



**ES**  
BROADCAST

# TERMS OF BUSINESS

UNITED KINGDOM

18:48:29

## 1 These terms

- 1.1 What these terms cover.** These are the terms and conditions on which we supply new, used and/or ex-demonstration broadcast equipment to you ("**Goods**"). These terms will also apply to any systems integration services ("**Services**") we agree to provide to you, where such services are supplied with the Goods to:
  - 1.1.1** deliver, install and integrate Goods (including hardware) and software to form the System, as more particularly specified in your order; and
  - 1.1.2** use reasonable endeavours to provide the installed and tested System (**Completion**) on or before the completion date, as specified in your order (**Completion Date**), ("**Services**").
- 1.2 Why you should read them.** Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide any Goods and Services to you, how you and we may change or end the contract, what to do if there is a problem, and other important information.
- 1.3 Are you a business customer or a consumer?** In some areas you will have different rights under these terms depending on whether you are a business or consumer. You are a consumer if:
  - (a) you are an individual.
  - (b) you are buying Goods from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).
- 1.4 If you are a business customer this is our entire agreement with you.** If you are a business customer these terms constitute the entire agreement between us in relation to your purchase. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

## 2 Information about us and how to contact us

- 2.1 Who we are.** We are ES Broadcast Ltd. a company registered in England and Wales. Our company registration number is 13097814 and our registered office is at 4th Floor, The Anchorage, 34 Bridge Street, Reading, RG1 2LU. Our registered VAT number is GB125 5023 50.
- 2.2 How to contact us.** You can contact us by calling us on +44 (0)1923 650 080 or by writing to us at sales@esbroadcast.com or at Unit 34, Orbital 25 Business Park, Dwight Road, Watford, Hertfordshire, WD18 9DA.
- 2.3 How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.
- 2.4 "Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.

## 3 Our contract with you

- 3.1 How we will accept your order.** Our acceptance of your order will take place when we provide you with written acceptance of your order at which point a contract will come into existence between you and us.
- 3.2 If we cannot accept your order.** If we are unable to accept your order, we will inform you of this and will not charge you for the Goods or Services you have ordered. This might be because any Goods you have ordered are out of stock or no longer available from our suppliers, because we have identified an error in the price or description of the Goods and Services, because we are unable to meet a delivery deadline or the Completion Date you have specified or because of unforeseen circumstances beyond our reasonable control. In any such cases, we will endeavour to suggest alternative Goods which you may decide, at your sole discretion, to order.
- 3.3 Where we sell our Goods and provide Services.** Our website and brochures are primarily for the promotion of our Goods and Services to customers in the UK. However, we may sell and deliver our Goods and provide Services to customers outside of the UK where we expressly agree in writing to do so. In such circumstances, the customer will be liable to us for the additional costs and expenses associated with providing the Goods and Services outside of the UK, including any additional delivery costs, taxes, charges, levies, assessments and other fees imposed on the purchase or import of any Goods or supply of Services outside of the UK.

## 4 Terms relevant to Goods

- 4.1 Our Goods.** The Goods that we supply are manufactured by third parties and may be supplied in new, used or ex-demonstration condition. We will specify in the description of the Goods on our website, in our brochures and advertisements, in any other promotional media or platforms we may use and in our written quotation the condition of the Goods (including whether they are new, used or ex-demonstration), as well as the manufacturer of such Goods.
- 4.2 Goods may vary slightly from their pictures.** The images of the Goods on our website and/or in our brochures are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours accurately reflects the colour of the Goods. Your Goods may vary slightly from those images.
- 4.3 Packaging.** The packaging of the Goods, especially of any Goods sold in a used or ex-demonstration condition, may vary from that shown in images on our website and/or in our brochures.
- 4.4 Delivery costs.** The costs of delivery will be as displayed to you on our website and/or in our brochure or as otherwise notified to you before you place your order. If we agree in writing to deliver Goods outside of the UK, any additional delivery costs associated therewith will be notified to you in writing.
- 4.5 When we will provide the Goods.** During the order process we will provide you with an estimated delivery date for provision of the Goods.
- 4.6 If you are not available at your requested delivery address when the Goods are delivered.** If no one is available at your address to take delivery and the Goods cannot be posted through your letterbox, we will leave you a note informing you of how to rearrange delivery.
- 4.7 If you do not re-arrange delivery.** If after a failed delivery to you, you do not re-arrange delivery we will contact you for further instructions and may charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery we may end the contract and clause 10.2 will apply.
- 4.8 When you become responsible for the Goods.** The Goods will be your responsibility from the time we deliver the Goods to the address you gave us.
- 4.9 When you own Goods.** You own the Goods once we have received payment in full. Until we have received payment in full, you must:
  - 4.9.1** store the Goods separately from all other Goods held by you so that they remain readily identifiable as our property;
  - 4.9.2** not remove, deface or obscure any identifying mark on or relating to the Goods; and
  - 4.9.3** maintain the Goods in satisfactory condition.
- 4.10 Guarantee.** We offer the following guarantee to our customers in respect of our Goods:

**New Goods:** One year back-to-base and labour warranty or subject to manufacturer's warranty, whichever is longer

**Ex-demonstration Goods:** Six months unless an extended back-to-back manufacturer's warranty is purchased and applied at point of sale

**Used Goods:** Three months unless you have purchased an extended back-to-back manufacturer's warranty.

If you are a consumer, the above guarantees do not affect your legal rights.  
If we offer any guarantee in relation to the Services you have ordered, we will agree this with you separately.  
If you have any queries or would like to make a claim under the above guarantee, you can telephone our customer service team on +44 (0)1923 650 080 or write to us at sales@esbroadcast.com.

## 5 Terms relevant to Goods and Services

- 5.1 We are not responsible for delays outside our control.** If our supply of the Goods or Services is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any Goods and/or Services you have paid for but not received.
- 5.2 What will happen if you do not give required information to us.** We may need certain information from you so that we can supply the Goods and/or Services to you. If so, this will have been stated in the description of the Goods and/or Services on our website and/or in our brochures. We will contact you to ask for this information. If you do not give us this information within a reasonable time of us

asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and clause 13.2 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the Goods and/or Services late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

- 5.3 Reasons we may suspend the supply of Goods and/or Services to you.** We may have to suspend the supply of Goods and/or Services to:
  - 5.3.1** deal with technical problems or make minor technical changes;
  - 5.3.2** update the Goods and/or Services to reflect changes in relevant laws and regulatory requirements;
  - 5.3.3** make changes to the Goods and/or Services as requested by you or notified by us to you (see clause 6).
- 5.4 We may also suspend supply of the Goods and/or Services if you do not pay.** If you do not pay us for the Goods and/or Services when you are supposed to (see clause 9.4) and you still do not make payment within 7 days of us reminding you that payment is due, we may suspend supply of the Goods and/or Services until you have paid us the outstanding amounts. We will contact you to tell you we are suspending supply of the Goods and/or Services. We will not suspend the Goods and/or Services where you dispute the unpaid invoice (see clause 9.7). We will not charge you for the Goods and/or Services during the period for which they are suspended. As well as suspending the Goods and/or Services we can also charge you interest on your overdue payments (see clause 9.6).

## 6 Terms relevant to Services

- 6.1 Documentation.** We will provide the relevant operating manuals, user instruction manuals (manuals may be provided through website links), technical literature and all other related materials (including the licence terms referred to in clause 7.4 below) in human- and/or machine-readable forms relating to the System and containing sufficient up-to-date (as at the Completion Date) information for the proper use and maintenance of the System (Documentation). Such Documentation may be supplied in electronic form.
- 6.2 Copies of Documentation.** You may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the System and for training your personnel in use of the System. You shall ensure that all proprietary notices (whether ours or a third party's) are reproduced in any such copy. The Documentation is, and shall remain, our property or the property of our licensors and you acquire no rights in or to the said Documentation other than those expressly granted by these terms.
- 6.3 Cabling.** We will supply all cabling and other equipment needed for the installation of the System at the place as detailed in order (Site).
- 6.4 Third party licences.** We shall provide the System and configurations to you under the standard licence terms provided by the relevant third parties, copies of which shall be provided to you, and you agree to be bound to the relevant third parties by such licence terms. You will be liable to us for any loss or damage we suffer as a result of your failure to comply with the terms of any third-party licence.
- 6.5 Intellectual property rights.** We or our licensors own all intellectual property rights in the design of the System and the Documentation. You hereby acknowledge and agree that any breach by you of clause 7.2 or 7.4 may breach our or the relevant third party's intellectual property rights. You agree to use your best endeavours not to breach such intellectual property rights and to ensure that your employees, agents and representatives who are given access to the Documentation are aware of the confidential and proprietary nature of the information contained within it and are under similar obligations not to do anything that might breach our or the relevant third party's intellectual property rights.
- 6.6 Site preparation.**
  - 6.6.1** Within a reasonable time before the Completion Date, we will provide such information and assistance to you as may be necessary to enable you to prepare the Site for the installation of the relevant item of the System or any part of it.
  - 6.6.2** You will, at your own expense, prepare the Site in accordance with the information and reasonable time frames provided by us under clause 7.6.1.
  - 6.6.3** You will be responsible for ensuring that each item of Electronic Equipment is installed and in working order and available to us as soon as possible and in any event no later than the date specified by us under clause 7.6.1.



**6.7 Acceptance.** You shall be deemed to have accepted the System if:

- 6.7.1 completion has occurred (whether on the Completion Date or otherwise); and
- 6.7.2 you have not notified us of any problem with the System within 14 days following Completion; or
- 6.7.3 you commence operational use of the System, whichever is the earlier (Acceptance Date).

**6.8 Extensions of time for Completion.** We shall be given an extension of time for Completion of the Services if one or more of the following events occurs:

- 6.8.1 Any act or omission by you causes a delay to the supply of the Services;
- 6.8.2 Delay is caused in whole or in part by an action or omission of you or your employees, agents or third-party contractors; or
- 6.8.3 Delay is caused by Site or Electronic Equipment not being ready by the dates specified in clause 7.5 or such other date as agreed in writing between us in which case we will notify you in writing no more than seven (7) days after the event causing the delay. Such notice will specify the event which caused the delay, the length of the delay and the resulting extension of time to which we are entitled.

**6.9 Increased costs due to delay.** If we can demonstrate that a delay exists under clause 7.8 and such delay has resulted in increased costs to us in carrying out our obligations under the contract, we may increase the price (and any other applicable charges) by an amount not exceeding any such increased cost. If you are a consumer and we demonstrate such increased cost to you, you will be entitled to contact us to end the contract and we will refund any money you have paid in advance for Goods and/or Services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of you ending the contract and for any Goods or Services we have already provided to you.

**6.10 Your obligations.** You agree that you will:

- 6.10.1 not, without our prior written consent, allow any person other than one of our representatives to modify, repair or maintain any part of the System for a period of three months after the Acceptance Date;
- 6.10.2 grant us and our employees, agents, representatives and contractors all reasonable access to your Site, Electronic Equipment and existing system(s) so as to not cause delay to Completion and so as not to cause us to incur extra costs as a result of such failure to grant access;
- 6.10.3 cooperate with us in any manner we reasonably require in order to carry out the Services, including provision of information and data, and making available suitably qualified employees and contractors and, subject to our compliance with your reasonable security requirements, provide direct or remote (as we reasonably request) access to your existing systems, Electronic Equipment and Site for the purpose of carrying out diagnostics and correction of defects. If our access is remote, you and we will comply with any additional (reasonable) requirements for security and encryption techniques or software which you or we may specify;
- 6.10.4 comply, as soon as reasonably practicable, with all our reasonable requests for information or assistance.

**6.11 Warranties.**

- 6.11.1 We warrant and represent that the System at the Acceptance Date, and for three months after that date, will perform in accordance with the specification set out in your order in all material respects, unless the failure to do so is due to any act or omission of anyone other than us. Any unauthorised modification, use or improper installation of the System by you or on your behalf will render this warranty and our obligations in relation to the Services under the contract null and void.
- 6.11.2 The sole remedy for breach of the warranty under clause 7.11.1 shall be as follows:
  - (a) Subject to clause 7.11.3, the correction of any defects which constitute such breach; and
  - (b) Where the failure is due to an act or omission by anyone other than us, in accordance with the terms (including time limits) of:
    - (i) the relevant manufacturers' warranties from which the Customer benefits under clause 4.10 above; or
    - (ii) the relevant third-party warranties from which the Customer benefits under clause 7.11.4 below.
- 6.11.3 We do not warrant or guarantee that we will be able to rectify all defects in the System.

6.11.4 You acknowledge that the only warranties in relation to third-party software or the supply thereof are those contained in the relevant third-party licence of the same, and that to the extent that any such warranties are given to us, we will pass on the benefit of such warranties to you.

**6.12 Increased cost due to investigation of defects.** If we visit your Site or other premises at your request to investigate a failure of the System, which proves in our reasonable opinion not to have been caused by a defect in the System, we will be entitled to charge you for the time we have spent on such visit on a time, materials and expenses basis at our standard rates then in force.

## 7. Your right to make changes

**7.1** If you wish to make a change to the Goods and/or Services you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Goods and/or Services, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

## 8. Our rights to make changes

**8.1 Minor changes to the Goods and/or Services.** We or the relevant manufacturer may change the Goods and/or Services to:

- 8.1.1 reflect changes in relevant laws and regulatory requirements; and
- 8.1.2 implement minor technical adjustments and improvements, for example to address a security threat. These changes will not affect your use of the Goods and/or Services.

**8.2 More significant changes to the Goods and/or Services.** In addition, we or the relevant manufacturer may make more significant changes to the Goods and/or Services, but if we do so we will notify you and you may then contact us to end the contract before the changes take effect and receive a refund for any Goods or Services paid for but not received.

## 9 Price and payment

**9.1 Where to find the price for the Goods and Services.** The price of the Goods and Services (which includes VAT or other applicable sales tax) will be the price notified to you at the time you placed your order. We take reasonable care to ensure that the price of the Goods and/or Services advised to you is correct. However please see clause 9.3 for what happens if we discover an error in the price of the Goods and/or Services you order.

**9.2 We will pass on changes in the rate of VAT or other applicable sales tax.** If the rate of VAT or other applicable sales tax changes between your order date and the date we supply the Goods and/or Services or the Completion Date (as applicable), we will adjust the rate of VAT or other applicable sales tax that you pay, unless you have already paid for the relevant Goods and/or Services in full before the change in the rate of VAT or other applicable sales tax takes effect.

**9.3 What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the Goods or Services may be incorrectly priced. We will normally check prices before accepting your order so that, where the correct price of the Goods or Services at your order date is less than our stated price on such date, we will charge the lower amount. If the correct price of the Goods or Services at your order date is higher than our stated price, we will contact you for your instructions before we accept your order.

**9.4 When you must pay and how you must pay.** We accept payment by bank transfer, banker's draft, cash, confirmed letter of credit and agreed finance company payment. You must pay for the Goods and Services in accordance with the payment terms agreed during the order process.

**9.5 Our right of set-off if you are a business customer.** If you are a business customer you must pay all amounts due to us under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) unless otherwise agreed in advance and in writing.

**9.6 We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the Bank of England's base lending rate from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

**9.7 What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us within 14 days of the date of the invoice to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we reserve the right to charge you interest on correctly invoiced sums from the original due date.

## 10 Mutual rights to end the contract

**10.1 Repeated breach.** Both you (whether you are a consumer or a business customer) and we will be able to end the contract if the other party breaks any of the terms of the contract in such a manner as to reasonably justify the opinion that the breaching party's conduct is inconsistent with it having the intention or ability to carry out its obligations under the contract.

**10.2 Insolvency.** Both you (whether you are a consumer or a business customer) and we can end the contract for the following reasons:

**10.2.1** If the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or: (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; or (being an individual) is deemed either unable to pay its 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) has any partner to whom any of the foregoing apply;

**10.2.2** If the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**10.2.3** If a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**10.2.4** If an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);

**10.2.5** If the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

**10.2.6** If a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

**10.2.7** If the other party (being an individual) is the subject of a bankruptcy petition, application or order;

**10.2.8** If a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;

**10.2.9** If any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.1 clause 10.2.8 (inclusive); or

**10.2.10** If the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 11 Your rights to end the contract

**11.1 Ending the contract because of something we have done or are going to do.** If you are ending a contract for a reason set out at clause 11.1.1 to 11.1.4 below, the contract will end immediately and we will refund you in full for any Goods and/or Services which you have paid for but not received and you may also be entitled to compensation. The reasons are:

**11.1.1** We have told you about an upcoming change to the Goods, the Services or these terms which you do not agree to (see clause 8.2);

**11.1.2** We have told you about an error in the price or description of the Goods or the Services you have ordered and you do not wish to proceed;

- 11.1.3 There is a risk that supply of the Goods or the Services may be significantly delayed because of events outside our control; or
- 11.1.4 You have a legal right to end the contract because of something we have done wrong, including if we have broken the contract and you have notified us of the breach and we have not remedied that breach within 14 days of receiving such notification.

**11.2 Exercising your right to change your mind if you are a consumer (Consumer Contracts Regulations 2013).** If you are a consumer then for most Goods bought at a distance or off-premises you have a legal right to change your mind within 14 days and receive a refund. These rights are explained in more detail in these terms.

**11.3 When consumers do not have a right to change their minds.** Your right as a consumer to change your mind does not apply in respect of:

- 11.3.1 services, once these have been completed, even if the cancellation period is still running;
- 11.3.2 sealed audio or sealed video recordings or sealed computer software, once these Goods are unsealed after you receive them;
- 11.3.3 any Goods which become mixed inseparably with other items after their delivery; and
- 11.3.4 any Goods that are made to your specifications or are clearly personalised.

**11.4 How long do consumers have to change their minds?** If you are a consumer, how long you have to change your mind depends on what you have ordered and how it is delivered:

- 11.4.1 If you have bought Services, you have 14 days after the day we email you to confirm we accept your order. However, once we have completed the Services you cannot change your mind, even if the period is still running. If you cancel after we have started the Services, you must pay us for the Services provided up until the time you tell us that you have changed your mind;
- 11.4.2 If you have bought Goods, you have 14 days after the day you (or someone you nominate) receive the Goods, unless:
- (a) your Goods are split into several deliveries over different days. In this case you have until 14 days after the day you (or someone you nominate) receive the last delivery.
- (b) your Goods are for regular delivery over a set period. In this case you have until 14 days after the day you (or someone you nominate) receive the first delivery of the Goods.

**11.5 Ending the contract where you are a consumer and where we are not at fault and there is no right to change your mind.** If you are a consumer, even if we are not at fault and you are not a consumer who has a right to change their mind, you can still end the contract before it is completed, but you may have to pay us compensation. A contract for Goods is completed when the Goods are delivered and paid for. A contract for Services is completed when we have finished providing the Services and you have paid for them. If you are a consumer and you want to end a contract before it is completed where we are not at fault and you are not a consumer who has changed their mind, just contact us to let us know. The contract will end immediately and we will refund any sums paid by you for Goods or Services not provided but we may deduct from that refund (or, if you have not made an advance payment, charge you) reasonable compensation for the net costs we will incur as a result of your ending the contract which may include, but are not limited to, any re-stocking fees which may be charged to us by our suppliers in respect of the Goods ordered by you under the contract.

## 12 How to end the contract with us (including if you are a consumer who has changed their mind)

- 12.1 Tell us you want to end the contract.** To end the contract with us, please let us know by doing one of the following:
- 12.1.1 **Email.** Email us at sales@esbroadcast.com. Please provide your name, address, details of the order (including any relevant order number) and, where available, your phone number and email address.
- 12.1.2 **By post.** Write to us at ES Broadcast Ltd, Unit 34, Orbital 25 Business Park, Dwight Road, Watford, Hertfordshire, WD18 9DA, including details of what you bought, when you ordered or received it and your name and address.
- 12.2 Returning Goods after ending the contract.** If you end the contract for any reason after Goods have been dispatched to you or you have received them, you must return them to us by post to ES Broadcast Ltd, Unit 34, Orbital 25 Business Park, Dwight Road, Watford, Hertfordshire, WD18 9DA. If you are a consumer exercising your right to change your mind you must send off the Goods within 14 days of telling us you wish to end the contract.

**12.3 When we will pay the costs of return.** We will pay the costs of return:

- 12.3.1 if the Goods are faulty or misdescribed; or
- 12.3.2 if you are ending the contract because we have told you of an upcoming change to the Goods, the Services or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong.

In all other circumstances (including where you are a consumer exercising your right to change your mind) you must pay the costs of return.

**12.4 How we will refund you.** If you are entitled to a refund under these terms we will refund you the price you paid for the Goods and/or Services including any delivery costs, by the method you used for payment. However, we may make deductions from the price, as described below.

**12.5 When we may make deduction from refunds if you are a consumer exercising your right to change your mind.** If you are exercising your right to change your mind:

- 12.5.1 we may reduce your refund of the price (excluding delivery costs) to reflect any reduction in the value of the Goods, if this has been caused by your handling them in a way which would not be permitted in a shop. If we refund you the price paid before we are able to inspect the Goods and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount. We may reduce your refund of the price charged for Services to reflect any Services we have already provided up until the time you tell us that you have changed your mind as set out in Clause 11.4.1. Once we have completed the Services you cannot change your mind, even if the period is still running, and you will not be refunded the price charged for these Services.

- 12.5.2 the maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method we offer.

**12.6 When your refund will be made.** We will make any refunds due to you as soon as possible. If you are a consumer exercising your right to change your mind then your refund will be made within 14 days from the day on which we receive the Goods back from you or, if earlier, the day on which you provide us with evidence that you have sent the Goods back to us. For information about how to return Goods to us, see clause 12.2.

## 13 Our rights to end the contract

**13.1 We may end the contract if you break it.** We may end the contract at any time by writing to you if:

- 13.1.1 you do not make any payment to us when it is due and you still do not make payment within 7 days of us reminding you that payment is due;
- 13.1.2 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Goods and/or Services;
- 13.1.3 you do not, within a reasonable time, allow us to deliver the Goods or provide the Services to you;
- 13.1.4 you do not, within a reasonable time, allow us access to your Site or other premises to supply the Services or
- 13.1.5 you breach your obligations in clause 7.5.

**13.2 You may have to compensate us if you break the contract.** If we end the contract in the situations set out in clause 13.1 we will refund any money you have paid in advance for Goods and/or Services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

## 14 What happens when you or we end the contract:

**14.1 What you and we must do when the contract ends.**

- 14.1.1 When the contract ends for any reason, we will:
- (a) promptly refund any portion of the price to you which relates to Goods or Services which you have paid for but not received, on a pro rata basis;
- (b) as soon as reasonably practicable, vacate your Site or other premises, leaving them clean and tidy and removing any Goods, materials or equipment belonging to us. You can dispose of any Goods, materials or equipment that we have not removed 60 days after the contract ends.
- 14.1.2 When the contract ends for any reason, you will immediately pay any outstanding unpaid invoices and interest due to us. We will submit invoices for any Goods and/or Services that we have supplied, but for which we have not yet submitted an invoice, and you will pay these invoices immediately on receipt.

## 15 If there is a problem with the Goods and/or Services

**15.1 How to tell us about problems.** If you have any questions or complaints about the Goods and/or Services, please contact us. You can telephone our customer service team on +44 (0)1923 650 080 or write to us at sales@esbroadcast.com.

## 16 Your rights in respect of defective Goods if you are a consumer

- 16.1 If you are a consumer we are under a legal duty to supply Goods that are in conformity with this contract. Nothing in these terms will affect your legal rights.
- 16.2 **Your obligation to return rejected Goods.** If you wish to exercise your legal rights to reject defective Goods you must post them back to us. We will pay the costs of postage or collection.

## 17 Your rights in respect of defective Services if you are a consumer

- 17.1 If you are a consumer:
- 17.1.1 you can ask us to repeat or fix a Service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it;
- 17.1.2 if you haven't agreed a price beforehand, what you're asked to pay must be reasonable; and
- 17.1.3 if you haven't agreed a time beforehand, the Services must be carried out within a reasonable time.

## 18 Your rights in respect of defective Goods if you are a business

- 18.1 If you are a business customer we warrant that on delivery, any Goods shall:
- 18.1.1 conform in all material respects with their description; and
- 18.1.2 be free from material defects in design, material and workmanship.
- 18.2 Subject to clause 18.3, if:
- 18.2.1 you give us notice in writing within a reasonable time of discovery that the Goods do not comply with the warranty set out in clause 18.1;
- 18.2.2 we are given a reasonable opportunity of examining such Goods; and
- 18.2.3 you return such Goods to us at our cost, we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 18.3 We will not be liable for the failure of any Goods to comply with the warranty in clause 18.1 if:
- 18.3.1 you make any further use of such Goods after giving a notice in accordance with clause 18.2.1;
- 18.3.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 18.3.3 the defect arises as a result of us following any drawing, design or specification supplied by you;
- 18.3.4 you alter or repair the Goods without our written consent; or
- 18.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions.
- 18.4 Except as provided in this clause 18, we shall have no liability to you in respect of the failure of Goods to comply with the warranty set out in clause 18.1.
- 18.5 These terms shall apply to any repaired or replacement Goods supplied by us under clause 18.2.

## 19 Our responsibility for loss or damage suffered by you if you are a consumer

- 19.1 **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the order process.
- 19.2 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for:
- 19.2.1 death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;

- 19.2.2 fraud or fraudulent misrepresentation;
- 19.2.3 breach of your legal rights in relation to the Goods or the Services; and
- 19.2.4 defective Goods under the Consumer Protection Act 1987.

19.3 **When we are liable for damage to your property.** If we are providing Services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the Services.

19.4 **We are not liable for business losses.** If you are a consumer we only supply the Goods to you for domestic and private use. If you use the Goods for any commercial, business or re-sale purpose our liability to you will be limited as set out in clause 20.

## 20 Our responsibility for loss or damage suffered by you if you are a business

20.1 Nothing in these terms shall limit or exclude our liability for:

- 20.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- 20.1.2 fraud or fraudulent misrepresentation;
- 20.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 20.1.4 defective Goods under the Consumer Protection Act 1987; or
- 20.1.5 any matter in respect of which it would be unlawful for us to exclude or restrict liability.

20.2 Except to the extent expressly stated in these terms, all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded. Without limitation, we specifically deny any implied or express representation that the System we provide will be fit:

- 20.2.1 to operate in conjunction with any hardware or software other than with those that are identified in the Documentation as being compatible with the System; or
- 20.2.2 to operate uninterrupted or error-free.

20.3 Subject to clause 20.1:

- 20.3.1 We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss (whether direct or indirect) of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, or any indirect or consequential loss arising under or in connection with any contract between us; and
- 20.3.2 Our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid by you for Goods and/or Services (as applicable) under this contract.

## 21 Personal data

21.1 For the purposes of these terms, "Data Protection Legislation" means:

21.1.1 unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR, the Data Protection Act 2018 and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and

21.1.2 any successor legislation to the GDPR or the Data Protection Act 2018, and "data controller", "data processor", "personal data" and "data subject" shall each have the meanings as defined in the Data Protection Legislation.

21.2 Where we are acting as the data controller, we will only process your personal data set out in our Privacy Policy (<https://www.esbroadcast.com/about-us/privacy-policy>), as such document may be amended from time to time by us at our sole discretion.

21.3 If you are a business customer and we process any personal data on your behalf when performing our obligations under our contract with you, you acknowledge that you will be the data controller and we will be the data processor for the purposes of the Data Protection Legislation. We may process personal data on your behalf including the names and business contact details (including job title, email address and phone number) of your employees in order to fulfil our obligations under these terms and our contract with you. We will only process such personal data for as long as is necessary to comply with our obligations under these terms and the contract.

21.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

21.5 Without prejudice to the generality of clause 21.4, you will ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the contract.

21.6 Without prejudice to the generality of clause 21.4, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under these terms and the contract:

- 21.6.1 process that personal data only on your written instructions unless we are required by the Data Protection Legislation or any other law applicable to us, to process that personal data ("Applicable Laws"). Where we are relying on Applicable Laws as the basis for processing personal data, we shall notify you of this before performing the processing required by the Applicable Laws, unless those Applicable Laws prohibit us from so notifying you;
- 21.6.2 ensure that we have 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;
- 21.6.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 21.6.4 assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 21.6.5 notify you without undue delay on becoming aware of a personal data breach;
- 21.6.6 at your written direction, delete or return personal data and copies thereof to you on termination of the contract unless required by Applicable Law to store the personal data; and
- 21.6.7 maintain complete and accurate records and information to demonstrate our compliance with this clause 21.

21.7 You consent to us appointing third-party processors of personal data under our contract with you. We confirm that we have entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially the same as those set out in this clause 21 and in either case we confirm reflect and will continue to reflect the requirements of the Data Protection Legislation. As between you and us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us.

21.8 You consent to us transferring personal data outside of the European Economic Area for the purposes of our contract with you, provided that the following conditions are fulfilled:

- 21.8.1 Either you or we have provided appropriate safeguards in relation to the transfer;
- 21.8.2 The data subject has enforceable rights and effective legal remedies;
- 21.8.3 We comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 21.8.4 We comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;

21.9 We may at any time revise this clause 21 by replacing it with any applicable controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme.

21.10 If you are a business customer, you shall defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your failure to comply with this clause 21.

## 22 Notices and communications

22.1 Both we and you will:

- 22.1.1 give any notice or other communication required to be given under the contract, in writing; and
- 22.1.2 deliver such notice personally, by pre-paid first-class post or recorded delivery; by commercial courier; or by email,

to the postal address or email address we specify to each other from time to time.

22.2 Any notice or other communication will be deemed to have been duly received:

- 22.2.1 if delivered personally, when left at the address referred to in clause 22.1;
  - 22.2.2 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;
  - 22.2.3 if sent by pre-paid first class post, or recorded delivery, on the second day after posting; and
  - 22.2.4 if delivered by email, on the next day after transmission, (in each case, unless delivered outside of the hours 9:00am to 5:30pm Monday to Friday, excluding public holidays in the place of receipt (Business Days), in which case it will be deemed received at 9.00am on the next Business Day).
- 22.3 The provisions of this clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

## 23 Other important terms

23.1 **Time is not of the essence.** You and we agree that any dates (including the Completion Date) quoted for delivery of the Goods and/or Services are approximate only, and that the time of delivery is not of the essence.

23.2 **We may transfer this contract to someone else.** We may transfer our rights and obligations under these terms to another organisation.

23.3 **You need our consent to transfer your rights to someone else (except that you can always transfer our guarantee).** You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing. However, if you are a consumer you may transfer our guarantee at clause 4.10 to a person who has acquired the Goods. We may require the person to whom the guarantee is transferred to provide reasonable evidence that they are now the owner of the relevant item or property.

23.4 **Nobody else has any rights under this contract (except someone you pass your guarantee on to).** This contract is between you and us. No other person shall have any rights to enforce any of its terms, except as explained in clause 23.3 in respect of our guarantee. Neither of us will need to get the agreement of any other person in order to end the contract or make any changes to these terms.

23.5 **We can agree to vary the contract.** You and we can agree to vary the contract but any such variation must be in writing and signed by both you and us (or our authorised representatives).

23.6 **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

23.7 **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Goods and/or Services, we can still require you to make the payment at a later date.

23.8 **Which laws apply to this contract and where you may bring legal proceedings.**

Any dispute or claim arising out of or in connection with a contract between us or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.