

PUKKAGENTEK STANDARD TERMS AND CONDITIONS OF ENGAGEMENT 2nd Edition (October 2011)

1. INTRODUCTION, DEFINITIONS AND INTERPRETATION

- 1.1 These Terms apply in respect of all goods and services sold and provided by PukkaGenTek Ltd to You under any agreement and shall, save where a specific written agreement states to the contrary, prevail over all other agreements including terms or conditions which You may propose and purport to rely on.
- 1.2 In the Agreement the following words and expressions shall, save where the context or the express provisions of the Agreement otherwise requires or admits, have the following respective meanings:
- 1.3 **Agreement** means the entire agreement as defined in clause 20;
- 1.4 **PGT** means PukkaGenTek Limited or any legally licensed franchisee of PukkaGenTek Limited;
- 1.5 **Business Day** means any day which is not a Saturday, a Sunday or a public holiday;
- 1.6 **Business Hours** means from 08.30 hours to 19.00 hours Greenwich Mean Time, Monday to Friday except bank holidays, and 10.00 to 17.00 GMT on Saturdays;
- 1.7 **Device** means any self contained operational Hardware;
- 1.8 **Goods** means those goods itemised in the Quotation or as otherwise agreed in writing between the Parties from time to time;
- 1.9 **Hardware** means the electronic and mechanical parts of a computer or system related piece of equipment;
- 1.10 **Hardware Provider** means the provider of any of Your Hardware;
- 1.11 **Management Software** means the software that is downloaded on to Your System to facilitate the provision of the Services;
- 1.12 **Management Software Providers** means any person who provides Management Software used by PGT;
- 1.13 **Notice Period** means one calendar month;
- 1.14 **Parties** means PGT and You, or PGT's and Your successors and assigns where and when applicable;
- 1.15 **Personal Data** means information about You that is protected under the Data Protection Act;
- 1.16 **Quotation** means the quotation, proposal or other named document which provides details of the Services to be provided and a price quotation and which refers to these Terms;
- 1.17 **Services** means those services itemised in the Quotation or as amended in writing between the Parties from time to time;
- 1.18 **Software** means a set of instructions comprehensible by a computer that provides use, purpose and the inter-relation of Hardware;
- 1.19 **Software Provider** means the provider of any Software;
- 1.20 **System** means a collection of Hardware and Software and processes brought together and utilised for a purpose;
- 1.21 **Term** means for as long as the Agreement is in full force and effect unless otherwise specified;
- 1.22 **Terms** means these standard terms and conditions of PGT;
- 1.23 **TUPE** means Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- 1.24 **You or Your** means the purchaser defined as such in the Quotation and if a corporate entity, its directors, shareholders and any employee, contractor or agent who is authorised to deal directly with PGT on Your behalf;
- 1.25 In the Agreement (except where the context otherwise requires):
- 1.25.1 Headings shall not affect the interpretation of this Agreement;
- 1.25.2 use of the singular includes the plural and vice versa and use of any gender includes the other genders;
- 1.25.3 any reference to persons includes a corporate or unincorporated body (whether or not having separate legal personality);
- 1.25.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any subordinate legislation for the time being in force made under it.
- 1.25.5 any phrase introduced by the terms "including", "include", "in particular" or similar shall be construed as illustrative and shall not limit the words preceding those terms; and
- 1.25.6 any reference to any other document is a reference to that other document as amended, varied, supplemented, or novated (in each case, other than in breach of the provisions of the Agreement) at any time.
- 1.26 Where PukkaGenTek Ltd receives payment for Goods and/or Services on behalf of a licensed Franchisee, PGT only acts as the money-handling agent and is in no way responsible for the provision of those goods and/or services and is not party to this contract.
- ## 2. PERSONAL DATA
- 2.1 By personal data we mean any data which identifies You or Your account with PGT. It includes identity, which you agree to supply to us accurately and to keep up to date by notifying us of any changes to the information held. It also includes any information contained on Your Systems together with any billing information ("Personal Data").
- 2.2 Personal Data will be collected, processed and used by PGT for the purposes of billing and for other purposes mentioned in these Terms.
- 2.3 In providing the Goods and Services PGT works with other organisations who produce the Software and Hardware and is required under its licences to provide certain information about You to these organisations. By agreeing to these Terms, you agree to having your Personal Data provided to such organisations.
- 2.4 PGT may also collect Personal Data for statistical purposes.
- 2.5 PGT may hold Personal Data relating to the transactions which you enter into with us. We will disclose this Personal Data only insofar as to facilitate the provision of the Goods and Services provided to You.
- 2.6 Any telephone calls made to or from our offices may be monitored or recorded.
- 2.7 PGT shall disclose Personal Data where we are compelled to do so by law.
- 2.8 You understand and acknowledge that some of the Software may be programmed to track the number of copies deployed and to provide the software provider with such deployment and usage information. You consent to this operation and agree at all times not to hinder, impede, alter, prevent or otherwise distort, the operation of such tracking and reporting functions.
- ## 3. SERVICES
- 3.1 PGT shall endeavour to provide during Business Hours, the Goods and Services specified in the Quotation or as otherwise agreed in writing between the parties;
- 3.2 The installation and service of new Hardware and Software is not included in the Services unless expressed to the contrary in the Quotation or in writing between the Parties. Any additional Hardware or Software provided and/or installed by PGT will be installed and Serviced at an extra charge in accordance with clause 5 of these Terms.
- 3.3 PGT shall use reasonable endeavours to ensure that any routine service work or upgrade to the Management Software causes minimum disruption to the provision of the Services and Your business.
- 3.4 The provision of the Services may be temporarily suspended and without notice in the case of system failure, security issues, unexpected maintenance or repair of either the Hardware or the Software on Your System, where urgent or unexpected remedial action is required to protect the Services or Your System or for reasons beyond PGT's control. In such instances, it may be necessary to withdraw the Services in whole or part for an indefinite period of time.
- 3.5 Where circumstances under clauses 3.4 and 3.6 occur, PGT shall not be held liable and you shall not make any claim against PGT for losses howsoever caused.
- 3.6 Where Services are unavailable due to third party acts or omissions or where factors are outside the control of PGT, including without limitation the interference or withdrawal of support by PGT's licensors and business partners, virus attack and System sabotage, PGT shall use reasonable endeavours to have such support reinstated as soon as is reasonably practicable but provide no guarantee. Any such work or remedy shall be at Your cost unless it is due to PGT's negligence.
- 3.7 PGT shall not be liable to You if for any reason the Services are unavailable at any time or for any period and for any reason.
- 3.8 PGT, its Software Providers and other third party suppliers, may from time to time modify, add to or remove aspects of the Services.
- 3.9 You will be charged for using the Services in accordance with the Quotation. We reserve the right to change our fees or billing methods, but will provide You with at least thirty (30) days' advance notice of any such change. As the account holder, You are responsible for all charges incurred and purchases made by You.
- 3.10 You are required to have the following minimum requirements for PGT to provide the Services:
- 3.10.1 in respect of a PC: Windows XP, 1Gb RAM, 1Ghz processor, 512Kbps broadband, 5Gb free hard disk space, recognised up to date antivirus software;
- 3.10.2 in respect of a server: Microsoft Windows Server 2003, 2Gb RAM, 512Kbps broadband, 10Gb free hard disk space, recognised up to date antivirus software, hardware warranty;
- 3.10.3 An applied computer and information usage company policy.

- 3.11 The Services are provided for the benefit of one (1) Device and it will be presumed and the Services will be provided on the basis that Your System consists of one (1) Device unless otherwise specified.
- 3.12 In order for PGT to provide the Services You agree for PGT to download appropriate Management Software on to Your System for PGT's sole use except where otherwise agreed in writing by PGT.
- 3.13 Where non-Microsoft Software requires PGT's service or support You shall be expected to provide access and be solely responsible for the costs of third party support for PGT to liaise with where necessary.
- 3.14 Should a fault be Hardware related PGT will charge You for the part(s) replaced. PGT will use alternative, compatible parts where necessary.
- 3.15 It remains Your sole responsibility to ensure that any valid warranty in respect of any Hardware or Software is not invalidated by the performance of the Services. Any valid warranty claim remains Your sole responsibility.
- ## 4. DATA BACKUP SERVICE
- 4.1 This clause 4 applies only in the case where data managed services are expressly being provided to You by PGT in accordance with clause 1.17;
- 4.2 PGT provides various managed services whether by itself or via third parties, including, as part of its portfolio of products, data backup services
- 4.3 Where data backup services are provided, PGT agrees to provide such services using reasonable skill and care by suitably qualified and experienced personnel.
- 4.4 You acknowledge that there are risks inherent in Internet connectivity and data backup that could result in the loss of your privacy, Confidential Information and data and that PGT cannot be held liable for this unless such loss is caused by their negligence.
- 4.5 The parties agree that You are the best judge of the value and importance of the data held on Your computer system, and You will be solely responsible for:
- 4.5.1 instituting and operating all necessary back-up performance management and review procedures to ensure your backups are working, including, but not limited to PGT's backup notification service, for Your own benefit;
- 4.5.2 taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.
- 4.6 PGT will not be responsible for any loss of data in accordance with these Terms.
- 4.7 PGT will not be responsible for any delay in performing or failure to perform Our obligations to the extent that such delay or failure was due to a failure by You to perform Your obligations under this Agreement or if delay results from a failure by You to comply with reasonable requests by PGT for instructions information or action required by it to perform its obligations within a reasonable time limit.
- ## 5. PAYMENT TERMS & REFUNDS
- 5.1 You should let us know about any billing problems or discrepancies promptly after their first day on your account statement. If you do not bring them to PGT's attention in writing within 14 days you will have waived your right to dispute those problems or discrepancies.
- 5.2 All monthly rates for Services shall be paid by standing order or Direct Debit in to PGT's nominated bank account on the first day of each month for which the Services are to be provided;
- 5.3 All payments other than those referred to in clause 5.2 shall be paid to PGT by cheque, electronic bank transfer or electronic internet payment, at Your choice unless otherwise notified to You by PGT.
- 5.4 All invoices for Goods and Services not provided on a monthly basis shall be submitted at the time of sale and must be settled within fourteen (14) days of their issue date.
- 5.5 PGT shall be entitled to charge interest at the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 on all sums not settled within the terms of this Agreement.
- 5.6 PGT reserve the right to suspend performance of any Services until all sums due to PGT have been paid in full (but only after having given written notice to You of our intention so to do);
- ## 6. PROPERTY AND RISK
- 6.1 The Goods shall be at Your sole risk as from delivery and/or installation
- 6.2 In spite of delivery and/or installation of the Software or Hardware having been made, property in the Goods shall not pass to You from PGT until:
- 6.2.1 You have paid the Price plus VAT in full and in cleared funds; and
- 6.2.2 No other sums whatsoever are due from You to PGT
- 6.3 Until the property in the Goods has passed to you in accordance with clauses 6.2.1 and 6.2.2 you shall hold the Goods on a fiduciary basis as bailee for the Goods and store and mark them separately from all other goods in your possession where possible.
- 6.4 Until such time as property in the Goods passes from PGT to You, You shall upon request deliver up such of the Goods as have not ceased to be in existence or been sold to PGT If You fail to do so PGT may enter upon any premises owned occupied or controlled by You where the Goods are situated and repossess the Goods.
- ## 7. MATERIAL AND CONDUCT
- 7.1 PGT reserve the right to refuse to provide or stop providing any Services where it reasonably believes that Your System contains material:
- 7.1.1 that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience or is illegal;
- 7.1.2 for which You have not obtained all necessary licences and/or approvals;
- 7.1.3 which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in the UK or any other country in the world; or
- 7.1.4 which is technically harmful (including without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).
- 7.2 PGT will fully co-operate with any law enforcement authorities or court order requesting or directing PGT to disclose the identity or locate anyone dealing with or storing any material in breach of clause 7.1.
- 7.3 PGT will not use Your System for any purpose other than hosting any Management Software and in providing the Services.
- ## 8. INTELLECTUAL PROPERTY RIGHTS
- 8.1 The Management Software upon or through which the Services are provided are owned by licensors ("Management Software Providers") who under agreement licence the use of the Management Software to PGT.
- 8.2 All title and intellectual property rights in and to the Management Software (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Management Software) are owned by our various Management Software Providers. The Management Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your hosting of parts of the Management Software does not transfer any ownership of the Management Software or any intellectual property rights to You.
- 8.3 You shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Management Software or that appear during use of the Management Software.
- 8.4 You shall not reverse engineer, de-compile, or disassemble the Management Software.
- 8.5 The Management Software is for PGT's use in providing You with the Services and under no circumstances are You to use, access or copy the same except with the express written consent of PGT.
- 8.6 You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Management Software to any third party, and you may not permit any third party to have access to and/or use the Management Software.
- 8.7 PGT may terminate the provision of Services if you fail to comply with these Terms. In the event of termination or cancellation for any reason whatsoever, you must permit or assist PGT or its agents to remove, delete and destroy any Management Software and all of its component parts from Your System.
- 8.8 In addition to any liability you may have to PGT, you agree that you will also be legally responsible directly to the Management Software Providers for any breach of these Terms.
- 8.9 Notwithstanding the rights specified in clause 8.8 nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 8.10 Any rights not expressly granted in these terms are reserved.
- ## 9. DISCLAIMER

- 9.1 PGT, and its officers, directors, employees, shareholders or agents do not accept any liability for the use made by You of the Goods or Services other than is provided under statute.
- 9.2 To the extent permitted by law, PGT excludes all representations, warranties, conditions and other terms whether actual or implied and whether in respect of PGT, the Software Providers or Hardware Providers (including without limitation, the conditions implied by law of satisfactory quality, fitness of purpose and the use of reasonable care and skill) which but for these Terms might have effect in relation to the Goods or Services.
10. **LIABILITY**
- 10.1 PGT and its officers, directors, employees, shareholders or agents exclude all liability and responsibility for any amount or kind of loss or damage that may result to You or a third party, including without limitation, any direct, indirect, punitive, or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, use of money or loss or damages arising from or connected in any way to business interruption, and whether in thought (including without limitation negligence, contract or otherwise) in connection with the Goods or Services, in any way or in connection with the use, inability to use or the results of use of the Goods or Services, including but not limited to loss or damage due to viruses that may infect Your System or other property on account of Your using the Goods or Services, Your downloading of any material from any website, disc or other medium, or from opening an email or any of its attachments. Provided that nothing in this agreement shall exclude or limit PGT's liability for death or personal injury caused by negligence or any liability which cannot be excused or limited under statutory law.
- 10.2 All costs associated with servicing, repair or correction of equipment, software or data or any other work carried out by PGT that is required due to Your negligent or careless actions or inactions in relation to, or use of, Your System will be at your additional expense.
- 10.3 You have responsibility to have adequate system protections (including, but not limited to anti-virus, firewall, and spyware, malware, malicious code detection/prevention) installed and configured to provide regular updates. All problems relating to viruses, spyware, malware, and/or malicious code are chargeable even if under a service contract agreement. Consumables are not covered under any service contract agreement. You have responsibility to ensure each consumable item (such as ink cartridge, toner, paper etc.) is installed correctly and at a level in accordance with the manufacturer's instructions. All costs associated with servicing, repair or correction of equipment, software or data due to a consumable item will be chargeable at our standard rate.
- 10.4 PGT shall not be held liable for any costs or claims whatsoever that arise from Your neglect to meet the minimum requirements specified in clause 3.10 or to upgrade Your System when and how recommended to do so by PGT.
- 10.5 PGT does not guarantee the full security of the servers it uses and does not guarantee that it will be impossible to 'hack' into any servers or back-up devices.
- 10.6 You must ensure that You have appropriate, up to date and valid policies of insurance for any Hardware or Software supplied or installed by PGT. You are responsible for insuring the Hardware or Software from the date of installation.
11. **INDEMNITY**
- 11.1 You agree to indemnify PGT in respect of all costs and damages arising under this Agreement for all claims or potential claims under or relating to TUPE.
12. **SET-OFF**
- 12.1 You may not at any time or times, set off any liability that you have to PGT against any liability that PGT may have to You (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated).
13. **INADEQUACY OF DAMAGES**
- 13.1 Without prejudice to any other rights or remedies that PGT may have, You acknowledge and agree that damages alone may not be an adequate remedy for any breach by You of these Terms and that accordingly PGT shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of these Terms.
14. **WAIVER AND REMEDIES**
- 14.1 No failure or delay by PGT in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
15. **TERMINATION**
- 15.1 PGT has the right at any time to terminate the Agreement or part thereof with immediate effect and without liability or penalty to themselves by giving You written notice where:
- 15.1.1 You commit a breach of any of the Terms;
- 15.1.2 any distress, execution or other process is levied upon any of Your assets or Your business;
- 15.1.3 You have a bankruptcy order made against You or You make an arrangement or composition with Your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of it's undertaking or any part thereof, or a resolution is passed or a petition presented to any court for winding up or for the granting of an administration order, or any proceedings are commenced relating to Your insolvency or possible insolvency;
- 15.1.4 You cease or threaten to cease to carry on business; or
- 15.1.5 Your financial position deteriorates to such an extent that in the opinion of PGT Your capability to adequately fulfil Your obligations under the Agreement with PGT has been placed in jeopardy.
- 15.2 Either Party may terminate the Agreement or any part thereof for any reason whatsoever by giving one month's written notice to the other Party except in circumstances where a fixed or minimum Term has been agreed in writing between the parties, in which case the Agreement will remain in force for the fixed or minimum Term save that it is terminable by PGT in accordance with clause 14.1.
- 15.3 Upon notice of termination having been given all outstanding monies owed to PGT by You must be settled within fourteen days of receipt of that notice.
- 15.4 Following termination of the Agreement or part thereof under the Terms all rights and obligations of the Parties shall cease except for those rights and obligations that are intended, by implication or expressly stated, to continue beyond termination.
- 15.5 In the event of Termination of this Agreement for any reason whatsoever You shall promptly return or delete the Management Software and any of the materials supplied by PGT under the terms of clause 8.7 of this Agreement
16. **FORCE MAJEURE**
- 16.1 Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party.
- 16.2 If either Party is prevented or delayed in the performance of any of its obligations, that Party must promptly:
- 16.2.1 serve notice on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure; and
- 16.2.2 shall, subject to service of such notice and take all reasonable steps to avoid and remedy such prevention or delay; and
- 16.2.3 for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 16.2.4 If such circumstances continue for a period of more than six (6) months, either Party may terminate this Agreement by written notice to the other Party.
17. **JOINT AND SEVERAL LIABILITY**
- 17.1 An obligation of two or more parties under the Terms shall bind them jointly and severally.
- 17.2 Any claim by You against PGT under the Terms shall be limited to such amount as PGT has received from You in the twelve (12) months preceding the date the claim was notified to PGT.
18. **NO PARTNERSHIP/AGENCY**
- 18.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have nor represent that it has, any authority to make any commitments on the other's behalf.
19. **ASSIGNMENT**
- 19.1 PGT may assign the Agreement or any part of it to any person, firm or company.
- 19.2 You shall not without the prior written consent of PGT (such consent not to be unreasonably withheld or delayed):
- 19.2.1 assign, transfer, charge or deal in any other manner with the Agreement or any of Your rights under it, or purport to do any of the same; or
- 19.2.2 sub-contract any or all of Your obligations under the Agreement.
- 19.3 The Parties are entering into the Agreement for their own benefit and not for the benefit of another person.
- 19.4 Subject to and upon any succession or assignment permitted by the Agreement, any successor or assignee of the Parties shall in its own right be able to enforce any term of the Agreement in accordance with the terms of the Agreement as if it were a Party, but until such time any such successor or assignee of the Parties shall have no such rights whether as a third party or otherwise.
20. **CONFIDENTIALITY**
- 20.1 For the purposes of the Agreement, Confidential Information shall mean the existence and terms of the Agreement and all information (of whatever nature and however recorded or preserved) disclosed by one Party to the other, which is marked as or has been otherwise indicated to be confidential.
- 20.2 The Parties shall keep confidential all Confidential Information and not use it except for the purpose of exercising or performing their rights and obligations under the Agreement.
- 20.3 The Parties may disclose Confidential Information to their employees, officers, professional representatives or advisers, sub-contractors and agents, provided that such persons:
- 20.3.1 need to know it for the purpose of exercising or performing that Party's rights and obligations under the Agreement;
- 20.3.2 have been informed of the confidential nature of the Confidential Information divulged; and
- 20.3.3 agree to act in compliance with the confidentiality requirements of the Agreement.
- 20.4 The Parties must not disclose Confidential Information to any third party or use it except as otherwise permitted in the Agreement.
- 20.5 Notwithstanding any other provision of the Agreement, it shall not be a breach of the Agreement for either Party to disclose any Confidential Information pursuant to:
- 20.5.1 a court order; or
- 20.5.2 a binding request from a regulatory (or other analogous) authority with jurisdiction; or
- 20.5.3 from any other third party with power to require the disclosure of such information; provided that (to the extent it is legally permitted to do so) the affected Party gives reasonable notice of such disclosure to the other Party.
- 20.6 Subject to the other terms of the Agreement, the terms of this clause 20 shall continue to apply notwithstanding termination of the Agreement or any other cessation of any business relationship between the Parties.
21. **ENTIRE AGREEMENT**
- 21.1 The Terms together with the details contained in the Quotation constitute the entire agreement and understanding of the Parties ("the Agreement") and supersedes any previous agreement between the Parties relating to the subject matter of the Agreement.
- 21.2 The Parties acknowledge and agree that in entering into the Agreement they are not relying on any pre-contractual statement or representation.
- 21.3 You acknowledge and agree that the only remedy available to You for breach of the Agreement shall be for breach of contract under the terms of the Agreement.
- 21.4 If any provisions of the Terms are inconsistent with provisions of the Quotation, the provisions in the Quotation shall prevail.
22. **ARIATION**
- 22.1 No variation of the Agreement shall be valid unless it is notified to You in writing by or on behalf of PGT.
23. **SEVERANCE**
- 23.1 If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect.
- 23.2 If any provision of the Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
24. **NOTICES**
- 24.1 Any notice or other communication given under the Agreement shall be in writing and shall be served to the address and for the attention of the relevant Party as set out in the Quotation, or such other address, or facsimile number as may be notified in writing from time to time by the relevant Party to the other, by delivering it personally or sending it by pre-paid recorded delivery or registered post or fax or by email.
- 24.2 Any such notice referred to in clause 24.1 shall be deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting and in the case of fax or email, at the time of transmission, unless out of Business Hours in which case deemed receipt shall be during Business Hours the next Business Day.
25. **COUNTERPARTS**
- 25.1 The Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.
26. **RIGHTS OF THIRD PARTIES (EXCLUSION)**
- 26.1 Save as expressly provided in the Agreement or as otherwise agreed in writing between the Parties, no term of the Agreement shall be enforceable by a third party (being any person other than the Parties and their permitted successors and assignees).
- 26.2 Notwithstanding that any term of the Agreement may be or become enforceable by a person who is not a Party to it, the terms of the Agreement or any of them may be varied, amended or modified or the Agreement may be suspended, cancelled or terminated by agreement in writing between the Parties or the Agreement may be rescinded (in each case), without the consent of any such third party.
27. **ALTERNATIVE DISPUTE RESOLUTION**
- 27.1 If any dispute arises out of the Agreement the Parties must attempt to settle it by negotiation in the first instance.
- 27.2 If negotiations fail to resolve the dispute either Party may serve notice on the other indicating that they wish to deal with the dispute through an alternative dispute resolution procedure. Upon receipt of such a notice the other Party must agree and submit to the alternative dispute resolution procedure proposed;
- 27.3 A Party cannot commence court proceedings until at least one method of alternative dispute resolution has been genuinely submitted to and a decision obtained.
- 27.4 Nothing in this clause 27 shall prevent PGT from taking immediate legal action no matter whether any of the procedures in clauses 27.1 to 27.4 (inclusive) have been carried out, where the interests of PGT or the Management Software Provider are at risk of being damaged, devalued or otherwise amended in any way whatsoever.
28. **YOUR OBLIGATIONS AS A CUSTOMER**
- 28.1 You are responsible for agreeing to a product or service. You must supply PGT with reasonable courtesy, information and cooperation so that PGT may perform its duties. You are responsible for having backups of all data from your Device and/or System.
29. **CALL MONITORING**
- 29.1 Calls made to or from PGT may be monitored and recorded:
- 29.1.1 for training and quality purposes;
- 29.1.2 to ensure compliance and self-regulatory procedures;
- 29.1.3 as evidence of a business transaction
30. **GOVERNING LAW AND JURISDICTION**
- 30.1 The validity, construction and performance of this Agreement shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.