

# Terms & Conditions for the Supply of Goods and Services (Issue One : Dated 24/07/2007)

## 1 INTERPRETATION

### 1.1 In These Conditions:

- "Buyer" means the person who accepts a quotation for the Work or whose order for the Work is accepted by the Seller or the person whose name appears on the order form to which these Conditions are annexed (as appropriate).
- "Goods" means the goods (including any instalment of the goods or any parts for them) specified on the order form to which these Conditions are annexed (as appropriate). Such order form and the Conditions together constitute the "Contract".
- "Services" means the installation and/or maintenance services specified on the order form.
- "Work" means the Goods and, if applicable, the Services.
- "Seller" means the company named on the order form to which these Conditions are annexed.
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- "Writing" includes telex cable facsimile transmission and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 BASIS OF THE SUPPLY OF WORK

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and, if required on the order form, the Seller shall provide the Services in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller subject in either case to these Conditions which shall govern the Contract to the exclusion of any terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.
- 2.2 No variation to these Conditions shall be made in writing unless agreed in writing between the authorized representative of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representation concerning the Goods and/or the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents as to the installation storage application maintenance or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice which is not so confirmed.
- 2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3 ORDERS AND SPECIFICATION

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order including any applicable specification submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its Terms.
- 3.3 Save as provided in these Conditions the quantity quality and description of and any specification for the Work shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be designed or manufactured or any process is to be applied to the Goods and/or the Services are to be provided in accordance with a specification submitted by the Buyer all intellectual property rights in such design, process or Goods will (unless otherwise agreed in writing) vest in the Seller and the Buyer shall indemnify the Seller against all damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trademark or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods and/or the Services which are required to conform to any applicable safety or other statutory requirements or where the Goods and/or the Services are to be supplied to the Buyer's specification which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled or deferred by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and material used) damages charges and expenses incurred by the Seller as a result of cancellation or deferment.

## 4 PRICE OF THE WORK

- 4.1 The price of the Goods and of the Services shall be the Seller's quoted price or where no price has been quoted or a quoted price is no longer valid the price listed in the Seller's published price list current at the date of the acceptance of the order. Where the Goods are supplied for export from the United Kingdom and/or the Services are to be provided outside the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates quantities or specifications for the Goods or in the requirements or specifications for the Services which is requested by the Buyer or any delay caused by any instructions of the Buyer or the failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except where the Goods are supplied for export from the United Kingdom or as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.
- 4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## 5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller (a) the Seller shall be entitled to invoice the Buyer for the price of the Goods or on any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods, and (b) payment for the Services will be due in advance or in arrears as stated in the specification or, if not stated, on completion of the Services.
- 5.2 The Buyer shall pay the price of the Goods and/or the Services (less any discount to which the Buyer is entitled but without any other deduction) in the agreed currency and in cleared funds within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment due to the Seller the Seller shall be entitled to suspend its obligations and to suspend its right to supply or remedy available to the Seller the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer and/or provide any further Services;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods and/or the Services (or the Goods supplied and/or the Services provided under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 0.066 per cent per day until payment is made in full.
- 5.4 All amounts stated as exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required to be paid.

## 6 DELIVERY AND PERFORMANCE

- 6.1 Except where the Goods are supplied for export from the United Kingdom, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery or provision of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services however caused (even if caused by the Seller's negligence) unless such delay exceeds 180 days. Time for delivery or performance shall not be of the essence unless previously agreed by the Seller in Writing. The Seller may be delivered or the Services provided by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where delivery of the Goods is to be made by the Seller in bulk the Seller reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Seller fails to deliver the Goods or to provide the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods or, as the case may be, of similar services to replace those not provided over the price of the Services.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:
- 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.6.2 sell the Goods at the best price readily obtained and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.7 The Buyer shall be its own carrier.
- 6.7.1 permit the Seller, its employees and agents access and make available the facilities, resources, working space and staff to undertake any other action;
- 6.7.2 co-operate with, and procure that its employees and agents co-operate with and assist, the Seller;
- 6.7.3 provide relevant information and documentation and obtain all necessary permissions, consents, and health and safety approvals, as reasonably required by the Seller to enable it to perform the Services and the Buyer shall be liable for any additional costs and expenses incurred by the Seller caused by the Buyer's failure to do so.

## 7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered at a place other than the Seller's premises at the time of delivery of the Goods and/or the Buyer's failure to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property. Until that time the Seller shall be entitled to reject or refuse to accept or to inspect any sample or part of the Goods and/or the Services and the Seller shall be entitled to sue for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any other party named in the Contract to inspect the Goods and/or the Services and to remove any part of the Goods and/or the Services which are in breach of the Contract by reason of any failure or any failure to perform any of the Seller's obligations in relation to the Goods and/or the Services if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 WARRANTIES AND LIABILITIES

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship, and that the Seller will use reasonable care in performing the Services and to a standard which conforms to generally accepted industry standards and practices.
- 8.2 The above Warranty is given by the Seller subject to the following conditions.
- 8.2.1 Where the Goods have been designed by the Seller to the Buyer's specification or in accordance with the Buyer's instructions the Seller will use reasonable care in creating any design but does not warrant that any result or objective shall be achieved, be achievable or attained at all and the Seller shall be responsible for any defects in design and inspection of any sample before manufacture and the Goods before delivery and after performance of the Services and the Seller makes no warranty that the Goods are fit for any particular purpose;
- 8.2.2 The Seller shall be under no liability in respect of any defect in the Goods or performance of the Services unless it arises solely from faulty design, materials or workmanship but the Seller shall be under no liability in respect of any defect in the Goods and/or performance of the Services arising from any drawing design or specification supplied by the Buyer for which the Seller has reasonably disclaimed responsibility in writing;
- 8.2.3 The Seller shall be under no liability in respect of any defect or malfunction arising from: fair wear and tear; willful damage; negligence; abnormal working conditions; failure to follow the Seller's instructions (whether oral or in writing); mis-use; alteration or repair of the Goods without the Seller's prior written approval; or assembly or work on the Goods being carried out by persons with insufficient expertise in working with components of the same kind as the Goods.
- 8.2.4 The Seller shall be under no liability under the Warranty (or any other Warranty condition or guarantee) if the total price for the Goods and for the Services has not been paid by the due date for payment;
- 8.2.5 The above Warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such Warranty or guarantee as is given by the manufacturer to the Seller;
- 8.2.6 The total liability of the Seller under any valid claim in respect of the Works and/or arising out of the Contract (whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever) shall not exceed the sums paid to the Seller under the Contract.
- 8.3 Subject as expressly provided in and except where the Goods are sold and/or the Services are provided to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Where the Goods are sold and/or the Services are provided under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.5 Any claim by the Buyer against the Seller in respect of any defect in the quality or condition of the Goods and/or in the provision of the Services or their failure to correspond with specification shall (whether or not delivery of the Goods is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and/or the Services and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered and/or the Services had been performed in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods and/or the Services which is based on any defect in the quality or condition of the Goods or performance of the Services or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to reject the Goods and/or the Services (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods and/or the Services (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any pure economic loss or damage whether direct indirect or consequential (whether for loss of profit loss of business depletion of goodwill or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or with the provision of the Services except as expressly provided in these Conditions.
- 8.8 The Seller shall be liable to the Buyer in respect of any breach of the Contract by reason of any failure or any failure to perform any of the Seller's obligations in relation to the Goods and/or the Services if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control.

- 8.8.1 Act of God explosion flood temper fire or accident;
- 8.8.2 war or threat of war sabotage insurrection civil disturbance or requisition;
- 8.8.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 8.8.4 import or export regulations or embargoes;
- 8.8.5 strikes lock-out or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.8.6 difficulties in obtaining raw materials labour fuel parts or machinery;
- 8.8.7 power failure or breakdown in machinery;
- 8.9 Nothing in these Conditions excludes or limits the liability of the Seller or the Buyer for fraud or fraudulent misrepresentation.

## 9 INDEMNITY

- 9.1 If any claim is made against the Buyer that the Goods and/or Services infringe or that their use or resale or performance infringes the patent copyright design trade mark or other industrial or intellectual property rights of any other person the Seller shall indemnify the Buyer against all loss damages costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Seller shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
- 9.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 9.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all the damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which shall not be unreasonably withheld) to be paid by any other party in respect of such claim; and
- 9.1.6 without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## 10 INSOLVENCY OF BUYER

- 10.1 This clause applies if:
- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession of or a receiver is appointed of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases or threatens to cease to carry on business; or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries and/or performance of the Services under the Contract without any liability to the Buyer and if the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11 EXPORT TERMS

- 11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.4 Unless otherwise agreed in Writing between the Buyer and the Seller the Goods shall be delivered FCA at the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.5 The Seller shall be responsible for arranging testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such bank in England as may be specified in the bill of exchange.

## 12 GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.4 The Seller may assign the benefit of this Contract to any person or company but the Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 12.5 The parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The parties agree that, irrespective of the place of performance, this Contract will be construed and interpreted according to the laws of England and Wales. Both parties agree that the United Nations Convention on Contracts for International Sale of Goods does not apply and is strictly excluded.
- 12.7 Unless otherwise agreed in writing by the parties, the exclusive venue and jurisdiction for all legal proceedings of any kind or nature brought under or in connection with this Contract shall lie within England, United Kingdom. The parties may enforce a judgement or decision in any Court of competent jurisdiction.