals as a consumer within the meaning of the Unfair Contract Terms Act 1977 as amended;

18.1.10 no change, alteration or modification to these Conditions or any agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.

**19. Data Protection**

The Company and the Client will comply with their respective obligations under the Data Protection Act 2018 and any other similar laws and regulations in connection with the Contract and shall provide such reasonable help and cooperation to each other to enable compliance with this Clause.