

# Terms and Conditions



These are the Terms and Conditions (“Terms or Agreement”) governing the use of each proprietary software offering from UNISOFT SMA (UK) LTD., duly incorporated in England & Wales with its registered office at One Crown Square, Church Street East, Woking, Surrey, England, GU21 6HR, and registered with Companies House under number 05984342 (“Company” or “Our”) to which You subscribe under a separate, signed Order (each, an “OpCon Solution”). above is opening paragraph

These Terms set out Your rights and obligations regarding use of the OpCon Solution. Your access to and use of the OpCon Solution is conditioned on Your full acceptance of and compliance with these Terms. These Terms apply to Customer and all users who access or use the OpCon Solution (each, a “User”). By installing, accessing or using the OpCon Solution, You agree to be bound by these Terms. If You disagree with any part of these Terms, then You may not install, access or use the OpCon Solution.

Your access to and use of the OpCon Solution is also conditioned on Your acceptance of and compliance with the Privacy Policy of the Company. The Privacy Policy describes Our policies and procedures on the collection, use and disclosure of Your personal information when You use the OpCon Solution or our website, and tells You about Your privacy rights and how the law protects You. Please read Our Privacy Policy carefully before using Our Service.

**1. Scope.** These Terms govern Customer’s access to and use of the OpCon Solution identified in the Order linked to these Terms. For the purposes of these Terms, the following capitalized words or phrases will have the specified meaning::

- a. Customer (or “You” or “Your”)** means the entity identified as the “Customer” in the Order.
- b. Data Source** means a specified source of data and information accessed by the OpCon Solution, including, but not limited to, external internet websites, internal intranet websites, third-party applications (e.g., ERP systems and EDI exchanges), private and public websites, emails, or paper documents.
- c. Documentation** means the technical and user documentation for the OpCon Solution, located at [help.smatechnologies.com](http://help.smatechnologies.com), which is incorporated herein.
- d. IP Rights** means any patent, trade secret, copyright and neighbouring and related rights, moral rights, business names and domain names, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and trademark rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- e. Order** means the ordering document linked to these Terms, which contains the details, duration, subscription capacity, and pricing, among other things, related to Customer’s use of an OpCon Solution.
- f. Privacy Policy** means Company’s official Privacy Policy document located at [smatechnologies.com/privacy-policy](http://smatechnologies.com/privacy-policy), which is incorporated herein.
- g. SOW** means a statement of work attached to an Order which contains the details of Company’s consulting services related to the OpCon Solution.

**h. Support** means those support and maintenance services provided by Company for the OpCon Solution under these Terms.

**i. Task** means each unique set of instructions executed in the OpCon Solution. For clarification purposes, a Task that runs one time on one machine counts as one Task. A Task that runs multiple times on the same machine using the same parameters counts as a Task. A Task that runs on multiple machines or using multiple parameters counts as multiple Tasks. For licensing purposes, a Task is counted whether the unit of work completes successfully or fails.

## 2. License.

**a. License.** Subject to these Terms, Company grants to Customer a non-exclusive, non-transferable, and term-based license without the right to grant sublicenses (other than as expressly provided in 2(a)(iii)) (the “**License**”) to use the OpCon Solution in accordance with the following:

- i.** To the extent delivered in object-code format, Customer may install the OpCon Solution on those computers specified in the Order and may use the OpCon Solution to perform Tasks, among other functions described in the Documentation;
- ii.** To the extent delivered as a service, Customer may use the OpCon Solution to perform Tasks, among other functions described in the Documentation;
- iii.** Customer may allow its employees, majority-owned affiliates, representatives, consultants, contractors or agents to access and use the OpCon Solution; provided that such access and use of the OpCon Solution must be for the sole benefit and internal business operations of Customer, and Customer must remain responsible for such Users’ compliance with these Terms.

**b. License Restrictions.** Customer will not, nor will it permit or assist Users to:

- i.** Decompile, disassemble or reverse engineer the OpCon Solution or otherwise circumvent protection of the OpCon Solution; provided that if Customer needs to decompile, translate or reproduce the code of the OpCon Solution for the purpose of interoperability under the conditions provided by law, Customer shall request the information necessary for the interoperability from Company and may only carry out such operations within the limits permitted by law and if Customer has not obtained the appropriate information from Company within a reasonable time.
- ii.** Correct or have any malfunctioning or error in the OpCon Solution corrected without Company’s prior consent, Company reserving the right to provide such corrections, under the terms and conditions of these Terms;
- iii.** Use the OpCon Solution to develop or market any conversion utility or aid specific to the OpCon Solution enabling users to convert from the OpCon Solution to an alternative software application;
- iv.** Market, sell, rent, lease, lend, provide, transfer, assign, grant or otherwise commercialize any interest in, the License or the OpCon Solution to any third-party;
- v.** Print, reproduce or copy in any form, in whole or in part, the OpCon Solution, except as is necessary for its own internal use and for backup purposes. Any and all copies made by Customer are subject to these Terms and are the sole and exclusive property of Company and must remain in the custody and control of Customer. Company may adopt from time to time such mechanical or electronic methods as Company deems necessary to control the unauthorized use or distribution of the OpCon Solution, associated Documentation or supporting material
- vi.** Use the OpCon Solution otherwise than in accordance with these Terms and the Documentation; and

vii. Make unauthorized changes to the underlying database(s) in the OpCon Solution.

**c. Customer Data.** Customer owns all data or information that is provided by Customer or stored in the OpCon Solution or provided from a Data Source or Customer's own systems ("Customer Data"). Customer grants Company the right to use the Customer Data solely for purposes of Company performing its obligations and exercising its rights under this Agreement. During the term of an Order, Customer may export its Customer Data as allowed by functionality within the OpCon Solution in standardized format, as described in the Documentation. Customer grants Company a non-exclusive, royalty-free license to internally and externally use any aggregated and/or anonymized statistical data regarding the performance of the OpCon Solution, including its processing of Customer Data, in a manner that does not allow for the identification of Customer or disclosure of Customer Data.

### 3. Term and Termination.

**a. Term.** This Agreement continues until its associated Order has expired or been terminated (whichever is earlier) as provided below.

**b. Termination for Material Breach.** If either party is in material breach of these Terms, the other party may terminate these Terms at the end of a written 30-day notice/cure period, if the breach has not been cured.

**c. Suspension.** Company may, after giving Customer reasonable notice, temporarily suspend Customer's access to an OpCon Solution if Customer is 30 days or more overdue in its payment of any subscription fees (and in such circumstances the Company shall be under no obligation to provide access to an OpCon Solution and/or any services while the invoice(s) concerned remain unpaid); or Company believes in good faith that, in using the OpCon Solution, Customer has violated, or will violate, any applicable law.

**d. Return of Customer Data.** Upon request within 30 days after termination or expiry of this Agreement (whichever is earlier), Company will make Customer Data available to Customer in an industry standard format. After such 30-day period, Company has no obligation to maintain or store the Customer Data and will be entitled to destroy it.

**e. Return of Company Property upon Termination.** Upon termination or expiry of this Agreement (whichever is earlier) for any reason, Customer must pay Company all amounts due and owed under the Order(s) and destroy or return all property of Company. Upon Company's request, Customer will confirm in writing its compliance with this destruction or return requirement.

**f. Further Consequences of Termination** Upon termination or expiry of these Terms (whichever is earlier) for any reason all licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the OpCon Solution and the Documentation.

**g.** Expiry or termination of this Agreement will not affect the accrued rights and obligations of the parties as at the date of expiry or termination.

### 4. Services.

**a. Support.** Subject to Customer's payment of required Support Fees specified in an Order, if any, Company will provide Support for the Opcon Solution under the terms of Company's Support Policy which is located at [smatechnologies.com/support](https://smatechnologies.com/support), which is incorporated into these Terms for all purposes ("**Support Policy**"). Support includes the following:

**i.** Such services necessary to install and maintain the OpCon Solution in order that it performs in accordance with the Documentation;

- ii. Such improvements, enhancements, extensions and other changes to the OpCon Solution as are determined by Company to be suitable to the uses made of the OpCon Solution by Customer;
- iii. Updates for the OpCon Solution as required to cause the OpCon Solution to operate under new versions of Customer's operating system(s); provided such updates are technically feasible as determined in Company's sole reasonable discretion.

**b. Consulting Services.** As documented in a mutually-signed SOW, Company will provide specified setup, conversion, installation/implementation, and/or customization services with respect to the OpCon Solution, subject in all respects to these Terms and the SOW.

## 5. Payment.

- a. Fees.** Customer must pay all fees due and as set out under the Order within 30 days of the invoice date, in the currency set out in each Order, except for any invoices disputed in good faith as being inaccurate. Company may charge Customer a late interest rate applied to the sums due if such sums are not paid when due. Customer is responsible for all applicable sales, use, withholding, value added tax (VAT) and other similar taxes. No Customer purchase order is required unless specified in an Order.
- b. Expenses.** Customer will reimburse Company for reasonable travel expenses incurred in connection with its performance under a SOW. In connection with any invoice for expense reimbursement, Company will, upon request, provide copies of receipts and other documents reasonably necessary to verify the amount and nature of any such expenses.
- c. Taxes.** Payment of all sales tax, use tax, VAT, foreign, state or federal taxes, and any other taxes in any form, offsets, withholding or currency control associated with the Order, and all subsequent Support charges, will reside solely with, and be the financial responsibility of, the Customer, excluding taxes based on Company's income which will be paid by Company. Domestic sales and use taxes (VAT) will be included on invoices where applicable.
- d. Audit and True-ups.** Customer will provide reports to Company for the purpose of calculation of fees pursuant to and due under the Order. Customer acknowledges that Company may use functionality within the OpCon Solution to collect usage information to assist in such calculations. Once a year, Company, and its designated representatives, will review Customer's usage records within the Opcon Solution that relate to its payment obligations under an Order.

## 6. Proprietary Rights; Confidentiality; Personal Data; Data Security.

**a. Proprietary Rights.** Company and its licensors retain all ownership, title and interest in and to the OpCon Solution and its associated design, software, documentation (including but not limited to the Documentation), processes, algorithms, and user interfaces, including services and deliverables provided by Company as part of Support and/or Consulting Services, and all IP Rights embodied in each of them ("**Company Technology**"). Customer may not remove or modify any proprietary marking or restrictive legends from the Company Technology. Company reserves all rights not expressly granted in these Terms.

### **b. Mutual Confidentiality.**

- i. Definition of Confidential Information.** Confidential Information means all non-public information disclosed by

a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). Customer Confidential Information includes, without limitation, the Customer Data. Company's Confidential Information includes, without limitation, these Terms, the Order, and the Company Technology.

**ii. Protection of Confidential Information.** Where a Recipient receives Confidential Information from a Discloser, such Recipient agrees to keep such Confidential Information in confidence and to use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) and will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must, under an obligation of reinforced means, limit access to Confidential Information to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the terms of this Agreement. The obligations provided in this section shall remain in effect for the term of the Agreement and for a duration of three (3) years after the termination or expiry of the Agreement.

**iii. Exclusions.** Confidential Information *excludes* information that: (1) is or becomes generally known to the public without breach of any obligation owed to Discloser, (2) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (3) is received from a third-party without breach of any obligation owed to Discloser, or (4) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order or other regulatory authority of competent jurisdiction but will, where permissible under applicable law for it to do so, provide Discloser with as much advance notice of such proposed disclosure (whether or not to seek a protective order or similar) as possible.

### **c. Personal Data.**

**i.** When the OpCon Solution is installed on premise at a Customer facility, by configuration Company will not have access to Customer network(s) or Personal Data, and does not monitor the processing of Customer Data, except as provided in a separate, signed agreement for Managed Automation Services, as applicable. The Customer shall provide the Company with advanced written notice prior to uploading any Personal Data to the OpCon Solution and shall ensure that relevant consents have been received from data subjects or applicable notices have been provided so that the Customer may provide the Personal Data to the Company for the processing outlined within this Agreement.

**ii.** In this clause 6(c):

**A. "Controller", "Data Subject" "Personal Data", "Personal Data Breach", "Processor" and "processing"** have the meaning given to them in the GDPR (and "**process**" and "**processed**" shall be construed accordingly);

**B. "Data Protection Laws"** means (1) the GDPR; and (2) all other laws concerning the processing of data relating to living persons including the Data Protection Act 2018; and

**C. "GDPR"** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**iii.** If and to the extent that the Company processes Personal Data in the course of providing access to the OpCon

Solution to the Customer, each party acknowledges that, for the purpose of Data Protection Laws, the Customer is the Controller of the Personal Data and the Company is the Processor.

**iv.** The Company shall:

- A.** Process personal data in accordance with Our Privacy Policy;
  - B.** (1) Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the risk of unauthorised or unlawful processing of Personal Data, and of accidental or unlawful loss, alteration, unauthorised disclosure or destruction of, or damage to, Personal Data; and (2) in such a manner for the fulfilment of the Customer's obligation to respond to requests by Data Subjects to exercise their rights of access, rectification or erasure, to restrict or object to processing of Personal Data, or to data portability;
  - C.** Only process the Personal Data in accordance with the Customer's instructions;
  - D.** If a Data Subject makes a written request to us to exercise any of the rights referred to in paragraph 6(c)(iv) (B)(2), forward the request to the Customer and, upon the Customer's reasonable written request and cost, provide the Customer with all co-operation and assistance the Company may reasonably request in relation to that request with regards to applicable deadlines and information requirements;
  - E.** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing, implement and maintain appropriate technical and organisational measures;
  - F.** Notify the Customer without undue delay after becoming aware of a Personal Data Breach, and provide the Customer at the Customer's cost with all co-operation and assistance reasonably requested by the Customer to enable the Customer to notify the Personal Data Breach to the relevant supervisory authority and relevant Data Subject(s) (as applicable);
  - G.** Save for those sub-processors already engaged by the Company, not engage another sub-processor without informing the Customer of any intended changes concerning the addition or replacement of other processors, thereby giving the Customer the opportunity to object to such changes. If the Company does not receive from the Customer, within ten (10) days of providing notice an objection to the addition or replacement of a sub-processor, the Customer will be deemed to have consented to such changes;
  - H.** Before disclosing Personal Data to any sub-processor, enter into a contract with that sub-processor containing obligations equivalent to those set out in this Agreement
  - I.** Remain liable to the Customer for the acts or omissions of such sub-processors in respect of the processing of Personal Data under this Agreement and ensure that any sub-processors are bound to hold the information in confidence to at least the same standard as required under this Agreement;
  - J.** Promptly notify the Customer if the Company receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data, or to either Party's compliance with Data Protection Laws, and shall co-operate and assist the Customer in relation to any such complaint, notice, communication or non-compliance; and
  - K.** Upon the Customer's reasonable written request, provide all information necessary to demonstrate compliance with these terms.
- v.** Any transfers to territories outside the EEA (whether or not specified in this Agreement) shall be conducted in compliance with the conditions for transfer set out in Chapter V (Articles 44-50) of the GDPR.

- vi. Upon termination or expiry of this Agreement, the Company shall either return the Personal Data to the Customer or to a processor nominated by the Customer or delete the Personal Data and all copies and extracts of the Personal Data unless required to retain a copy in accordance with any applicable law.
- vii. Customer agrees, upon demand, to defend, hold harmless and indemnify Company against any claim, damage, loss, fine, cost, expense or liability suffered or otherwise incurred by the Company arising as a result of or in connection with breach of clause 6(c).

## 7. Warranties.

- a. **OpCon Solution Warranty.** Company warrants that: (i) the OpCon Solution will contain the features and functions contained in the Documentation; and (ii) the functionality or features of the OpCon Solution may change but will not materially decrease during any paid term. AS CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY, Company will fix or replace the non-conforming portion of the OpCon Solution within a commercially reasonable period of time after Customer notifies Company of the breach; provided, however, that if within the 60 day period following initial delivery of the OpCon Solution to Customer, Company cannot remedy the breach, then Customer may terminate the Order and request a refund of the fees paid for such OpCon Solution. This warranty does not apply if: (1) the OpCon Solution is not used in accordance with Documentation, (2) any equipment owned or supplied by Customer malfunctions, or (3) any other cause which is not attributable to the acts or omissions of Company.
- b. **Consulting Services Warranty.** Company warrants that, for a period of 60 days after delivery of any Consulting Service, it has performed such Consulting Service in accordance with the SOW and generally accepted practices within the software industry. Customer must notify Company of any breach of this warranty no later than 10 days after Customer's discovery of the breach. AS CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY UNDER THIS WARRANTY, Company will re-perform the non-conforming portion of the Consulting Services within a commercially reasonable period of time; provided, however, if Company cannot remedy the breach within a reasonable period of time after Customer notifies Company of the breach, but in any event, no later than 60 days after delivery of the Consulting Service, then Customer may terminate the Order and request a refund of the portion of the fee attributable to such non-conforming Consulting Service.
- c. **Support Warranty.** Company warrants that: (i) it will provide Support in accordance with these Terms, the Support Policy and generally accepted practices within the software industry; and (ii) that the Support Policy may change, but will not materially degrade Support under these Terms.
- d. **Embedded Terms Warranty.** Company may change at any time the terms incorporated herein by reference (in particular the Documentation, the Privacy Policy and the Support terms). Company warrants that any change of such incorporated changes will not materially degrade Customer's rights during the term hereof.
- e. **DISCLAIMER. COMPANY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, QUIET ENJOYMENT, CONFORMITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE COMPANY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE OPCON SOLUTION, COMPANY DOES NOT GUARANTEE THAT THE OPCON SOLUTION CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE OPCON SOLUTION MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**

## 8. Indemnities; Insurance.

- a. Indemnity.** Company will defend or settle any third-party claim against Customer to the extent such claim alleges that the OpCon Solution (and its underlying technology) infringes or misappropriates its IP rights; provided that:
- i.** Customer promptly notifies Company of the claim in writing, cooperates with Company in the defense, and allows Company to solely control the defense or settlement of the claim.
  - ii.** Company will pay or reimburse Customer any costs incurred in performing its obligations above, and any Company -negotiated settlement amounts or court-awarded damages.
  - iii.** If such a claim appears likely to prevail on its merits, in Company's sole reasonable discretion, then Company may modify the OpCon Solution, procure the necessary rights, or replace it with a functional equivalent.
  - iv.** If Company determines that none of the above options are commercially feasible, then Company may terminate the applicable Order, in whole or in part, and will refund to Customer any prepaid and unused fees for such terminated OpCon Solution.
  - v.** Company has no obligation or liability under this Section to the extent that any claim arises out of or in connection with: Company's compliance with Customer's specifications, where there would be no infringement but for these specifications; a combination of the OpCon Solution with other technology or aspects not contemplated by the Documentation, where the infringement would not occur but for the combination; use of Customer Data; Customer's alteration, modification, conversion or reverse engineering of the OpCon Solution; or Customer's use of the OpCon Solution in violation of these Terms.

### **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND COMPANY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**

- b. Insurance.** Company agrees to carry and maintain during the term of this Agreement, at its own cost, insurance policies and coverage amounts which are appropriate to the provision of the Services. Upon Customer's request, Company will provide evidence of such insurance.

## 9. Limitations on Liability.

- a.** Nothing in these Terms excludes or limits Our liability for: (i) death or personal injury caused by Our negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded or limited by applicable law.
- b. EXCLUSION OF DAMAGES. SUBJECT TO CLAUSE 9 (A) AND NEITHER PARTY IS LIABLE FOR ANY SPECIAL, INDIRECT AND CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR FOR ANY COSTS OF DELAY, DAMAGES ARISING OUT OF LOSS OR CORRUPTION OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION, AND LOST PROFITS OR LOST BUSINESS (IN EACH CASE WHETHER DIRECT OR INDIRECT).**
- c. TOTAL LIMIT ON LIABILITY. [EXCEPT FOR INDEMNITY OBLIGATIONS IN THIS AGREEMENT, OR IF NOT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED: (i) FOR CLAIMS COVERED BY COMPANY'S INSURANCE, THE APPLICABLE LIMIT OF SUCH INSURANCE; OR (ii) FOR ALL OTHER CLAIMS NOT COVERED BY SUCH INSURANCE, THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.]**



## 10. General.

- a. Governing Law and Forum.** These Terms are governed by the laws of England & Wales (without regard to conflicts of law principles). ANY DISPUTE (INCLUDING NON-CONTRACTUAL DISPUTES OR CLAIMS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY DISPUTE RELATING TO ITS INTERPRETATION, VALIDITY, PERFORMANCE OR END, AND ANY SUMMARY PROCEEDINGS OR PROVISIONAL AND PROTECTIVE MEASURES NOTWITHSTANDING ANY NUMBER OF DEFENDANTS, ANY ACTION ON A WARRANTY OR GUARANTEE OR OTHER THIRD PARTY PROCEEDINGS AND ANY COUNTER-CLAIMS SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURTS OF ENGLAND & WALES.
- b. Entire Agreement.** This Terms and associated Order(s) constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter and each party acknowledges that in entering into these Terms, it does not rely on, and shall have no remedies in respect of, any oral or written statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out herein. Nothing in this Section shall exclude or restrict the liability of either party for fraud, fraudulent misrepresentation or fraudulent concealment.
- c. No Assignment.** Customer may not assign, transfer, charge, novate, sub-contract or deal in any other manner its rights and/or obligations under these Terms, in whole or in part, to a third-party without Company's prior written consent. Company shall be entitled to assign, transfer, novate, charge, sub-contract and/or deal in any other manner its rights and obligations under this Agreement, in whole or in part, including by operation of merger, demerger, contribution, transfer of all its assets and liabilities or otherwise, without Customer's prior consent.
- d. Enforceability.** If any provision of these Terms is found to be invalid, illegal or unenforceable, it shall be deemed deleted but the other terms remain in effect. .
- e. Force Majeure** Neither party is liable to the other if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents by events beyond their reasonable control, including without limitation force majeure events, due to contingencies beyond its reasonable control whether directly or indirectly, including but not limited to, fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic, pandemic or catastrophe (including any restrictions imposed by any local or national government agency or body in response to such circumstances), or other conditions beyond the control of such party.
- f. Money Damages Insufficient.** Any breach by a party of these Terms or a violation of the other party's IP Rights could cause irreparable injury or harm to the other party. The other party may seek injunctive relief to stop such breach or violation or to prevent any future breach or violation.
- g. No Additional Terms.** additional or conflicting terms of a Customer purchasing document shall be applicable to the Agreement.
- h. Survival.** Any terms that by their nature survive termination of these Terms for a party to assert its rights and receive the protections of these Terms, will survive.
- i. Relationship of the Parties.** The parties are independent contractors with respect to each other and nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise

to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**j. Export Control Laws.** Customer will not import, export, re-export, or transfer, directly or indirectly, any part of the OpCon Solution or any underlying information or technology, except in full compliance with all applicable laws and regulations.

**k. Notices.** Unless otherwise agreed to by the Parties, all notices required under these Terms (except those relating to OpCon Solution pricing, changes and upgrades) will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail, addressed and sent to the address in the Order.

**l. Logo Usage.** Company is not authorized to use Customer's name and company logo in SMA's printed or electronic marketing materials and website, or to indicate that Customer is an SMA customer or OpCon Solution user, unless Customer provides its prior written consent. If such consent is granted, SMA must use the exact digital form of any such logos as published by Customer, and must include a trademark attribution notice, giving notice of Customer's ownership of such trademarks, in the marketing materials in which Customer's name or logo appear. SMA will cease any such usage within 30 days of Customer's written request.

**m. Third Party Rights.** These Terms and the Order do not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.