



## Terms and Conditions of Purchase

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these conditions.

Contract: the Purchase Order and the Supplier's acceptance of it in accordance with condition 3.3.

Customer: means ETL Systems Ltd as detailed on the Purchase Order.

Goods: the goods agreed in the Contract to be purchased by the Customer from the Supplier (including any part of them).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Purchase Order: the Customer's written instruction to supply the Goods and/or Services, incorporating these conditions. Services: the services agreed in the Contract to be purchased by the Customer and supplied by the Supplier (including any part of them).

Supplier: the person, firm or company who accepts the Purchase Order in accordance with condition 3.3.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to writing or written includes faxes and e-mail.

- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## **2. Application of conditions**

- 2.1 These conditions shall:
- (a) apply to and be incorporated in the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these conditions or any of them shall be binding on the Customer unless in writing and signed by a duly authorised representative of the Customer.
- 2.3 Where the Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Goods and/or Services supplied pursuant to that Purchase Order.

## **3. Effect of Purchase Order**

- 3.1 The Customer shall only be bound by an order if it is issued on the Customer's standard Purchase Order form.
- 3.2 The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or Services subject to these conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of that Goods and/or Services on these conditions. Any counter-offer made by the Supplier to supply the Goods and/or Services on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Customer.
- 3.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier.

## **4. Supplier's warranty for Goods**

- 4.1 The Supplier warrants to the Customer that:
- (a) the Goods will conform with the quality, description and other particulars of the Goods stated in the Purchase Order;
  - (b) the Goods will conform to all samples, drawings, descriptions and specifications provided to the Customer by the Supplier;

(c) the Goods will conform with all standards referred to on any part of the Goods and in any product packaging and/or documentation in, with or in relation to which the Goods is supplied;

(d) the Goods will be of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Supplier, and will be free from all defects in materials, workmanship and installation (where applicable) for a period of 12 months from the date of delivery; and

(e) the Goods will comply with all performance and other specifications stated in the Purchase Order, and all applicable legislation for the time being in force.

4.2 The Customer's rights under the Contract are in addition to the statutory terms implied in favour of the Customer by the Sale of Goods Act 1979 and any other statute.

4.3 The provisions in this condition 4 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial goods provided by the Supplier.

## **5. Quantities of Goods**

Unless the Customer has agreed otherwise in writing, the Supplier shall deliver the exact specified quantities of items comprised in the Goods in accordance with the Purchase Order. Without affecting its other rights and remedies, the Customer reserves the right to reject incomplete deliveries and to return excess quantities at the Supplier's risk and expense.

## **6. Inspection and testing of Goods**

6.1 The Supplier shall:

(a) carefully test and inspect the Goods before delivery to ensure that they comply with the requirements of the Purchase Order; and

(b) if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

6.2 The Customer reserves the right to call for certificates or test certificates for the Goods at any stage of manufacture or assembly. Such certificates shall clearly state the Customer's order numbers and any item or equipment numbers. If, as a result of any inspection or test, the Customer finds that the Goods or any items comprised within it do not comply with the Purchase Order, or are unlikely to comply with it on completion of manufacture, processing or performance, the Customer may inform the Supplier, and the Supplier shall take such steps as are necessary to ensure compliance.

## **7. Delivery, installation and acceptance of Goods and/or Services**

7.1 The Supplier shall deliver the Goods and/or Services on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Goods and/or Services under the Contract and if

the Supplier does not comply with its obligations in the preceding sentence, the Customer may:

(a) cancel the Contract in whole or in part without incurring any liability to the Supplier;

(b) refuse to accept any subsequent delivery of items comprised in the Goods and/or Services which the Supplier attempts to make;

(c) purchase substitute items or services elsewhere; and (d) hold the Supplier accountable for any loss and additional costs incurred.

7.2 The Goods shall be properly packed and secured in such manner as to enable it to reach its destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.

7.3 The Goods shall be delivered by the Supplier to the place of delivery specified in the Purchase Order, or as otherwise specified by the Customer by means of advice notes quoting the Customer's order number. The Goods shall be received at the place of delivery, subject to the Customer's inspection and approval. Any Goods which the Customer rejects as not conforming with the Purchase Order shall be returned at the Supplier's risk and expense.

7.4 Unless the Customer and the Supplier have, before or at the same time as the Purchase Order, agreed in writing (signed on behalf of the Customer) additional conditions regarding preparation of or environmental requirements at the site at which the Goods is to be installed, the Supplier acknowledges and agrees that the Goods is suitable to be installed and used at the premises at which the Customer intends to use it and that there are no additional conditions regarding site preparation or environmental requirements.

7.5 In relation to installation and acceptance tests (where applicable):

(a) except where condition 7.5(e) applies, the Supplier shall, without further charge to the Customer, install the Goods at the premises at which the Customer intends to use it and subject the Goods to its standard installation and acceptance tests;

(b) if the Goods passes those tests, the supplier will issue an acceptance certificate to that effect to the Customer, but receipt by the Customer of such an acceptance certificate will not constitute legal acceptance by the Customer;

(c) if the Goods does not (on any attempt) pass those tests, the Supplier will (without affecting the Customer's other rights and remedies) promptly and at its expense carry out all necessary remedial work and re-submit the Goods to the tests as set out in conditions condition 7.5(a) and condition 7.5(b);

(d) If all the tests have not been successfully completed within 14 days after delivery, the Customer shall have the same rights as it would have had if the Supplier had not performed its obligations under condition 7.1;

(e) if the Customer and the Supplier have, before or at the same time as the Purchase Order, agreed otherwise in writing (signed on behalf of the Customer), then the Customer (itself or through a third party) will be responsible for installing the Goods and conditions condition 7.5(a) to condition 7.5(d) shall not apply.

7.6 Notwithstanding condition 7.5, the Customer shall not be deemed to have accepted the Goods until it has had 14 days to inspect it after delivery. The Customer may also reject the Goods as though it had not been accepted for 12 months after any latent defect in the Goods has become apparent.

## **8. Risk and property**

8.1 The Goods shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Purchase Order, or as otherwise specified by the Customer in accordance with condition 7.3. The Supplier shall off-load the Goods at its own risk as directed by the Customer.

8.2 Ownership of the Goods shall pass to the Customer on completion of delivery (including off-loading) in accordance with the Purchase Order, except that if the Goods is paid for before delivery ownership shall pass to the Customer once payment has been made. The passing of ownership in the Goods is without prejudice to any right of rejection to which the Customer may be entitled under the Contract or otherwise.

## **9. Suppliers warranty for Services**

9.1 The Supplier warrants to the Customer that:

(a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

(b) the Services will conform with all descriptions and specifications provided to the Customer by the Supplier; and

(c) the Services will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Customer as soon as it becomes aware of any changes in that legislation.

9.2 The Customer's rights under this agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.

9.3 The provisions of this condition 9 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

## **10. Prices**

All prices shall be as stated in the Purchase Order.

10.1 Payment unless otherwise stated in the Purchase Order, payment of invoices shall be made by the end of the month following the month in which the Goods are received by the Customer, or the Services are supplied by the Supplier, in accordance with the Purchase Order.

- 10.2 Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Contract.

## **11. Indemnity**

The Supplier shall indemnify and hold the Customer harmless 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 by, the Customer as a result or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use, manufacture or supply of the Goods; or

(b) defective workmanship, quality or materials in or in relation to the Goods; or

(c) any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods or the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier howsoever arising.

## **12. Confidentiality and the Customer's property**

- 12.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer or its agents, and any other confidential information concerning the Customer's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Customer and shall ensure that such employees are subject to obligations of confidentiality corresponding to those which bind the Supplier.

- 12.2 All materials, Goods, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Customer to the Supplier shall at all times be and remain the exclusive property of the Customer, and shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer, and shall not be disposed or used other than in accordance with the Customer's written instructions or authorisation. The Supplier shall return all copies of any such material to the Customer immediately on the Customer's first written request.

- 12.3 This condition 13 shall survive the termination of the Contract, however arising.

## **13. Termination**

- 13.1 The Customer may cancel the Contract (for all or part only of the Goods and/or Services) by giving written notice to the Supplier at any time before delivery, in which case the Customer shall pay the Supplier the price for the cancelled Goods and/or Services, less any cost savings accruing to the Supplier by reason of the cancellation.
- 13.2 Without prejudice to any other rights or remedies to which the Customer may be entitled, the Customer may terminate the Contract without liability to the Supplier if:
- (a) the ability of the Customer to accept delivery of the Goods and/or Services is delayed, hindered or prevented by circumstances beyond its reasonable control; or
  - (b) the Supplier commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) the Supplier repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (e) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
  - (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (j) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
  - (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(b) to clause 14.2(j) (inclusive);
  - (l) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

- 13.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 13.4 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

#### **14. Remedies**

If any Goods and/or Services is not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, the Customer may (without prejudice to any other right or remedy) exercise any one or more of the following rights or remedies, whether or not any part of the Goods and/or Services has been accepted by the Customer:

(a) rescind the Contract; or

(b) reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid immediately by the Supplier; or

(c) require the Supplier, at the Supplier's expense, either (at the Customer's option) to remedy any defect in the Goods and carry out such other work as is necessary to ensure that the Goods is in all respects in accordance with the Purchase Order or to supply replacement equipment, provided that if the Supplier refuses to remedy the defect in the Goods or to supply replacement equipment within 15 days of receiving such a request, the Customer may purchase replacement equipment from another source and the Supplier shall reimburse the Customer for all costs and expenses reasonably incurred in doing so; or

(d) refuse to accept any further deliveries of the Goods and/or Services, without liability to the Supplier; and

(e) in any case, to claim such damages as it may have sustained in connection with the Supplier's breach of the Contract not otherwise covered by this condition 15.

#### **15. Force majeure**

The Customer may defer the date of delivery or payment, or cancel the Contract or reduce the amount of Goods and/or Services ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Customer or any other party), failure of a utility service or transport or telecommunication network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.



## **16. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **17. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **18. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **19. Severance**

- 19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20. Assignment**

- 20.1 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 The Customer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **21. Third party rights**

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## **22. Notices**

- 22.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

22.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

### **23. Governing law**

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

### **24. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

### **25. Goods originating in the USA**

Unless specifically informed to the contrary, all goods will be classified by the Customer as EAR99 for the purposes of compliance with US Export Administration Regulations. The Supplier is held to be liable for the provision of all required ECCN numbers where classification EAR99 is not appropriate.