



***Terms and Conditions***

***For the supply of goods and services***

*28 October 2008*

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## **1 Interpretation**

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

*Customer;* the person, firm or supplier who purchases the goods and/or services from the supplier.

*Supplier;* Steve Bailey of Unit 4, Southlands, Latchford Lane, Bordon GU35 9JD.

*Contract;* any contract between the supplier and the customer for the sale and purchase of the goods and/or services, incorporating these conditions.

*Delivery Point;* the place where delivery of the goods is to take place under condition 4.

*Goods;* any goods agreed in the contract to be supplied to the customer by the supplier (including any part or parts of them).

*Services;* any services to be provided by the supplier under the contract as set out in the written estimate or quotation given by the supplier, together with any other services which the supplier provides, or agrees to provide to the customer.

*Supplier's Equipment;* any equipment, including tools, systems, cabling or facilities, provided by the supplier or its subcontractors and used directly or indirectly in the supply of the services which are not subject of a separate agreement between the parties under which title passes to the customer.

*VAT;* value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.6 A reference to writing or written includes faxes but not email.

1.7 Condition headings do not affect the interpretation of these conditions.

## **2 Application of Terms**

1.8 Subject to any variation under condition 2.3 the contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the customer purports to apply under the purchase order, confirmation of order, specification or other document).

1.9 No terms or conditions endorsed on, delivered with or contained in the customer's purchase order, confirmation of order, specification or other document shall form part of the contract simply as a result of such document being referred to in the contract.

1.10 These conditions apply to all the suppliers sales and any variation to these conditions and any representations about the goods shall have no effect unless expressly agreed in writing and signed by the supplier. The customer acknowledges that it has not relied on any statement, promise or

representation made or given by or on behalf of the supplier which is not set out in the contract. Nothing in this condition shall exclude or limit the supplier's liability for fraudulent misrepresentation.

- 1.11 Each order or acceptance of a quotation for goods by the customer from the supplier shall be deemed to be an offer by the customer to buy the goods subject to these conditions.
- 1.12 The customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 1.13 Any quotation is valid for a period of 30 days only from its date, provided that the supplier has not previously withdrawn it.

## **2** *Description*

- 2.1 The quality and description of the goods shall be as set out in the supplier's quotation or acknowledgment of order.
- 2.2 All samples, drawings, descriptive matter, specifications and advertising issued by the supplier are issued for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the contract and this is not a sale by sample.

## **3** *Delivery*

- 3.1 The customer shall take delivery of the goods within 7 days of the supplier giving notice that the goods are ready for delivery.
- 3.2 Any dates specified by the supplier for delivery of the goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be within a reasonable time.
- 3.3 Subject to the other provisions of these conditions the supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods (even if caused by the supplier's negligence), nor shall any delay entitle the customer to terminate or rescind the contract unless such delay exceeds 90 days.
- 3.4 If for any reason the customer fails to accept delivery of any goods when they are ready for delivery, or the supplier is unable to deliver the goods on time because the customer has not provided appropriate instructions, documents, licenses or authorisations;
  - a- Risk in title shall pass to the customer (including for loss or damage caused by the supplier's negligence)
  - b- The goods shall be deemed to have been delivered
  - c- The supplier may store the goods until delivery, whereupon the customer shall be liable for all the related costs and expenses (including, without limitation, storage and insurance)
- 3.5 The customer shall provide at the delivery point and at its expense adequate and appropriate equipment and manual labour for loading the goods.
- 3.6 The supplier may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions of the contract.

3.7 Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the customer to repudiate or cancel any other contract or instalment.

#### **4 *Non-Delivery***

4.1 The quantity of any consignment of goods as recorded by the supplier on despatch from the supplier's place of business shall be conclusive evidence of the quantity received by the customer on delivery unless the customer can provide conclusive evidence proving the contrary.

4.2 The supplier shall not be liable for any non-delivery of goods (even if caused by the supplier's negligence) unless the customer gives written notice to the supplier of the non-delivery within 7 days of the date when the goods would in the ordinary course of events have been received.

4.3 Any liability of the supplier for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods.

#### **5 *Risk/Title***

5.1 The goods are at the risk of the customer from the time of delivery.

5.2 Ownership of the goods shall not pass to the customer until the supplier has received in full (in cash or cleared funds) all sums due to it in respect of;

- a- The goods
- b- All other sums which are or which become due to the supplier from the customer on any account.

5.3 Until ownership of the goods has passed to the customer, the customer shall;

- a- Hold the goods on a fiduciary basis as the supplier's bailee
- b- Store the goods (at no cost to the supplier) separately from all other goods of the customer or any third party in such a way that they remain readily identifiable as the supplier's property
- c- Not destroy, deface or obscure any identifying mark or packaging on or relating to the goods
- d- Maintain the goods in satisfactory condition and keep them insured on the supplier's behalf for their full price against all risks to the reasonable satisfaction of the supplier. On request the customer shall produce the policy of insurance to the supplier.

5.4 The customer may resell the goods before ownership has passed to it solely on the following conditions;

- a- Any sale shall be affected in the ordinary course of the customer's business at full market value
- b- Any such sale shall be a sale of the supplier's property on the customer's own behalf and the customer shall deal as principal when making such a sale.

5.5 The customer's right to possession of the goods shall terminate immediately if;

- a- The customer has a bankruptcy order made against him or makes an agreement or composition with his creditors, or otherwise takes the benefit of any statutory provision

for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or document are filed with the court for the appointment of an administrator of the customer or notice of intention to appoint an administrator is given by the customer or its directors or by a qualifying floating charge holder (defined in paragraph 14 of schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the customer or for the granting of an administration order in respect of the customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the customer

- b- The customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the contract or any other contract between the supplier and the customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the customer ceases to trade
- c- The customer encumbers or in any way charges any of the goods

- 5.6 The supplier shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the supplier.
- 5.7 The customer grants the supplier, its agents and employees an irrevocable license at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the customer's right to possession has terminated, to recover them.
- 5.8 Where the supplier is unable to determine whether any goods are the goods in respect of which the customer's right to possession has terminated, the customer shall be deemed to have sold all goods of the kind sold by the supplier to the customer in the order in which they were invoiced to the customer.
- 5.9 On termination of the contract, howsoever caused, the supplier's (but not the customer's) rights contained in this condition 6 shall remain in effect.

## **6 Price**

- 6.1 Unless otherwise agreed by the supplier in writing, the price for the goods shall be set out in the supplier's quotation.
- 6.2 The price for the goods and/or services shall be exclusive of any value added tax, which the supplier shall add to his invoices at the appropriate rate.

## **7 Payment**

- 7.1 Subject to condition 8.4, payment of the price for the goods and/or services is due in pounds sterling 14 days after delivery or the date of the supplier's invoices, whichever shall be the later.
- 7.2 Time for payment shall be of the essence.
- 7.3 No payment shall be deemed to have been received until the supplier has received cleared funds.

- 7.4 All payments payable to the supplier under the contract shall become due immediately on its termination despite any other provision.
- 7.5 The customer shall make all payments due under the contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the customer has a valid court order requiring an amount equal to such deduction to be paid by the supplier to the customer.
- 7.6 Without prejudice to any other right or remedy that he may have, if the customer fails to pay the supplier any sum due pursuant to the contract, the supplier may;
- a- Charge interest to the customer on such sum from the due date for payment at the annual rate of 4% above the lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The supplier reserves the right to claim interest under the Late Payment of Commercial debts (Interest) Act 1998
  - b- Suspend all services until payment has been made in full
- 7.7 All deposits paid by the customer for any goods and/or services are non-refundable under any circumstances.

## **8 *Quality of Goods***

- 8.1 The Supplier warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months after the date of delivery, the goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 The supplier shall not be liable for a breach of the warranty in condition 9.1 unless;
- a- The customer gives written notice of the defect to the supplier, and, if the defect is as a result of damage in transit to the carrier, within 5 days of the time when the customer discovers or ought to have discovered the defect, and
  - b- The supplier is given a reasonable opportunity after receiving the notice of examining such goods and the customer (if asked to do so by the supplier) returns such goods to the supplier's place of business at the supplier's cost for the examination to take place there.
- 8.3 The supplier shall not be liable for a breach of the warranty in condition 9.1 if;
- a- The customer makes any further use of such goods after giving such notice, or
  - b- The defect arises because the customer failed to follow the supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice; or
  - c- The customer alters or repairs such goods without the written consent of the supplier.
- 8.4 Subject to condition 9.2 and condition 9.3, if any of the goods do not conform with the warranty in condition 9.1 the supplier shall at its option repair or replace such goods (or the defective part) or refund the price of such goods at the pro rata contract rate provided that, if the supplier so requests, the customer shall, at the supplier's expense, return the goods or the part of such goods which is defective to the supplier.
- 8.5 If the supplier complies with condition 9.4 it shall have no further liability for a breach of the warranty OR any of the warranties in condition 9.1 in respect of such goods.

## **9**      ***Limitation of Liability***

- 9.1      Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the supplier (including any liability for the acts or omissions of its own employees, agents and sub-contractors) to the customer in respect of;
- a- Any breach of these conditions
  - b- Any use made or resale by the customer of any of the goods, or of any product incorporating any of the goods or the services
  - c- Any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.
- 9.2      All warranties, conditions and other terms implied by statute or common law(save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- 9.3      Nothing in these conditions excludes or limits the liability of the supplier;
- a- For death or personal injury caused by the supplier's negligence
  - b- Under section 2(3), Consumer Protection Act 1987
  - c- For any matter which it would be illegal for the supplier to exclude or attempt to exclude its liability
  - d- For fraud or fraudulent misrepresentation
- 9.4      Subject to condition 10.2 and condition 10.3 the supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price.

## **10**     ***Assignment***

- 10.1     The supplier may assign the contract or any part of it to any person, firm or supplier.
- 10.2     The customer shall not be entitled to assign the contract or any part of it without the prior written consent of the supplier.

## **11**     ***Force Majeure***

- 11.1 The supplier reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of the goods ordered by the customer (without liability to the customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 3 months, the customer shall be entitled to give notice in writing to the supplier to terminate the contract.

## **12 General**

- 12.1 Each right or remedy of the supplier under the contract is without prejudice to any other right or remedy of the supplier whether under the contract or not.
- 12.2 If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed to severable and the remaining provisions of the contract and the remainder of such provision shall continue to full force and effect.
- 12.3 Failure or delay by the supplier in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract.
- 12.4 Any waiver by the supplier of any breach of, or any default under, any provision of the contract by the customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.
- 12.5 The parties to the contract 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 formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **13 Communications**

- 13.1 All communications between the parties about the contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax;
- a- (in case of communications to the supplier) or its address shown above or such changed address as shall be notified to the customer by the supplier
  - b- (in case of the communication to the customer) to the registered office of the addressee (if it is a supplier) or (in any other case) to any address of the customer set out in any document which forms part of the contract or such other address as shall be notified to the supplier by the customer.
- 13.2 Communications shall be deemed to have been received;
- a- If sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting), or
  - b- If delivered by hand, on the day of delivery, or
  - c- If sent by fax on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

## **14 Supplier's Obligations For Services**

- 14.1 The supplier shall use reasonable endeavours to provide the services to the customer, in accordance in all material respects with the supplier's written estimate or quotation.
- 14.2 The supplier shall use reasonable endeavours to meet any performance dates specified in the supplier's written estimate or quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the services.

## **15 Customer's Obligations For Services**

15.1 The customer shall;

- a- Co-operate with the supplier in all matters relating to the services
- b- Provide the supplier, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge, with access to the customer's premises, office accommodation, data and other facilities as reasonably required by the supplier
- c- Provide to the supplier, in a timely manner, such in-put material and other information as the supplier may reasonably require and ensure that it is accurate in all material respects
- d- Be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the services
- e- Inform the supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the customer's premises
- f- Not dispose of or use the supplier's equipment other than in accordance with the supplier's written instruction or authorisation.

15.2 If the supplier's performance of its obligations under the contract is prevented or delayed by any act or omission of the customer, its agents, sub-contractors, consultants or employees, the supplier shall not be liable for any costs, charges or losses sustained or incurred by the customer arising directly or indirectly from such prevention or delay.

## **16 Charges and Payment**

16.1 In consideration of the provision of the services by the supplier, the customer shall pay the charges as set out in the supplier's written estimate or quotation, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both.

16.2 Where services are provided for a fixed price, the total price for the service shall be the amount set in the supplier's written quotation. The total price shall be paid to the supplier (without deduction or set-off) in instalments. At the end of a period specified in the quotation, the supplier shall invoice the customer for the charges that are then payable, together with Vat where appropriate.

## **17 Supplier's Property**

17.1 All materials, equipment and tools, drawings, specifications and data supplied by the supplier to the customer shall, at all times, be and remain as between the supplier and the customer the exclusive property of the supplier, but shall be held by the customer in safe custody at its own risk and maintained and kept in good condition by the customer until returned to the supplier, and shall not be disposed of or used other than in accordance with the supplier's written instructions or authorisation.

## **18 Termination**

18.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the contract without liability to the other immediately on giving notice to the other if;

- a- The other party fails to pay any amount due under the contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment
- b- The other party commits a material breach of any of the terms of the contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach
- c- A petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up or bankruptcy of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party
- d- 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 other party
- e- 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
- f- A creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days
- g- Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 19.1(c) to condition 19.1(f) (inclusive)
- h- The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business

18.2 On termination of the contract for any reason;

- a- The customer shall immediately pay to the supplier all of the supplier's outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, the supplier may submit an invoice, which shall be payable immediately on receipt
- b- The customer shall, within a reasonable time, return all of the supplier's equipment. If the customer fails to do so, then the supplier may enter the customer's premises and take possession of them. Until they have been returned or repossessed, the customer shall be solely responsible for their safe keeping
- c- The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**19 Variation**

- 19.1 The supplier may, from time to time and without notice, change the services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the services. The supplier may, from time to time change the services, provided that such changes do not materially affect the nature or quality of the services and, where practicable, it will give the customer at least 2 days' notice of any change.
- 19.2 Subject to condition 20.1, no variation of the contract or these conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**20**      ***Waiver***

- 20.1      A waiver of any right under the contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 20.2      Unless specifically provided otherwise, rights arising under the contract are cumulative and do not exclude rights provided by law.

**21**      ***Severance***

- 21.1      If any provision of the contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the contract, and the validity and enforceability of the other provisions of the contract shall not be affected.
- 21.2      If a provision of the contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**22**      ***Entire Agreement***

- 22.1      The contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 22.2      Each party acknowledges that, in entering into the contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance of warranty (whether made negligently or innocently) other than as expressly provided in the contract.
- 22.3      Nothing in this condition shall limit or exclude any liability for fraud.

**23**      ***Rights of Third Parties***

- 24.1      A person who is not a party to the contract shall not have any rights under or in connection with it.