

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Conditions the following words have the following meanings: Significant Bought In Items means those items procured by the Supplier but specified by the Customer; Conditions means these terms and conditions; Contract means a contract between the Customer and the Supplier for the sale and purchase of Goods and/or the performance of Services made subject to these Conditions and which has come into force in accordance with Clause 2.2; Customer means the entity who issues an Order to the Supplier; Force Majeure Event means any circumstance beyond the reasonable control of the Supplier including any act of God, war, riot, terrorism, explosion, abnormal, extreme or unusual weather conditions, loss of utilities, fire, flood, strike, lock out or industrial dispute and/or governmental or regulatory authority action; Goods means any goods to be provided by the Supplier as detailed in the applicable Quotation; Insolvency Event means with respect to a party that: (a) any meeting of creditors of that party is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to that party; (b) that party ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; (c) a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of that party or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of that party; (d) a petition is presented for the winding-up of that party or a resolution for its winding up is passed; (e) a notice of intention to appoint an administrator is filed with the court or served on any creditor of that party; (f) an application for an administration order in respect of that party is issued at court; (g) a meeting is convened for the purpose of considering a resolution for the winding up of that party or the making of an application for an administration order or the dissolution of that party; (h) any Main or Territorial proceedings are opened within the meaning of the EC Regulation on Insolvency Proceedings 2000 with respect to that party; and/or (i) any event analogous to any of the foregoing occurs to that party in any jurisdiction; Order means the Customer's order for any Goods and/or Services as may be set out in any purchase order issued by the Customer to the Supplier or in any other request for Goods and/or Services which is issued by the Customer to the Supplier from time to time (but excluding in any case any terms and conditions which the Customer may purport to apply in any such purchase order or other order); Price means the price payable by the Customer for the Goods and/or Services as set out in the applicable Quotation forming part of the Contract; Quotation means the Supplier's written quotation for the supply of Goods and/or Services; Services means any services to be provided by the Supplier in as detailed in the applicable Quotation; and Warranty Period means a period of time following successful completion of the installation and commissioning of the Goods as follows: (a) for all Supplier manufactured Goods a period of 12 months; (b) for all Significant Bought In Items the remainder of the original period available to the Supplier; (c) no period will be applicable for items supplied by the Customer.
- 1.2. In these Conditions and each Contract: headings are inserted for convenience only and do not affect construction or interpretation; references to Clauses are to the Clauses of these Conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute or statutory provision shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2. BASIS OF CONTRACT

- 2.1. Each Order constitutes an offer by the Customer to purchase the Goods and/or Services in question in accordance with these Conditions and the applicable Quotation. Quotations do not constitute an offer which is capable of acceptance by the Customer and may be withdrawn or varied by the Supplier without liability at any-time prior to a Contract coming into force in accordance with Clause 2.2.
- 2.2. Each Order shall be deemed accepted on the earlier of: (a) the Supplier issuing a written acceptance of the Order (which may be issued by the Supplier by email); or (b) the Supplier commencing manufacture of any Goods and/or the performance of any Services. Once an Order has been accepted it cannot be cancelled by the Customer other than specifically as provided for in these Conditions or with the prior written agreement of the Supplier (which shall be at the discretion of the Supplier).
- 2.3. Each Contract represents the entire agreement between the parties relating to the supply of the Goods and/or Services in question and the Customer acknowledges that it will not rely on and has not relied on any statement, promise or representation which is not set out in the applicable Contract. The Customer further acknowledges that the terms and conditions of each Contract apply to the exclusion of any other terms which the Customer might seek to impose or incorporate (whether through the use of any standard form documents of the Customer, which shall be permitted for convenience only, or otherwise) or which might otherwise be implied by trade, custom, practice or course of dealing all of which are excluded from each Contract to the fullest extent lawfully permitted.
- 2.4. The Supplier shall be under no obligation to accept any Orders which are submitted to it and shall be entitled to decline to accept any Orders without liability or the need to give reason.

3. DELIVERY

- 3.1. All Goods are supplied and delivered on the basis of DAP (Incoterms 2010) unless an alternative basis is specified in the applicable Quotation.
- 3.2. The Supplier shall deliver the Goods to the delivery location specified in the applicable Quotation in accordance with the delivery dates/lead times specified in that Quotation.
- 3.3. In the event that the Customer fails to accept delivery of any Order when the Supplier attempts to make delivery then the Customer shall reimburse the Supplier on demand for any reasonable additional costs and expenses directly incurred by the Supplier in storing the Goods in question and attempting re-delivery.

4. GOODS WARRANTY

- 4.1. The Supplier warrants that all Goods supplied by it shall: (a) correspond with the specification provided for in the applicable Quotation; and (b) be free from material defects in design, material and workmanship and fit for any purpose held out by the Supplier in either case, for the Warranty Period.

5. WARRANTY CLAIMS

- 5.1. The Customer shall: (a) (save where the Supplier is to install and commission any Goods as part of the Contract) conduct a thorough visual inspection of any Goods on delivery and shall notify the Supplier in writing of any damage to their packaging or other apparent failure of the Goods to comply with the Warranty set out at Clause 4.1 on delivery within seven days of the date of delivery; (b) shall notify the Supplier in writing of any failure of any Goods to comply with the Warranty set out at Clause 4.1 which arises after the date of delivery within seven days of the date of which the Customer first became aware of the failure in question.
- 5.2. In the event of the Customer making a Warranty claim during the Warranty Period under the Warranty set out at Clause 4.1 and/or 1 which the Supplier (acting reasonably) considers to be valid then the Supplier shall (at its discretion) as soon as reasonably practicable either replace the Goods (or the affected part of the Goods), re-perform the affected Services or

refund to the Customer the Price actually paid by it to the Supplier for the Goods and/or Services in question. Any such repairs or replacements shall be subject to the Warranty set out at Clause 4.1 and/or 1 for the remainder of the original Warranty Period.

- 5.3. The Customer shall on request: (a) permit the Supplier to access any premises where any Goods which are the subject of a Warranty claim are located (or in the case of any Services, where those Services were carried out) for the purposes of investigating the Warranty claim in question; and/or (b) promptly return to the Supplier (at the Customer's expense) any Goods which are the subject of a Warranty claim.
- 5.4. The Customer shall on demand reimburse the Supplier for any reasonable costs and expenses which are directly incurred by it in investigating any Warranty claim made by the Customer which is subsequently found to be invalid for any reason.
- 5.5. Compliance by the Supplier with its obligations under Clause 5.2 shall represent the Customer's exclusive rights and remedies (and the Supplier's only liability) in respect of any failure of the Goods and/or Services to comply with the warranties set out at Clauses 4.1 and 1.
- 5.6. The terms implied by sections 13 – 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from any Contract.

6. EXCLUSIONS FROM WARRANTY CLAIMS

- 6.1. The Supplier shall have no liability or responsibility to the Customer (whether under any Contract or otherwise) in respect of any failure of the Goods and/or Services to comply with these Conditions (including any failure to comply with the warranties set out at Clauses 4.1 and 1): (a) which is not notified by the Customer to the Supplier in accordance with Clause 5.1; (b) in the event that the Customer fails to comply with its obligations under Clause 5.3; (c) in the event of further failures as a result of the Customer making further use of the Goods after becoming aware of any failure of the Goods to comply with the Warranty set out at Clause 4.1; (d) which is attributable to any failure by the Customer to follow the Supplier's oral or written instructions as to the storage, handling, maintenance and use of the Goods and/or any failure by the Customer to follow good trade practice regarding the same; (e) in the event that the Customer alters the Goods (or permits any third party to do so) without the written consent of the Supplier; (f) where any failure of the Goods arises as a result of fair wear and tear, wilful damage, negligence, or abnormal or incorrect storage or working conditions; and (g) which is attributable to processing of any materials or products using any Goods which are not in compliance with the specifications, characteristics and requirements for such materials or products as detailed in the applicable Quotation.

7. CUSTOMER OBLIGATIONS

- 7.1. In addition to timely compliance by the Customer with any specific Customer obligations which may be specified in the applicable Quotation (such as any site preparatory works which the Customer is required to complete so as to facilitate delivery and installation of any Goods), the Customer shall also provide in a timely manner any information, co-operation, assistance, safe access that the Supplier may reasonably request from time to time to assist with the supply of the Goods and/or the performance of the Services and/or any Warranty repairs (which may include participation in acceptance testing for the Goods and the provision of a reasonable quantity of Customer materials or products which will be processed using the Goods for the purposes of such testing) and the Customer shall ensure that all information provided by it is complete and accurate.
- 7.2. The Supplier shall not be liable for any failure or delay in complying with any of its obligations under any Contract if the failure or delay in question is attributable to any failure or delay by the Customer to comply with any obligation as referred to in Clause 7.1 or any other act or omission of the Customer (a Customer Default). In the event of a Customer Default then without prejudice to any other rights or remedies available to the Supplier (whether under the applicable Contract or otherwise) the Supplier shall be entitled to a reasonable extension of

time for its performance of the Contract to reflect the impact of the Customer Default in question and to recover from the Customer any additional costs and expenses reasonably and properly incurred by the Supplier as a direct result of that Customer Default.

8. PRICE AND PAYMENT

- 8.1. The Supplier may invoice the Customer for the Price under the Contract in accordance with the instalments set out in the applicable Quotation and the Customer shall pay all such invoices in full in cleared funds to such bank account as nominated by the Supplier from time to time within 30 days of the date of invoice.
- 8.2. Responsibility for the costs and expense of packaging, insuring and transporting the Goods to the Customer (and responsibility for obtaining any required export/import clearance and associated duties and levies) shall be as provided for under the applicable delivery terms as referred to in Clause 3.1.
- 8.3. Unless otherwise provided for in a Quotation, the Price for any Services is stated exclusive of expenses and the Supplier shall be entitled to re-charge to the Customer at cost monthly in arrears any reasonable travel, accommodation and subsistence expenses reasonably and properly incurred by the Supplier's personnel and representatives in the performance of the Services in question.
- 8.4. All Prices and any other amounts which may be payable to the Supplier under any Contract are stated exclusive of VAT which shall be paid by the Customer in addition at the rate from time to time in force (subject to the provision of a VAT invoice by the Supplier).
- 8.5. In the event that: (a) the Customer fails to pay any sum due from it under any Contract (including the Price) by the due date for payment; (b) the Customer suffers any Insolvency Event; or (c) the Supplier (acting reasonably) considers it is likely that the Customer will suffer an Insolvency Event then without prejudice to any other rights or remedies available to the Supplier (whether under the applicable Contract or otherwise) the Supplier shall be entitled to suspend further delivery of any Goods and/or further performance of any Services (whether supplied under the Contract in question and/or under any other contract from time to time in force between the Supplier and Customer) and charge interest on such amount together with the cost of recovery in each case, in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 8.6. The Price together with any other amounts which may be due to be paid by the Customer to the Supplier under any Contract shall be paid by the Customer in full in cleared funds without set-off, withholding, deduction or counterclaim.

9. RISK AND TITLE

- 9.1. Risk of loss or damage occurring to Goods shall pass from the Supplier to the Customer in accordance with the applicable delivery terms as referred to in Clause 3.1.
- 9.2. Ownership of any Goods delivered to the Customer shall not pass from the Supplier to the Customer unless and until the Supplier has received from the Customer in full in cleared funds the full Price payable under the applicable Contract.
- 9.3. Until title to any Goods has passed to the Customer, the Customer shall: (a) hold those Goods on a fiduciary basis as the Supplier's bailee; (b) store those Goods separately from any other items held by the Customer to that they remain readily identifiable as the Supplier's property; (c) not remove, deface or obscure any markings on the Goods or their packaging which identifies the Goods as the Supplier's property; (d) maintain those Goods in a safe and satisfactory condition and keep them insured against all usual risks for their full Price; and (e) be permitted to use those Goods in the ordinary course of the Customer's business but for the avoidance of doubt, such use shall not include the right for the Customer to sell, charge, mortgage or encumber those Goods or otherwise do anything which is inconsistent or contradictory with the Supplier's ownership of those Goods.

- 9.4. The Customer's right of possession of any Goods in respect of which title has not passed to it shall immediately end in the event that the Customer suffers any Insolvency Event and the Customer shall notify the Supplier immediately should it suffer any Insolvency Event and shall also inform any receiver, manager, administrative receiver or similar who may be appointed with respect to any assets of the Customer that those Goods belong to the Supplier and are not assets belonging to the Customer.
- 9.5. The Customer shall allow the Supplier or its authorised representatives on request access any premises where any Goods in respect of which title has not passed to the Customer may be stored (or in the case of any premises not under the control of the Customer, shall procure that such access is granted for the Supplier or its authorised representatives) for the purposes of inspecting those Goods, verifying the compliance by the Customer with its obligations under Clause 9.3 and/or where the Customer's right of possession of those goods has ended, for the purposes of recovering those Goods.

10. SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS

- 10.1. The Customer acknowledges that all intellectual property rights subsisting or capable of subsisting in any Goods (including in any software provided with any Goods) and/or Services are the property of the Supplier and/or its third party licensors and that save only as provided for under Clause 10.2, nothing in any Contract nor the supply of any Goods and/or Services to the Customer shall act so as to give the Customer any right, title or other interest in or to any such intellectual property rights.
- 10.2. Subject to payment of the Price by the Customer in accordance with the terms of the applicable Contract and any third party end user licence which may be provided with any software supplied by the Supplier, the Supplier grants to the Customer a non-exclusive, royalty free and perpetual licence to use any software provided with any Goods for the purposes of the use and operation of those Goods in the course of the Supplier's business.

11. LIMITATIONS AND EXCLUSIONS ON LIABILITY

- 11.1. Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; in respect of any breach of any condition implied under section 12 of the Sale of Goods Act 1979; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of each Contract shall be read as subject to this Clause 11.1 and no provision of any Contract is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.
- 11.2. Subject to Clauses 11.1, 11.3 and 11.4, the maximum aggregate liability of the Supplier to the Customer for all claims under any Contract howsoever arising (including under any indemnity) shall be limited in aggregate to Price actually paid by the Customer to the Supplier under the Contract in question.
- 11.3. The Supplier shall not be liable (whether under the terms of any Contract, under any indemnity or otherwise) for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or any consequential, special or indirect loss or damage in any case, regardless of whether or not the Supplier was aware or had been made aware (or ought reasonably to have been aware) at the time of the relevant Contract being formed of the risk that such loss or damage might occur.
- 11.4. The Supplier shall not be liable for any failure or delay in complying with any of its obligations under any Contract if the failure or delay in question is attributable to any Force Majeure Event.

12. TERMINATION FOR DEFAULT

12.1. Either party may terminate a Contract at any time by giving written notice to the other if the other party: (a) commits any material breach of that Contract and that breach is: (i) not capable of remedy; or (ii) is capable of remedy, but the defaulting party fails to remedy it within 30 days of receiving a written notice from the first party containing full particulars of the material breach and requiring it to be remedied; and/or the (b) other party suffers any Insolvency Event.

13. TERMINATION FOR CONVENIENCE

13.1. The Customer may terminate the Contract for any reason at any time by giving 45 days written notice to the Supplier.

13.2. The Supplier shall use reasonable endeavours to minimise further costs on the contract with the Customer liable to pay for the value of: (a) any work already performed; (b) any purchase order which cannot be cancelled; (c) any work required to terminate the Contract early.

13.3. Any invoice presented under a termination for convenience shall become due on the date presented to the Customer.

14. TERMINATION AND EXPIRY

14.1. Termination or expiry of any Contract on whatever basis shall be without prejudice to any rights or obligations of either party which have accrued prior to the date of termination and shall not affect the continuing in or coming into force of any provision of that Contract which, whether expressly or by implication, is to continue in or come into force following expiry or termination.

15. CONFIDENTIALITY AND PUBLICITY

15.1. Each of the Customer and Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to it by the other party and any other confidential information concerning the business, products and services of that other party which the receiving party may obtain or be provided with access to. Each of the Customer and Supplier shall use and disclose such confidential information of the other party only to those of its employees, agents or authorised subcontractors or sub-suppliers who need to know the same for the purpose of exercising its rights or discharging its obligations under a Contract and shall ensure that such employees, agents or subcontractors or sub-suppliers shall keep such information confidential.

15.2. Clause 15.1 shall apply without limit in time but shall cease to apply to the limited extent that any confidential information of a party which: (a) is legally required to be disclosed by the other party (provided that where lawfully permitted that other party shall provide advance notice of the request/requirement to disclose the confidential information in question so as to enable the disclosing party (at its discretion) to object to such disclosure); and/or (b) after its disclosure subsequently lawfully enters the public domain.

15.3. The Supplier shall be permitted to: (a) take a reasonable amount of video and photographic footage at any Customer location where Goods are to be installed and used provided that such footage is used by the Supplier solely to assist with such installation and the performance of the Supplier's other obligations under the relevant Contract and is treated by the Supplier as confidential information of the Customer which subject to this Clause 13; and (b) state in marketing and promotional materials issued by it (including on the Supplier's website) that the Customer is a customer of the Supplier for the Goods and/or Services.

16. GENERAL

16.1. Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post or courier service to the address of the other party specified in the Quotation (or if no address is specified in the Quotation to the registered office address of the other

party) or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.

- 16.2. The parties are with respect to each other independent contractors and nothing in these Conditions or any Contract and no actions taken by the parties under any these Conditions or any Contract shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 16.3. Save only to the extent specifically provided for otherwise under these Conditions, no variation or amendment of these Conditions or any Contract shall be binding unless made in writing and signed by or on the behalf of each of the parties.
- 16.4. The Customer may not assign or transfer any of its rights and/or obligations under any Contract without the prior written consent of the Supplier.
- 16.5. The Supplier may sub-contract the performance of any of its obligations under any Contract without the prior consent of the Customer but shall remain primarily liable to the Customer for the acts and omissions of any of its sub-contractors as if those were the acts or omissions of the Supplier itself under the applicable Contract.
- 16.6. A person who is not a Party to a Contract shall have no right to enforce any term of that Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 16.7. If any provision of these Conditions or of any Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.
- 16.8. Save only to the extent specifically provided for otherwise under these Conditions: (a) the failure to exercise or delay in exercising any right or remedy under these Conditions or any Contract shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies; and (b) no single or partial exercise of any right or remedy under these Conditions or any Contract shall prevent any further exercise of the right or remedy or any other right or remedy.
- 16.9. These Conditions, each Contract and any dispute or claim arising out of or in connection with them or their subject matter or formation (including any non-contractual disputes or claims) shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.

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