

1. **Interpretation**  
In these terms and conditions (the 'Conditions') the following words and expressions shall have the following meanings:  
**'Company'**: Ontrax Limited (Company Number 6469626) whose registered office is at 35 Stow Park Circle, Newport, Gwent, NP20 4HF;  
**'Company's Equipment'**: any equipment provided by or on behalf of the Company and used directly or indirectly in the supply of the Services;  
**'Contract'**: the Company's acceptance of the Customer Instructions for the provision of Services, or the Customer's acceptance of a quotation for Services by the Company under condition 2.4;  
**'Customer'**: the person, firm or company who purchases Services from the Company;  
**'Customer Instructions'**: the instructions given to the Company by the Customer;  
**'Intellectual Property Rights'**: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;  
**'Report'**: any document produced by the Company in connection with the provision of the Services;  
**'Repossession'**: the repossession of plant and/or machinery conducted in accordance with the Customer's Instructions;  
**'Sale'**: the sale of plant and/or machinery by the Company as agent for the Customer;  
**'Services'**: the services to be provided by the Company under the Contract as agreed with the Customer, together with any other services which the Company provides, or agrees to provide, to the Customer which may include pricing, inspections, re-marketing, storage, valuations, repossessions or agency sales of plant and/or machinery and/or the production of a Report in connection with these Services;  
**'Valuation'**: the valuation of plant and/or machinery by the Company in accordance with the Customer's Instructions;  
**'VAT'**: value added tax where due and any similar additional tax.  
All Services provided by the Company are provided on these Conditions as set out below.
2. **Application of Conditions**
  - 2.1 These Conditions shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's Instructions, acceptance of a quotation, or specification supplied by the Customer, or implied by law, trade, custom, practice or course of dealing.
  - 2.2 These Conditions may be varied only by agreement by an authorised officer or agent of the Company and no other action on the part of the Company shall be construed as an acceptance of any other conditions whatsoever.
  - 2.3 The Customer's Instructions may be varied only by agreement between an authorised officer of the Company and the Customer.
  - 2.4 The Customer's acceptance of a quotation for Services constitutes an offer by the Customer to purchase the Services on these Conditions. No offer placed by the Customer shall be accepted by the Company other than by confirmation from an authorised representative of the Company or (if earlier) by the Company starting to provide the Services.
  - 2.5 Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.4.
3. **Commencement and duration**  
The Services supplied under the Contract shall be provided by the Company to the Customer as and when agreed by the parties and, subject to Condition 8, shall continue to be supplied until the Company has provided the Services as determined by the Company in accordance with the Customer's Instructions.
4. **Price**
  - 4.1 In consideration for the provision of the Services by the Company, the Customer shall pay the fees agreed with the Company for the Services. The fees shall be exclusive of VAT. Where VAT is payable, the Customer shall pay the Company, in addition to the fees agreed, an amount on account of VAT shown on the invoice rendered by the Company.
  - 4.2 Any fees will exclude the cost of freight, storage, insurance, sales taxes or delivery costs which the Company may incur in the provision of the Services. Such expenses shall be invoiced by the Company together with any applicable VAT, which the Company shall add to its invoices at the appropriate rate.
  - 4.3 Any fees will exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials, the hiring of any Company Equipment and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services. Such expenses, materials, hiring charges and third party services shall be invoiced by the Company together with any applicable VAT, which the Company shall add to its invoices at the appropriate rate.
  - 4.4 The fees agreed shall be based on the Customer's Instructions and the information provided by the Customer. The Company shall use its reasonable endeavours to provide an accurate estimate of its fees although if the remit of the Customer's Instructions changes the Company reserves the right to vary its fee proposal for the Services.
  - 4.5 Where it is necessary to undertake additional unforeseen work for the proper performance of the Services, the Company will use its reasonable endeavours to inform the Customer before such work is undertaken and provide the Customer with an estimate of its additional fees. However, in the event that this is not practicable for the Company, the Customer authorises the Company to carry out the additional work and agrees to pay any additional fees incurred by the Company in the performance of the additional work.
5. **Payment**
  - 5.1 The Customer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within thirty (30) days of receipt, to a bank account nominated by the Company, unless otherwise agreed by the Company.
  - 5.2 Payment shall be in GBP sterling unless expressly agreed to the contrary.
  - 5.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:
    - 5.3.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Company may claim interest and penalties under the Late Payment of Commercial Debts (Interest) Act 1998; and
    - 5.3.2 suspend all Services until payment has been made in full. Time for payment of any sums due to the Company from the Customer shall be of the essence.
  - 5.4 All unpaid balances will constitute a debt payable by the Company and the Customer shall indemnify the Company on demand against all costs, charges, expenses and legal costs incurred by the Company in recovering unpaid balances owed by the Customer.
  - 5.5 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This Condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
  - 5.6 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.
6. **The Services**
  - 6.1 The nature of the Services to be provided by the Company shall be determined by the Customer's Instructions, as agreed with the Company.
  - 6.2 Wherever possible the Customer's Instructions should be confirmed in writing. However, in circumstances where this is not possible, verbal Instructions will be accepted.
  - 6.3 The Company shall use its reasonable endeavours to provide the Services in accordance with the Customer's Instructions.
  - 6.4 The Company shall use its reasonable endeavours to meet any performance dates agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
  - 6.5 In providing the Services, and to be able to provide accurate advice, the Customer consents to the Company contacting manufacturers or suppliers of plant and/or machinery and any finance companies [and shall procure consent from any third parties where required for the Services].

- 6.6 The scope of the Services undertaken by the Company will be limited by the time available and by the information made available by the Customer. Such information will be accepted by the Company at face value and will be unaudited. In the circumstances, the Customer should not rely on the Company's work or any Report as being comprehensive.
- 6.7 The Customer agrees that, in view of the limited scope of the Services provided by the Company, the Company may not necessarily identify all matters that will be of interest to the Company.
- 6.8 The Company shall carry out such inspections and investigations as are, in its professional judgement, appropriate and feasible in the particular conditions. The Company will not undertake or commission a technical survey of condition unless specifically requested to do so.
- 6.9 Before conducting a Valuation the Company will be deemed to be authorised by the Customer permitting the Company to act on its behalf.
- 6.10 Any Valuation that the Company is instructed to conduct shall be undertaken in accordance with the Customer Instructions. The Customer will inform the Company of the purpose for the Valuation and/or any Report required in connection with the Valuation.
- 6.11 When conducting a Valuation, the Company will rely upon information provided by the Customer, the Customer's legal and/or professional representatives and third parties. Any Valuation provided will be indicative only and the Customer agrees that the Company does not warrant that the Valuation is true, correct or complete.
- 6.12 For the avoidance of doubt, the Company accepts no responsibility for the following matters, which shall not be included in any Report: issues of law (including, without prejudice, the validity and effectiveness of contracts, licences, title deeds including those for property, investments, encumbrances, compliance with relevant laws and regulations and all matters relating to product liability); environmental issues; specialist industry advice and regulatory issues.
- 6.13 Any Report produced in connection with a Valuation shall be provided for the sole use of the Customer and will be confidential to the Customer unless an officer or agent of the Company agrees otherwise. Neither the whole or any part of a Report produced in connection with a Valuation, or any reference thereto, shall be included in any document, circular, statement or published in any way without the prior approval of an officer or agent of the Company.
- 6.14 Any Intellectual Property Rights vesting in any Report produced by the Company shall remain the property of the Company.
- 6.15 Any Sale that the Company is instructed to complete will be carried out in accordance with the Customer's Instructions. Unless instructed otherwise by the Customer, the Company shall use reasonable endeavours to obtain the price which is reasonably achievable by the Company at that time and in the circumstances, for any items that it is instructed by the Customer to sell.
- 6.16 The sale proceeds following a Sale will be paid directly to the Company. Any sums owing to the Company by the Customer may be deducted from the proceeds of the Sale or invoiced separately at the Company's discretion.
- 6.17 Any Repossession that the Company is instructed to complete will be carried out in accordance with the Company's Instructions.
- 7. Customer's Obligations**
- 7.1 To assist the Company in the performance of the Services, the Customer shall:
- 7.1.1 co-operate fully with the Company in all matters relating to the Services;
- 7.1.2 provide to the Company, in a timely manner, such information as the Company may require and ensure that it is accurate and correct;
- 7.1.3 ensure that the Customer Instructions contain sufficient information to enable the Company to carry out the Services;
- 7.1.4 obtain and maintain all necessary licences, consents and authorisations and comply with all relevant legislation in relation to the Services and the use of the Company's Equipment insofar as such licences, consents and legislation relate to the provision of the Services and the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to commence; and
- 7.1.5 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the premises that the Company is required to attend in the performance of the Services.
- 7.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or any third party, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 7.3 The Customer indemnifies the Company from any losses the Company suffers as a result of the withholding or misrepresentation of any material or information which the Customer provides to the Company, which is necessary for the performance of the Services.
- 7.4 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.
- 8. Confidentiality**
- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business which the Customer may obtain.
- 8.2 The Customer may disclose such information:
- 8.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
- 8.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under these Conditions.
- 8.5 All materials, equipment and tools, drawings, Reports, specifications and data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk, and shall not be disposed of or used other than in accordance with the Company's instructions.
- 9. Limitation of liability**
- 9.1 This Condition 9 sets out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- 9.1.1 any breach of the Contract;
- 9.1.2 any use made by the Customer of Reports; and
- 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Company:
- 9.3.1 for death or personal injury resulting from negligence; or
- 9.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.
- 9.4 Subject to Condition 9.2 and Condition 9.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.
- 10. Termination**
- 10.1 Without prejudice to any other rights or remedies which the parties may have, the Company may terminate the Contract without liability to the Customer immediately if:
- 10.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified to make payment; or
- 10.1.2 the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified of the breach;
- 10.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer;
- 10.1.4 the Customer 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;

- 10.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 10.1.6 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 10.1.7 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 its assets and such attachment or process is not discharged within fourteen (14) days.
- 10.2 Subject to Conditions 5.6 and 10.3.1 and without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract on giving the other not less than three (3) months' notice.
- 10.3 On termination of the Contract for any reason:
- 10.3.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest due and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- 10.3.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected; and
- 10.3.3 Conditions 6.10, 8, 9, 10, 12.11 and 12.12 shall survive and continue in full force and effect
- 11. Force majeure**  
 The Company shall have no liability to the Customer if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of third parties or subcontractors.
- 12. General**
- 12.1 A waiver of any right under the Contract is only effective if it is agreed between the parties and it applies only to the circumstances for which it is given.
- 12.2 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.3 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.4 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 12.5 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 12.6 The Customer shall not, without the prior consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.7 The Company may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 12.8 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 12.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.10 A person who is not a party to the Contract shall not have any rights under or in connection with it and the Contracts (Rights of Third Parties) Act 1999 is excluded from the Contract.
- 12.11 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 12.12 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.
- 12.13 Any complaint which the Customer has in relation to the Company's performance of the Services should be directed to any director of the Company.