

Standard terms and conditions of purchase

Go Ahead

STANDARD TERMS AND CONDITIONS OF PURCHASE

1 TERMS OF AGREEMENT

- 1.1 This purchase order, together with these terms and conditions, and any attachments and exhibits, statement of work, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the "**Purchase Order**"), constitutes the entire and exclusive agreement between the Customer and the Supplier (each of which is named on the Purchase Order).
- 1.2 The Customer's submission of the Purchase Order is conditional on the Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, delivery note, acceptance or other written and / or oral correspondence and communication, irrespective of the timing, shall **NOT** form a part of the Purchase Order, even if the Supplier purports to condition its acceptance of the Purchase Order on the Customer's agreement to such different or additional terms.
- 1.3 The Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes the Supplier's acceptance of the terms of this Purchase Order.
- 1.4 Notwithstanding the foregoing, if a master agreement covering the procurement of the Goods or Services described in the Purchase Order exists between the Supplier and the Customer (the "**Master Agreement**"), the terms of such Master Agreement shall prevail over any inconsistent terms contained herein.

2 DEFINITIONS

"**Deliverables**" means the deliverables, if any, specified in the Purchase Order (and any Statement of Work) to be delivered on or before the Delivery Date.

"**Delivery Date**" means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Goods and / or perform the Services.

"**Intellectual Property Rights**" means patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing, the right to apply for any of the foregoing; copyrights, (including without limitation copyright in software), design rights, semi-conductor topography rights, moral rights, database rights, trademarks, service marks, applications for any of the foregoing, the right to apply for any of the foregoing; rights (whether registered or not) in trade names, business names, brand names, get-up and logos, rights in know-how, trade secrets and confidential information, data exclusivity rights, data and all other forms of intellectual property right (having equivalent or similar effect to the foregoing) which may exist anywhere in the world.

"**Goods**" means tangible goods, specified in the Purchase Order, to be delivered in accordance with the terms of the Purchase Order.

"**Services**" means, collectively, the Deliverables and Services specified in the Purchase Order, including any SOW.

"**Statement of Work**" or "**SOW**" means the document specifying, without limitation, the scope, objective, and time frame of the Services that the Supplier will perform for the Customer.

"**Subcontractor**" means a third party performing Services under an agreement (a "**Subcontract**") with or on behalf of the Supplier.

"**Supplier Personnel**" mean the Supplier's employees, consultants, agents, independent contractors and Subcontractors.

"**Third Party Intellectual Property**" means the Intellectual Property Rights of a third party which the Supplier uses or incorporates into the Services or supplies as part of the Goods.

3 DELIVERY

- 3.1 Unless the Customer expressly instructs otherwise, the Supplier shall deliver all Goods and perform Services at the delivery address set forth in the Purchase Order (or such other address as notified to the Supplier by the Customer prior to the date of delivery of the Goods and, as the case may be, of performance of the Services). Other than as set out in Condition 7.1.4 and marked as to the account of the Customer, the Seller assumes responsibility for all packaging, shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.
- 3.2 Time is of the essence in the Supplier's performance of its obligations set out in the Purchase Order. The Supplier will immediately notify to the Customer if the Supplier's timely performance under the Purchase Order is likely to be delayed and/or the Goods and/or Services will not be delivered by the Delivery Date. The Customer's acceptance of such notice will not constitute the Customer's waiver of any of the Customer's rights or a variation to, or waiver of, the Supplier's obligations.
- 3.3 In the absence of any requirement made by the Customer, the Supplier shall preserve, pack, package and handle the Deliverables and Goods so as to protect the Deliverables and Goods from loss or damage in accordance with best commercial practices.
- 3.4 Without limiting the foregoing, the Supplier shall observe and comply with the requirements of any relevant laws and regulations relating to hazardous substances or mixtures, including, without limitation, with respect to its accompanying information, classification, packing, labelling, reporting, carriage and disposal.
- 3.5 The Supplier shall include, with each delivery of Goods, a packing list identifying the relevant Purchase Order number, the Customer part number for each of the Goods (if applicable), a description and the quantity of each of the Goods, and the date of dispatch.

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- 3.6 Where required by the Customer, the Supplier shall remove from the Customer Customer's premises all packaging and temporary fixings necessary for the delivery of the Goods or performance of the Services and leave the delivery area and all the Customer premises clear of waste.

4 INSPECTION AND ACCEPTANCE

- 4.1 The Customer may reject any or all of the Goods and / or the Services which are delivered after the Delivery Date or which do not conform to the applicable requirements stated in the Purchase Order, the SOW, or both, within ten (10) days of the Supplier's delivery of the Goods or Services. Failure to do so will constitute acceptance of the Goods and, where performed, the Services by the Customer.

- 4.2 At the Customer's option, the Customer may:

- 4.2.1 return the late or non-conforming Goods or, as the case may be, the late or non-performing Services to the Supplier for a refund or credit; or
- 4.2.2 require the Supplier to replace the late or non-conforming Goods or, as the case may be, the late or non-performing Services; and / or
- 4.2.3 repair the non-conforming Goods or complete the non-performing Services so that each requirement meets the requirements stated in the Purchase Order, the SOW or both.

In the alternative to sub-Conditions 4.2.1 to 4.2.3 inclusive, the Customer may accept the non-conforming Goods or the non-performing Services conditional on the Supplier providing a refund or credit in an amount the Customer reasonably determines to represent the diminished value of the non-conforming Goods or Services.

- 4.3 The Customer's payment to the Supplier for Goods or Services prior to the Customer's timely rejection of such Goods or Services as non-conforming will not be deemed as acceptance by the Customer.
- 4.4 The Customer will hold any Goods or Services rejected under the Purchase Order at the Supplier's risk and expense, including storage charges, while awaiting the Supplier's returns shipping instructions. The Supplier will bear all return shipping charges, including without limitation, insurance charges the Customer incurs on the Supplier's behalf.

5 RISK AND TITLE

- 5.1 Risk of loss for any Deliverables and Goods shall not pass to the Customer until acceptance in accordance with Condition 4.
- 5.2 Title in any Deliverables and Goods shall pass to the Customer upon the date of the Purchase Order.
- 5.3 Where the Supplier provides maintenance or repair Services on the Customer's goods (including but not limited to the Goods), the Supplier shall identify such goods as property of the Customer and hereby agrees that title to such goods shall remain with the Customer at all times but risk of loss in such goods shall remain with the Supplier whilst the Customer Customer's goods are in its possession.

6 PRICE

Unless otherwise specified in the Purchase Order, the price for the Goods and/or Services includes all taxes and other charges such as freight and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges.

7 INVOICES

- 7.1 Upon delivery of the Goods and/or completion of the Services, the Supplier shall provide to the Customer a valid invoice, including the following information:
- 7.1.1 a reference to this Purchase Order (and its number) and the relevant Master Agreement number (if any);
- 7.1.2 a detailed description of the delivered Goods and, where performed, the Services, including the date of delivery and/or period of Services to which the invoice relates and the relevant quantity;
- 7.1.3 an individual reference number for the Customer to quote with remittance of payment; and
- 7.1.4 the price relating to the Goods and/or Services, broken down to reflect the same price components set out in the Purchase Order and such that any taxes and other charges are separately identifiable from the price .
- 7.2 The Supplier shall, promptly and upon request, provide the Customer with all relevant records to calculate and verify the amount set out in any invoice.
- 7.3 The Customer may withhold approval and / or money due to the Supplier under this Purchase Order if the Goods or Services (or any part of them) are defective. The withholding of such approval and / or money does not absolve the Supplier from its obligations under this Purchase Order.

8 PAYMENT

The Customer shall pay to the Supplier the price stated in the Purchase Order by the end of the calendar month following the calendar month during which the invoice was issued by the Supplier or such shorter period as required under any Act of Parliament, order, regulation or bylaw made with statutory authority. Unless otherwise stated in the Purchase Order, no invoice may be submitted by the Supplier until the Goods have been supplied or the Services have been performed (or, of both Goods and Services are to be supplied, the latest of the dates when the said Goods have been supplied and the said Services have been performed).

9 CHANGES

- 9.1 For the purpose of this Condition 9, the term “**Change**” means a change which the Customer directs within the general scope of this Purchase Order, the applicable SOW or both.
- 9.2 The Customer may, by written order (“**Change Order**”), make Changes in accordance with this Condition 9.
- 9.3 If the Supplier asserts that the Customer has directed a Change to the cost of or time for performance of the Goods or Services for which the Customer has not issued a Change Order, the Supplier will promptly notify the Customer in writing of the Change, providing:
 - 9.3.1 a description of the action or inaction asserted to have caused the Change;
 - 9.3.2 an estimate of the equitable adjustment to the price and / or time for performance that would be required for the Supplier to perform the changed Change Order; and
 - 9.3.3 a date no fewer than thirty (30) days from the date of notice by which the Customer must respond to the Supplier’s notice so that the Supplier may proceed with the Services unchanged.
- 9.4 The Customer will evaluate the Supplier’s notice of Change in good faith and, if the Customer agrees to the change, the Customer shall issue a Change Order to the Supplier.
- 9.5 The Supplier shall, as promptly as practicable, after giving the notice of the Change, or within ten (10) days of receiving a Change Order, submit a request for equitable adjustment specifying the adjustment in the price or time for performance resulting from the Change.
- 9.6 The parties shall negotiate in good faith an amendment to the applicable Purchase Order or SOW to incorporate a Change Order providing for an equitable adjustment to the price, time for performance or both. During the period of the negotiations, each party shall continue to comply with its remaining obligations under the Purchase Order notwithstanding the issues outstanding under the Change Order.

10 REPRESENTATIONS AND WARRANTIES

- 10.1 At all times, the Supplier represents and warrants that:
 - 10.1.1 it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order;
 - 10.1.2 the Goods and / or Services, and the Customer’s use of the Goods and / or Services, do not and will not (in each case on a full indemnity basis) infringe upon any third party’s Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;
 - 10.1.3 subject to Condition 10.3, the Goods and / or Services conform to the Customer’s specifications, the Supplier’s quotation or proposal and the Supplier’s brochures or catalogues (collectively, the “**Supplier’s Reps and Warranties**”) and, if not of the foregoing is applicable, then such Goods and / or Services are suitable for the intended use;
 - 10.1.4 Goods and Services conform to the description, specifications and service levels set out in the Purchase Order;
 - 10.1.5 the Goods and Services comply with all applicable quality standards and, to the extent not covered by the foregoing, all applicable legislation;
 - 10.1.6 the Goods are fit for the purpose for which goods of the same kind are commonly supplied or bought as well as for any other purpose which the Customer specifies (acting reasonably); and
 - 10.1.7 the Goods are free from defects in design, material and workmanship.
- 10.2 The Customer warrants and represents to the Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.
- 10.3 In the event that the representations and warranties set out in the Purchase Order, pursuant to Condition 10.1.4 or otherwise, are different from the Supplier’s Reps and Warranties, the representations and warranties set out in the Purchase Order shall take precedence.

11 ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without the Customer’s prior written consent.
- 11.2 The Supplier may not subcontract any of its rights or obligations under the Purchase Order without the Customer’s prior written consent. If the Customer consents to the use of a Subcontractor, the Supplier shall: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify the Customer against any and all Claims (as defined in Condition 15 (Indemnification) below), subject to the limitations in Condition 15 (Indemnification), incurred by the Customer or any third party and caused by the acts and omissions of the Subcontractors; and (iii) make all payments to its Subcontractors which arise out of this Purchase Order. If the Supplier fails to pay a Subcontractor for Services performed in a timely fashion, the Customer will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to the Supplier by any amount paid to the Subcontractor. The Supplier will defend, indemnify and hold the Customer harmless for all damages and costs of any kind, without limitation, incurred by the Customer and caused by the Supplier’s failure to pay a Subcontractor.

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11.3 To the extent allowed by applicable law, no person who is not a party to (other than as stated in) the Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

12 TERM

Without prejudice to the terms and conditions set out herein, the Purchase Order will remain in full force and effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Goods and / or Services are completed and accepted.

13 TERMINATION

- 13.1 The Customer may terminate this Purchase Order, any SOW, or both at any time, for any reason, upon fifteen (15) days prior written notice to the Supplier.
- 13.2 Upon receipt of notice of such termination, the Supplier will inform the Customer of the extent to which it has completed performance as of the date of the notice and the Supplier will collect and deliver to the Customer whatever Goods or Services then exists. Other than where Conditions 13.3 and / or 13.4 apply, the Customer will pay to the Supplier for all Goods delivered and accepted as well as what the Customer deems to be a *quantum meruit* amount for all Services performed and accepted through the effective date of the termination, provided that the Customer will not be obligated to pay any more than the payment that would have become due had the Supplier completed and the Customer had accepted the Goods or Services. The Customer will have no further payment obligation in connection with any termination.
- 13.3 Either party may terminate the Purchase Order, any SOW or both, immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either party makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any insolvency or debtor's relief law, if such proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.
- 13.4 Either party may terminate this Purchase Order, any SOW or both, immediately by delivering written notice to the other party for any breach not remedied within thirty (30) days of receipt of notice of the breach. The Customer shall have no further payment obligation to the Supplier under any terminated SOW or Purchase Order if the Customer terminates the Purchase Order or SOW under this Condition 13.4.
- 13.5 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order or SOW shall survive the expiration or termination of the Purchase Order or SOW.

14 CONFIDENTIAL INFORMATION AND PUBLICITY

The Supplier shall obtain the Customer's written consent prior to any publication, notification, presentation, public announcement, or press release concerning its relationship as a supplier to the Customer. Notwithstanding the foregoing, the Supplier shall not disclose any information concerning the Customer, the arrangements contemplated under these Conditions nor in respect of any information disclosed to the Supplier whether by the Customer or any person connected with the Customer and such information not being in the public domain other than where the Customer has permitted to the Supplier to make such disclosure.

15 INDEMNIFICATION

- 15.1 As used in this Condition 15, a "**Claim**" is any claim, demand, loss, damage, liability, cost and expense (including professional fees and costs as incurred) which are brought against, or incurred or suffered by, one party (the "**Indemnified Party**") for which the other party (the "**Indemnifying Party**") is be obligated to defend, indemnify and hold harmless the other **Indemnified Party** .
- 15.2 The Supplier shall defend, indemnify and hold the Customer harmless from and against any and all Claims arising out of or in connection with any (i) act or omission of the Supplier (including its Subcontractors) in the performance of the Services; or (ii) any infringement of a Third Party Intellectual Property Rights or any other rights.
- 15.3 Each party will indemnify and hold the other party harmless from and against any and all Claims, as incurred, arising out of any negligent or wilful acts or omissions of the Indemnifying Party which results in personal injury (including death) or, subject to Condition 15, damage to tangible property (not including lost or damaged data).
- 15.4 The Indemnified Party will provide to the Indemnifying Party a prompt written notice of the Claim and, to the extent appropriate in the opinion of the Indemnified Party, permit the Indemnifying Party to control the defence, settlement, adjustment, or compromise of any Claim. The Indemnified Party may employ counsel at its own expense to assist it with respect to any Claim. The Indemnified Party will have no authority to settle any Claim on the Indemnifying Party's behalf.
- 15.5 If a third party enjoins or interferes with the Customer's use of any Goods or Services then, in addition to the Supplier's obligations under Condition 15.2, the Supplier will use its best efforts to (i) obtain any licenses necessary to permit the Customer to continue to use the Goods or Services; (ii) replace or modify the Goods or Services as necessary to permit the Customer to continue to use of the Goods or Services; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to the Customer the amount paid for any Goods or Services for which a third party enjoins or interferes with the Customer's use of Goods or Services.
- 15.6 Nothing in this Condition 15 shall limit any other remedy of the parties.

16 LIABILITY

- 16.1 Notwithstanding anything else in the Purchase Order or otherwise, the Customer will not be liable to the Supplier with respect to the subject matter of the Purchase Order under any contract, tort (including negligence), strict liability or other

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legal or equitable theory for any amounts in excess of the amount the Customer set out on the Purchase Order, the breach of which has given rise to such liability.

- 16.2 In no event will the Customer be liable to the Supplier for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Purchase Order, whether or not the Customer was advised of the possibility of such damage.
- 16.3 Nothing in the Purchase Order limits either party's liability for bodily injury of a person, death, or, any liability which cannot be excluded under applicable law or, other than as set out in Condition 16.1, physical damage to property.

17 INSURANCE

The Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect the Customer in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. The Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to the Supplier in the jurisdiction or jurisdictions in which the Supplier's operations take place.

18 COMPLIANCE WITH LAWS

the Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Purchase Order.

19 GENERAL

- 19.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery; (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- 19.2 If there is a conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:
- 19.2.1 A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favour of the Purchase Order.
- 19.2.2 A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favour of the SOW.
- 19.2.3 A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favour of the SOW.
- 19.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- 19.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.

20 GOVERNING LAW

- 20.1 The validity, interpretation, and performance of this Purchase Order (and any matter arising out of the Purchase Order) will subject to, and construed in accordance with, the laws of England and Wales.
- 20.2 The English Courts shall have exclusive jurisdiction over any claim arising under this Purchase Order.
- 20.3 Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's Intellectual Property Rights or other proprietary rights.