

Terms and Conditions – Apple Solutions Limited

These terms and conditions govern the relationship between you, the Customer (as defined below), and Apple Solutions Limited. Please read them carefully as they affect your rights and liabilities under the law.

The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Apple: Apple Solutions Limited registered in England and Wales with company number 05661034 whose registered office is at 213 Station Road, Stechford, Birmingham, B33 8BB.

Apple Property: has the meaning set out in clause 8.1(g).

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between Apple and the Customer for the supply of Materials and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Materials and/or Services from Apple.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15.1(a).

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.

Materials: the materials (or any part of them) set out in the Order.

Purchase Order: the Customer's order for the supply of Materials and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Apple's quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by Apple to the Customer as set out in the Service Specification.

Schedule of Works: the description, plans, workings and other specification details for the Services provided in writing by Apple to the Customer, and any specification for the Materials, including any relevant plans or drawings which shall be produced on the basis of information provided by the Customer to Apple.

1.2 Construction. In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Materials and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Apple issues written acceptance of the Order (following a general site survey and Apple providing the Customer with a Schedule of Works) at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Apple which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Apple and any descriptions of the Materials or illustrations or descriptions of the Services contained in Apple's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Materials described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by Apple shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 For the avoidance of doubt, the Schedule of Works shall be, shall remain the property of Apple, and shall be strictly confidential between Apple and the Customer until Apple have received payment in full from the Customer for the Materials/Services in accordance with the Contract and the Customer shall indemnify Apple against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Apple in connection with any unauthorised use or disclosure of any part of the Schedule of Works . This clause 2.7 shall survive termination of the Contract.

2.8 All of these Conditions shall apply to the supply of both Materials and Services except where application to one or the other is specified.

3. MATERIALS

3.1 The Materials are described in the Schedule of Works.

3.2 The Customer shall indemnify Apple against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Apple in connection with any claim made against Apple for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Apple's use of the Schedule of Works. This clause 3.2 shall survive termination of the Contract.

3.3 Apple reserves the right to amend the Schedule of Works if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF MATERIALS

4.1 Apple shall ensure that:

- (a) each delivery of the Materials is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Apple reference numbers, the type and quantity of the Materials (including the code number of the Materials, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Materials remaining to be delivered; and
- (b) if Apple requires the Customer to return any packaging material to Apple, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Apple shall reasonably request. Returns of packaging materials shall be at Apple's expense.

- 4.2 Apple shall deliver the Materials to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Apple notifies the Customer that the Materials are ready.
- 4.3 Delivery of the Materials shall be completed on the Materials' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Materials are approximate only, and the time of delivery is not of the essence. Apple shall not be liable for any delay in delivery of the Materials that is caused by a Force Majeure Event or the Customer's failure to provide Apple with adequate delivery instructions or any other instructions that are relevant to the supply of the Materials.
- 4.5 If Apple fails to deliver the Materials, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Materials. Apple shall have no liability for any failure to deliver the Materials to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Apple with adequate delivery instructions for the Materials or any relevant instruction related to the supply of the Materials.
- 4.6 If the Customer fails to accept or take delivery of the Materials within five Business Days of Apple notifying the Customer that the Materials are ready, then except where such failure or delay is caused by a Force Majeure Event or by Apple's failure to comply with its obligations under the Contract in respect of the Materials:
- (a) delivery of the Materials shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which Apple notified the Customer that the Materials were ready; and
 - (b) Apple shall store the Materials until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If six Business Days after Apple notified the Customer that the Materials were ready for delivery the Customer has not accepted or taken delivery of them, Apple may resell or otherwise dispose of part or all of the Materials and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Materials or charge the Customer for any shortfall below the price of the Materials.
- 4.8 The Customer shall not be entitled to reject the Materials if Apple delivers up to and including 5 per cent more or less than the quantity of Materials ordered.
- 4.9 Apple may deliver the Materials by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF MATERIALS

5.1 Apple warrants that on delivery the Materials shall:

- (a) conform in all material respects with their description and any applicable Schedule of Works;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Materials Act 1979); and
- (d) be fit for any purpose held out by Apple.

5.2 Apple shall not be liable for the Materials' failure to comply with the warranty in clause 5.1 if:

- (a) the defect arises because the Customer failed to follow Apple's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Materials or (if there are none) good trade practice;
- (b) the defect arises as a result of Apple following any drawing, design or Schedule of Works supplied by the Customer;
- (c) the Customer alters or repairs such Materials without the written consent of Apple;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (e) the Materials differ from the Schedule of Works as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.3 Except as provided in this clause 5, Apple shall have no liability to the Customer in respect of the Materials' failure to comply with the warranty set out in clause 5.1.

6. TITLE AND RISK

6.1 The risk in the Materials shall pass to the Customer on completion of delivery.

6.2 Title to the Materials shall not pass to the Customer until Apple has received payment in full (in cash or cleared funds) for:

- (a) the Materials; and
- (b) any other goods that Apple has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Materials has passed to the Customer, the Customer shall:

- (a) hold the Materials on a fiduciary basis as Apple's bailee;
- (b) store the Materials separately from all other goods held by the Customer so that they remain readily identifiable as Apple's property;

- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Materials;
- (d) maintain the Materials in satisfactory condition and keep them insured against all risks for their full price on Apple's behalf from the date of delivery;
- (e) notify Apple immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
- (f) give Apple such information relating to the Materials as Apple may require from time to time,

but the Customer may resell or use the Materials in the ordinary course of its business.

6.4 If before title to the Materials passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or Apple reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Materials have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Apple may have, Apple may at any time require the Customer to deliver up the Materials and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Materials are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 Apple shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 Apple shall use all reasonable endeavours to meet any performance dates for the Services specified in the Schedule of Works, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Apple shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Apple shall notify the Customer in any such event.

7.4 For the avoidance of doubt, should the Customer or Apple require any changes to the Services or the Materials, such proposed changes shall be notified to the other party prior to any such changes being made, the parties shall then discuss the proposed changes within 24 hours of such notification, confirm the proposed changes in writing within 24 hours of the aforementioned discussion and, in the case of any proposed changes that mean additional costs will be incurred, submit a quotation for the additional Services and/or Materials. Such confirmation email shall be acknowledged by the receiving party as soon as practicable and no such additional Services/Materials shall be carried out/provided until such communications have been acknowledged.

7.5 Any additional Services and/or Materials envisaged by condition 7.3 shall only be carried out/be provided subject to any additional costs being agreed in writing by the parties.

7.6 Apple warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and the Schedule of Works are complete and accurate;
- (b) co-operate with Apple in all matters relating to the Services;
- (c) provide Apple, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Apple to provide the Services;
- (d) provide Apple with such information and materials as Apple may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of Apple (**Apple Property**) at the Customer's premises in safe custody at its own risk, maintain Apple Property in good condition until returned to Apple, and not dispose of or use Apple Property other than in accordance with Apple's written instructions or authorisation.

8.2 If Apple's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) Apple shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Apple's performance of any of its obligations;
- (b) Apple shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Apple's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Apple on written demand for any costs or losses sustained or incurred by Apple arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Materials shall be the price set out in the Order or, if no price is quoted, the price set out in Apple's published price list as at the date of delivery. The price of the Materials is exclusive of all costs and charges of packaging, insurance, transport of the Materials.

9.2 The charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with Apple's standard daily fee rates, as set out in the Schedule of Works, or in accordance with the pricing structure set out in the Schedule of Works;
- (b) Apple's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days; and
- (c) Apple shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Apple engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Apple for the performance of the Services, and for the cost of any materials.

9.3 Apple reserves the right to:

- (a) increase its standard daily fee rates for the charges for the Services; and
- (b) increase the price of the Materials, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Materials to Apple that is due to:
 - (i) any factor beyond the control of Apple (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Materials ordered, or the Schedule of Works; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Materials or failure of the Customer to give Apple adequate or accurate information or instructions in respect of the Materials.
- (c) require the Customer to make accelerated payments to Apple if the Customer does anything, or omits to do something, that inhibits the progress of Apple. Such accelerated payments shall be at such rates and on such timescales as Apple shall deem appropriate.

9.4 In respect of Materials, Apple shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Apple shall invoice the Customer on weekly/monthly in arrears.

9.5 The Customer shall pay each invoice submitted by Apple:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Apple, and

time for payment shall be of the essence of the Contract.

- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Apple to the Customer, the Customer shall, on receipt of a valid VAT invoice from Apple, pay to Apple such additional amounts in respect of VAT as are chargeable on the supply of the Services or Materials at the same time as payment is due for the supply of the Services or Materials.
- 9.7 Without limiting any other right or remedy of Apple, if the Customer fails to make any payment due to Apple under the Contract by the due date for payment (**Due Date**), Apple shall have the right to charge interest on the overdue amount at the rate of four per cent per annum above the then current National Westminster Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Apple in order to justify withholding payment of any such amount in whole or in part. Apple may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Apple to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Apple.
- 10.2 All Apple Property is the exclusive property of Apple and the Schedule of Works is the exclusive property of Apple until payment in full has been received by Apple for the Services and Materials.

11. CONFIDENTIALITY

A party (**Receiving Party**) 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 Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such

of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude Apple's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Materials and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Materials Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) Apple shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Apple's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount payable under the Contract.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, Apple may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;

- (b) the Customer 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) is deemed unable to pay its debts within the meaning of section 123 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;
- (c) 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 ;
- (d) 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 Customer (being a company);
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer 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 14 days;
- (g) 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 (being a company);
- (h) a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, Apple may terminate the Contract:

- (a) by giving the Customer one months' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, Apple shall have the right to suspend the supply of Services or all further deliveries of Materials under the Contract or any other contract between the Customer and Apple if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or Apple reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Apple all of Apple's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Apple shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Apple Property and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Apple may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. GENERAL

15.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Apple including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party 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 suppliers or subcontractors.
- (b) Apple shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Apple from providing any of the Services and/or Materials for more than [NUMBER] weeks, Apple shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15.2 Assignment and subcontracting:

- (a) Apple may at any time assign, transfer, charge, 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.
- (b) The Customer shall not, without the prior written consent of Apple, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

15.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 15.6 No partnership: 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.

- 15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Apple.

- 15.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.