

## **AUTOFLOW LTD STANDARD TERMS AND CONDITIONS OF SUPPLY**

### **1. Definitions and Interpretation**

- 1.1 In this Agreement the following phrases shall have the following meanings:
- Agreement:** the agreement relating to the supply of the AutoFlow System, its installation and training, the Annual Support Service, any Equipment (if any) and any Enhanced Support Service (if any), which agreement shall comprise the Purchase Order and these terms and conditions of supply;
- Annual Support Service:** the service relating to the support of the AutoFlow System, to be supplied in accordance with condition 6;
- Annual Support Service Charges:** the charges detailed in the Purchase Order, which charges are expressed either as an annual or monthly amount;
- AutoFlow:** AutoFlow Limited, a company incorporated in England (company number 4061932) having its registered office at Wellington House, The Embankment, Wellingborough, England, NN8 1LD;
- AutoFlow Hosted Service:** the internet installation of the AutoFlow System, accessible by the Client and hosted by AutoFlow as detailed in the Purchase Order supplied in accordance with condition 8
- AutoFlow Hosted Service Charges:** the charges detailed in the Purchase Order, which charges are expressed as an advanced installation fee per user and a monthly maintenance amount;
- AutoFlow System Upgrade:** any new version of, or enhancement, addition or patch to the AutoFlow System;
- AutoFlow System:** the AutoFlow bodyshop management system detailed in the Purchase Order and/or User Manual;
- Changes Document:** the document detailing any changes to the AutoFlow System following any AutoFlow System Upgrade, which document, once issued, shall be deemed to change the User Manual
- Client:** the person or party detailed in the Purchase Order;
- Covered Equipment:** means the computer equipment detailed in the Purchase Order, which equipment may also include the Equipment;
- Daily Rate:** the charging rate detailed in the Purchase Order and notified to the Client from time to time on the Website, which rate is determined on the basis of an eight (8) hour working day.
- Data Controller:** has the meaning given to it in the DPA/GDPR;
- Data Processor:** has the meaning given to it in the DPA/GDPR;
- Defect:** a material failure of the AutoFlow System to meet the functionality detailed in the User Manual;
- DPA:** means the Data Protection Act 2018 (superseding the Data Protection Act 1998);
- Enhanced Support Service:** the support service (if provided for in the Purchase Order) to be supplied in accordance with condition 7;
- Enhanced Support Service Charges:** the charges detailed in the Purchase Order, which charges are expressed as an annual or monthly amount;
- Equipment:** the computer equipment (if provided for in the Purchase Order) to be supplied in accordance with condition 9;
- Equipment Charges:** the charges detailed in the Purchase Order, which may or may not be incorporated in the Upfront Charges;
- GDPR:** means on and from the 25<sup>th</sup> May 2018, the General Data Protection Regulation (EU) 2016/679 ("GDPR") (together with laws implementing or supplementing the GDPR in Member States, in each case as amended and superseded from time to time such as the Data Protection Act 2018), and/or all applicable laws, rules, regulations, regulatory guidance, regulatory requirements from time to time, in each case in each jurisdiction where the services are delivered in relation to data privacy;
- Hardware Requirement Document:** the document setting out details of the computer equipment necessary to ensure the proper performance of the AutoFlow System;
- Minimum Term:** (subject always to early termination under condition 16 below) that number of calendar years detailed in the Purchase Order, the first of which shall commence on the Installation Date;
- Initial Charges:** the initial charges detailed in the Purchase Order, which for the avoidance of doubt shall include the licence fees for use of the AutoFlow System together with the charges for installation and training;
- Installation:** installation of the AutoFlow System so that it is capable of functioning materially in accordance with the Specification in a live environment. The terms "Install" and "Installed" shall be construed accordingly;
- Installation Date:** the date on which the AutoFlow System has actually been installed at the Site and is operating in a live environment with that functionality detailed in the User Manual;
- Intellectual Property Rights:** the copyright, design rights, database rights, patents, trade secrets and know-how (whether or not registered) and applications for any of them and any rights of any such nature anywhere in the world;
- Personal Data:** has the meaning given to it in the DPA/GDPR;
- Purchase Order:** the quotation attached to these terms and conditions of supply;
- Repex:** means AutoFlow's centralised data capture platform that supports a wide range of reporting and business requirements;
- Site:** the location detailed in the Purchase Order;
- Special Conditions:** any special terms and conditions agreed by AutoFlow and the client in writing, which terms and conditions shall also form part of this Agreement;
- Staff:** means all employee's, agents and sub-contractors working on behalf of either party;
- User Manual:** the document made available by AutoFlow to the Client on the Installation Date, detailing the functionality of the AutoFlow System, such document being amended from time to time to reflect any AutoFlow System Upgrades;
- Website:** the current version of this agreement which may be updated from time to time and made available on the internet at <https://services.autoflow.ltd.uk/pub/autoflowtermsandconditions.pdf>;
- 1.2 If there is any conflict, inconsistency or ambiguity when interpreting this Agreement, the following order of precedence shall always apply to its interpretation:
- firstly, any Special Conditions;
  - secondly, any additional terms and conditions indicated in the Agreement as being available on the Website; and
  - finally, these terms and conditions.
- ### **2. TERM**
- 2.1 Whilst this Agreement shall have binding effect on the signature of the Purchase Order by the Client, the licence referred to in condition 3 and the Annual Support Service (and if applicable the Enhanced Support Service and/or the AutoFlow Hosted Service) shall commence on the Installation Date and continue for the Minimum Term.
- 2.2 Subject always to condition 2.3, following expiry of the Minimum Term, this Agreement shall automatically renew for further subsequent terms equal of twelve (12) calendar months ("Subsequent Term"), unless either party has given the other at least one (1) calendar months notice in writing of their intention to terminate this Agreement prior to the expiry of the Minimum Term or any Subsequent Term.
- 2.3 As a consequence of the licence protection systems built into the AutoFlow System, the Client acknowledges that the AutoFlow System may automatically deactivate if this Agreement is not renewed beyond the Minimum Term or Subsequent Term.
- 2.4 The Client acknowledges that the Annual Support Service Charges and Enhanced Support Service Charges are only fixed for the first (1) calendar year of the Minimum Term. On each anniversary of the Installation Date, AutoFlow reserves the right to increase the Annual Support Service Charges and Enhanced Support Service Charges, provided that such increase is notified to the Client at least ninety (90) calendar days prior to the anniversary of the Installation Date, so as to give the Client the opportunity to terminate this Agreement in accordance with condition 2.2.
- ### **3. LICENCE**
- 3.1 Subject always to the Client procuring the Annual Support Service in accordance with condition 6, AutoFlow hereby grants to the Client a non-exclusive, non-transferable, non sub-licensable right and licence to utilise the AutoFlow System at the Site on the number of terminals contemplated by the Purchase Order.
- 3.2 The AutoFlow System is to be used by the Client for its own internal purposes only. Save as expressly set out in this Agreement, the Client shall not use the AutoFlow System on behalf of any third party, in excess of the agreed number of terminals, or from any location other than the Site.
- 3.3 The Client shall follow all reasonable instructions given to it by AutoFlow from time to time with regard to the use of the AutoFlow System. The Client shall permit AutoFlow, on reasonable notice and at AutoFlow's expense, to verify that the use of the AutoFlow System is within the terms of this Agreement.
- 3.4 Except for the purposes of interoperability (as defined in Section 50B of the Copyright, Designs and Patents Act 1988) the Client shall not disassemble, decompile or reverse engineer the AutoFlow System. Information necessary to achieve the interoperability of the AutoFlow System with other programs is available from AutoFlow for a nominal fee.
- 3.6 The rights provided under this condition 3 are granted to the Client only, and shall not be considered granted to any associated, subsidiary or holding company of the Client.
- ### **4. FEES AND PAYMENT**
- 4.1 On the Installation Date, AutoFlow shall issue the Client with an invoice:
- for the payment of the Initial Charges, which charges shall be paid on the Installation Date; and

- (b) for the payment of the Annual Support Service Charges, which charges shall be paid:
- (i) in full on the Installation Date if the Purchase Order indicates they are to be paid annually in advance; or otherwise
  - (ii) every month, (in advance) for the duration of the Minimum Term, the first of which payments shall be paid on the 1st of the following calendar month (if the Installation Date is prior to the 15th of the month) or on the 15th of the following calendar month (in all other cases); and/or
- (c) for the payment of the Enhanced Support Charges, in full on the Installation Date.
- 4.2 All sums due to AutoFlow under this Agreement are exclusive of VAT, all reasonable travelling, accommodation and subsistence expenses which will be re-charged to the Client.
- 4.3 Time for payment of any of the charges contemplated by the purchase order is of the essence, and with the exception of the charges contemplated by clause 4.1 in accordance with the terms shown on the corresponding invoice.
- 4.4 AutoFlow shall be entitled to suspend its performance of this agreement, if any of the charges remain outstanding at any time.
- 4.5 AutoFlow shall be entitled (but not obliged) to charge the Client interest on any overdue amount, payable by the Client forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly. AutoFlow reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5. INSTALLATION AND TRAINING**
- 5.1 On the date of this Agreement, the date of Installation may not be known. If such date is not known, AutoFlow and the Client shall in good faith take steps to agree the date of Installation.
- 5.2 Prior to Installation, the Client shall request the Hardware Requirement Document from AutoFlow. The use and performance of the AutoFlow System is entirely reliant upon the contents of the Hardware Requirement Document being satisfied and complied with at all times. The Client acknowledges that such satisfaction may require the procurement by the Client of additional equipment and software, the costs of which shall be borne by the Client.
- 5.3 Where AutoFlow is prevented or delayed from commencing or completing Installation, due to circumstances within the reasonable control of the Client (for example its failure to ensure the Hardware Requirements Document has been complied with), the Client shall indemnify AutoFlow for all reasonable costs and expenses incurred or suffered as a consequence of such delay, including accommodation costs and those associated with the wasted allocation of human resources.
- 5.4 Unless detailed in the Purchase Order no provision is made in this Agreement for any additional training over and above that which is detailed in the Purchase Order, which training (if requested) shall be delivered by AutoFlow on a time and materials basis with reference to the Daily Rate.
- 6. ANNUAL SUPPORT SERVICE**
- 6.1 In consideration for payment by the Client of the Annual Support Service Charges, AutoFlow shall supply the Annual Support Service.
- 6.2 The Annual Support Service relates only to the AutoFlow System and shall be delivered remotely (via telephone, email and the AutoFlow support portal) during normal working hours (Monday to Friday 9:00am to 5:00pm, bank holidays and weekends excluded). The AutoFlow Service shall be limited to the following services, subject always to the Client making contact with AutoFlow to request assistance:
- (a) fault diagnosis, defect and error correction, subject to condition 6.3;
  - (b) reasonable support, advice and assistance;
  - (c) installation of AutoFlow System Upgrades.
- 6.3 The Annual Support Service does not extend to dealing with any defects or errors resulting from: (a) unauthorised modifications or changes to the AutoFlow System by any party other than AutoFlow; or (b) any issues associated with non-compliance with the Hardware Requirements Document. Whilst AutoFlow shall use its best endeavours to assist with the resolution of such defects or errors, it cannot guarantee that it will be able to do so and reserves the right to charge for its efforts on a time and materials basis with reference to the Daily Rate.
- 6.4 The supply of the Annual Support Service is dependent upon the Client maintaining appropriate internet connectivity. Whilst AutoFlow shall use reasonable endeavours to assist the Client with the maintenance of any internet connectivity, this shall be the ultimate responsibility of the Client.
- 7. ENHANCED SUPPORT SERVICE**
- 7.1 In consideration for payment by the Client of the Enhanced Support Charges, AutoFlow shall supply the Enhanced Support Service.
- 7.2 The Enhanced Support Service relates only to the Covered Equipment and shall be delivered remotely (via telephone, email and the AutoFlow support portal) during normal working hours (Monday to Friday 9:00am to 5:00pm, bank holidays and weekends excluded). The Enhanced Support Service shall be limited to the following services, subject always to the Client making contact with AutoFlow to request assistance:
- (a) fault diagnosis and correction, subject to condition 7.3;
  - (b) reasonable support, advice and assistance with regard to general operation;
  - (d) installation of applicable updates, patches and fixes.
- 7.3 The Enhanced Support Service does not extend to dealing with any defects or errors resulting from: (a) unauthorised modifications or changes to the Covered Hardware by any party other than AutoFlow; or (b) any issues associated with non-compliance with the Hardware Requirements Document. Whilst AutoFlow shall use its best endeavours to assist with the resolution of such defects or errors, it cannot guarantee that it will be able to do so and reserves the right to charge for its efforts on a time and materials basis with reference to the Daily Rate.
- 7.4 The supply of the Enhanced Support Service is dependent upon the Client maintaining appropriate internet connectivity. Whilst AutoFlow shall use reasonable endeavours to assist the Client with the maintenance of internet connectivity, this shall be the ultimate responsibility of the Client.
- 8. AUTOFLOW HOSTED SERVICE**
- 8.1 In consideration for payment by the Client of the AutoFlow Hosted Service Charges, AutoFlow shall supply the AutoFlow Hosted Service.
- 8.2 The AutoFlow Hosted Service relates only to the installation of the AutoFlow software in a dedicated Client server environment held within AutoFlow's secure UK based datacentre. AutoFlow shall make all reasonable, commercial endeavours to provide hosted services on a 24/7/365 basis, subject to any scheduled maintenance. The Client may request specific assistance which shall be delivered remotely (via telephone, email and the AutoFlow support portal) during normal working hours (Monday to Friday 9:00am to 5:00pm, bank holidays and weekends excluded).
- 8.3 The AutoFlow Hosted Service does not extend to dealing with any defects or errors resulting from:
- (a) unauthorised internet browsing software to establish a secure connection, or unauthorised third party remote desktop applications;
  - (b) any issues associated with devices and peripherals which do not explicitly support the use of the Microsoft remote desktop protocol; or
  - (c) any issues resulting from or in connection with anomalous network activity or compromised computer operating system.
- Whilst AutoFlow shall use its best endeavours to assist with the resolution of such defects or errors, it cannot guarantee that it will be able to do so and reserves the right to charge for its efforts on a time and materials basis with reference to the Daily Rate.
- 8.4 The supply of the AutoFlow Hosted Service is dependent upon the Client maintaining appropriate internet connectivity. Whilst AutoFlow shall use reasonable endeavours to assist the Client with the maintenance of internet connectivity, this shall be the ultimate responsibility of the Client.
- 8.5 Separate to the Data Protection provisions already contemplated by these terms and conditions of supply, AutoFlow and the Client jointly acknowledge that in making use of the AutoFlow Hosted Service, AutoFlow is a Data Processor and the Client a Data Controller (or a co-processor with the permission of the Data Controller) for all Personal Data entered or uploaded into the Client's dedicated server environment. The Client further acknowledges that AutoFlow shall undertake processing activities that are customary and normal practice for the provision of a hosted service, such as regular backing up of data, monitoring the performance of the server, ensuring the data is safe and secure, and facilitating a connection for the Client and AutoFlow technical support agents in the event the Client requests assistance.
- 9. SUPPLY OF EQUIPMENT**
- 9.1 In consideration for payment by the Client of the Equipment Charges, AutoFlow shall supply the Equipment.
- 9.2 Full legal and beneficial title and ownership of the Equipment shall pass to the Client unless and until AutoFlow has received in full (in cleared funds) all sums due to it in respect of:
- (a) this Agreement; and
  - (b) all other sums which are or which become due to AutoFlow from the Client under any other contract or account.
- 9.3 Until title and ownership of the Equipment has passed to the Client, the Client shall:
- (a) hold the Equipment on a fiduciary basis as AutoFlow's bailee;
  - (b) store the Equipment (at no cost to AutoFlow) separately from all other Equipment of the Client or any third party in such a way that they remain readily identifiable as the property of AutoFlow;
  - (d) maintain the Equipment in satisfactory condition and keep them insured on AutoFlow's behalf for their full price against all risks to the reasonable satisfaction of AutoFlow. On request the Client shall produce the policy of insurance to AutoFlow.
- 9.4 AutoFlow shall be entitled to recover payment for the Equipment notwithstanding that legal and beneficial ownership and title of any of the Equipment has not passed to AutoFlow.
- 9.5 The Client grants AutoFlow, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment are or may be stored in order to inspect them, or, where the Client's right to possession has terminated, to recover them.
- 9.6 The status of AutoFlow is that of a re-seller and not a manufacturer of Equipment. Accordingly, to the fullest extent permissible by law, unless otherwise specified in this Agreement, AutoFlow is unable to offer any warranties or guarantees of any kind whatsoever in respect of the Equipment.

- 9.7 The Equipment may be sold with a manufacturer's or wholesaler's warranty, guarantee or similar or equivalent protection, details of which shall be dispatched with the Equipment and may be requested from AutoFlow in advance of delivery. In which case, AutoFlow shall for a period of twelve (12) months from the Installation Date, use its best endeavours to:
- procure that the Client receives the benefit of any manufacturer's or wholesaler's warranty, guarantee or similar or equivalent protection in respect of the Equipment supplied and assist the Client in the completion of all User Manual and the taking of all steps to perfect the Client's title to any such protection;
  - assist the Client in any warranty claims made by the Client.
- 10. WARRANTY**
- 10.1 For so long as the Annual Support Service is supplied by AutoFlow to the Client ("Warranty Period"), AutoFlow warrants that the AutoFlow System shall conform, function and perform in all material respects (minor errors excluded) with the User Manual.
- 10.2 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 11. LIABILITY AND INDEMNITY**
- 11.1 The following provisions set out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to each other in respect of:
- any breach of the terms and conditions of this Agreement;
  - any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 11.2 Nothing in this Agreement excludes or limits the liability of either party:
- for death or personal injury caused by AutoFlow's negligence;
  - under section 2(3), Consumer Protection Act 1987;
  - for any matter which it would be illegal for AutoFlow to exclude or attempt to exclude its liability; or
  - for fraud or fraudulent misrepresentation.
- 11.3 Subject to conditions 11.1, 11.2 and 11.4
- AutoFlow shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with this Agreement; and
  - AutoFlow total liability to the Client in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed a sum of money which is equal to the aggregate of the Initial Charges and Annual Support Service Charges paid in the twelve (12) month period preceding the date of any claim.
- 11.4 AutoFlow shall have no liability to the Client unless it has first been afforded a reasonable opportunity to remedy any issues in accordance with condition 6 (and if applicable clauses 7 and 8).
- 11.5 The Client's liability to AutoFlow under the indemnity in clause 15.7 (intellectual property breach) and clause 13.4 (data protection breach) shall be unlimited.
- 12. NON DISCLOSURE**
- 12.1 The Client agrees that the terms of this Agreement and the AutoFlow System (including, without limitation, its structure, sequence, organisation and screen presentation) and the User Manual are the confidential information of AutoFlow and that they shall not without the prior written consent of AutoFlow:
- disclose any details of the method of operation of the AutoFlow System to any third party (whether for maintenance purposes or otherwise); and
  - insofar as it is necessary to disclose aspects of the AutoFlow System to the Client's employees, such disclosure by the Client is permitted only to the extent bona fide necessary for the use permitted by this Agreement.
- 12.2 The Client shall take all reasonable precautions to ensure:
- that the AutoFlow System and User Manual are stored in a controlled area to which access is appropriately limited;
  - that no unauthorised person may take or remove from the Client's premises any copy of the AutoFlow System or User Manual; and
  - that those persons who with the Client's consent have access to the AutoFlow System and User Manual are aware of and accept these conditions.
- 13. PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**
- 13.1 Both parties shall, and shall procure that Staff shall, comply with any notification requirements under the DPA or GDPR and both parties shall duly observe all of their obligations under the DPA/GDPR which arise in connection with this agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Client is processing Personal Data within Repex as a Data Processor the client shall:
- ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 of the DPA;
  - provide AutoFlow with permission to access data and any other information stored and captured on the Client's IT systems or other storage repository as AutoFlow may reasonably request to satisfy itself that the Client is complying with its obligations under the DPA/GDPR;
  - promptly notify AutoFlow of:
    - any breach of the security requirements of AutoFlow as referred to in clause 13.3;
    - any request for Personal Data;
    - ensure that it does not knowingly or negligently do or omit to do anything which places AutoFlow in breach of AutoFlow's obligations under the DPA/GDPR.
- 13.3 When handling AutoFlow data (whether or not Personal Data), the client shall ensure the security of the data is maintained in line with good industry practice and the security requirements of AutoFlow as notified to the Client from time to time.
- 13.4 The Client shall indemnify and hold harmless AutoFlow from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid as a result of or in connection with any alleged claim or actual infringement, whether or not under English Law, of any AutoFlow data (whether or not Personal Data) out of the use of the supply of the services contemplated by this agreement or by any negligent act by, or failure or omission of, the Client.
- 14. CLIENTS OBLIGATIONS**
- 14.1 The Client undertakes to ensure that:
- only properly trained staff operate the AutoFlow System in accordance with best computing practice;
  - AutoFlow's maintenance and support staff have full, free and timely access to the AutoFlow System either by remote access or visit to the Client's premises at the discretion and request of AutoFlow and that provision is made for adequate working and storage space and other such facilities as AutoFlow may reasonably require and that any common law or statutory requirements relating to a healthy and safe place of work at the Client's premises are followed by the Client and that it co-operates with AutoFlow's staff as reasonably required to perform the Annual Support Service;
  - the AutoFlow System is not under any circumstances altered, modified, adjusted or interfered with except by AutoFlow's authorised staff or with the agreement of AutoFlow in writing; and
  - the AutoFlow System is not constrained or prohibited from transmitting data to AutoFlow at any time. The Client agrees to allow any and all bodyshop data processed (excluding Personal Data) in the AutoFlow System to be transmitted to AutoFlow, who shall have the right to process this data and disclose it to authorised third parties;
  - AutoFlow can study any other software, equipment or information and data used by the Client with the AutoFlow System for the purpose of rectifying any problems with the AutoFlow System.
- 15. INTELLECTUAL PROPERTY RIGHTS**
- 15.1 The Intellectual Property Rights in the AutoFlow System and User Manual are and shall remain the property of AutoFlow and the Client acknowledges that it shall gain no title right or interest in the AutoFlow System or User Manual (including any amendments or additions arising as a result of any Professional Services) by virtue of this Agreement other than the non-exclusive licences granted to it by AutoFlow.
- 15.2 The Client shall only make such back up or other copies of the AutoFlow System and the User Manual as are reasonable for the use of the AutoFlow System in accordance with this Agreement but shall not otherwise be entitled to copy them.
- 15.3 On termination of this Agreement for any reason all copies of the AutoFlow System and the User Manual shall be returned immediately to AutoFlow at the expense of the Client or the Client shall provide a certificate signed by a director or other officer of the Client confirming that:
- all copies of and reference to the AutoFlow System have been deleted from any and all computer held files and/or storage;
  - the AutoFlow System has not been loaded or accessed since the date of termination of this Agreement;
  - all programs written in the AutoFlow System have been deleted from any and all computer held files and/or storage and that no such programs have been in existence or use since the date of termination of this Agreement; and

- (d) the AutoFlow System and User Manual have been irretrievably erased or destroyed and cannot be referred to or accessed in any way.
- 15.4 AutoFlow warrants that the AutoFlow System and the User Manual do not infringe the Intellectual Property Rights of any third party.
- 15.5 If the AutoFlow System infringes any Intellectual Property Rights of any third party in the United Kingdom, or such infringement is alleged, AutoFlow may procure the right of the Client to continue to use the AutoFlow System or to modify or replace the AutoFlow System so as to stop such infringement or allegation provided that the AutoFlow System as modified or replaced substantially meets the requirements of the Client. If, after AutoFlow has used its reasonable endeavours, the foregoing has not been achieved, AutoFlow may end this Agreement immediately by giving notice to the Client.
- 15.6 The Client acknowledges that in utilising the AutoFlow System, it shall have access to (i) automated electronic first notification of loss instructions (FNOL); and (ii) job update messages relating to the status of an authorised repair issued in relation to any FNOL's ("Data"). The Client acknowledges and agrees that the Intellectual Property Rights in the Data are and shall remain the property of AutoFlow and the Client shall gain no title, right or interest in the Data by virtue of this Agreement.
- 15.7 The Client shall indemnify, and keep indemnified, AutoFlow in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by AutoFlow as a result of or in connection with any claim made against AutoFlow for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the use of AutoFlow's systems, contrary to the licence conditions contained within the Purchase Order, to the extent that the claim is attributable to the acts or omission of the Client or any of its Staff.
- 16. TERMINATION**
- 16.1 Without prejudice to any other rights AutoFlow may have under this Agreement, at any time during this Agreement, AutoFlow shall have the right to terminate this Agreement on written notice to the Client, with immediate effect, if the Client:
- (a) breaches any of these terms and conditions and such breach is not capable of remedy;
  - (b) breaches any of these terms and conditions and if such breach is remediable, fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do;
  - (c) (being a person) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
  - (d) (being a body corporate) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors; or
  - (e) suspends or ceases or threatens to suspend or cease, to carry on all or a substantial part of its trade or business.
- 16.2 Termination of this agreement (however occasioned) shall not affect any accrued rights or liabilities of either party.
- 17. ASSIGNMENT AND SUBCONTRACTING**
- 17.1 AutoFlow shall be entitled to sub-contract the performance of any of its obligations under this Agreement, and to assign all or any of its rights and obligations under this Agreement.
- 17.2 This Agreement and the rights granted to the Client under this Agreement are personal to the Client, who may not without the written consent of AutoFlow, assign, mortgage, charge or dispose of all or any of its rights and obligations under this Agreement, or sub-contract or otherwise delegate the performance of any of its obligations under this Agreement.
- 18. UNFORSEEABLE DELAYS**
- 18.1 AutoFlow shall not be liable to the Client for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control (force majeure) including, without limitation, any of the following: acts of God, governmental acts, war, fire, flood, explosion or civil commotion and industrial action.
- 19. NOTICES**
- 19.1 Any notice required or permitted under the terms of this Agreement or required by statute, law or regulation will (unless otherwise provided in this Agreement as a Notification) be in writing and delivered in person, sent by email or registered mail (properly posted and fully prepaid in an envelope properly addressed) to the respective addresses of the parties as set out in the Purchase Order. Any such notice shall be deemed to have been given on the day of delivery or if sent by facsimile on the day of despatch.
- 20. GENERAL**
- 20.1 The Client agrees that it shall not for a period of twelve (12) months after expiry, non renewal or termination of this agreement approach AutoFlow's employee's whether as agent or employer or otherwise nor through an agency or intermediary with any offers of employment, contract. The Client agrees that it will not, whether directly or indirectly, recruit or try to recruit or engage in paid work any person employed by AutoFlow as an employee or consultant or in some other capacity if that person was at any time during the last six (6) months of this agreement employed by AutoFlow whether engaged in the services under this agreement or otherwise. AutoFlow holds the Client responsible for any losses it incurs due to any breach of this condition by the Client.
- 20.2 AutoFlow reserves the right to publicise this Agreement and to list the Client as a client in its marketing materials and the Client grants to AutoFlow a right and licence to use its trade marks for this purpose. For the avoidance of doubt, AutoFlow must gain the Client's approval before issuing press releases and general releases relating to this Agreement.
- 20.3 Any delay, forbearance or indulgence by either party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.
- 20.4 If at any time any provision of this Agreement is or becomes invalid or illegal in any respect such provision shall be deemed to be severed from this Agreement.
- 20.5 This Agreement sets out the entire agreement and understanding between the parties in connection with is subject matter. In particular, but without limitation, the Client warrants and represents that in entering into this Agreement it has not relied upon any statement of fact or opinion made by AutoFlow, its officers, servants or agents which has not been included expressly in this Agreement. The Client irrevocably and unconditionally waives any right it may have:
- (a) to rescind this Agreement by virtue of any misrepresentation;
  - (b) to claim damages for any misrepresentation whether or not contained in this Agreement;
  - (c) to claim damages for breach of any warranty not contained in this Agreement
- save in each case where such misrepresentation or warranty was made fraudulently.
- 20.6 This Agreement may not be amended, modified, varied or supplemented except in writing signed by or on behalf of AutoFlow and the Client.
- 20.7 This Agreement shall be construed in accordance with English law. The parties hereby submit to the exclusive jurisdiction of the English Courts.