

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### 1. Definitions

In the context of these conditions, the following words shall have the following meanings:

"the Purchaser"	means the business placing the Order as identified on the Order.
"the Supplier"	means the person, firm, company or organisation to whom the Order is addressed.
"the Goods"	means the goods subject to the Order, or any of them, or any services to be provided thereunder.
"the Order"	means the Order issued by the Purchaser for the supply of the Goods.
"Specification"	means the technical description and/or requirements (if any) of the Goods contained or referred to in the Order.

### 2. Applicable Terms and Conditions

This Order is made only upon and subject to the terms and conditions set out below and shall be accepted by the Supplier. These terms and conditions, and any Special Conditions of Purchase applicable to this Order, shall prevail over any terms and conditions of the Supplier whether contained in a quotation, catalogue, price list, Order acknowledgement or any other document, except so far as provided in any amendments or modifications which have been agreed in writing by the Purchaser.

### 3. Authorisation

The Purchaser accepts no liability for any goods delivered or services provided unless the Order has been placed or amended by a duly authorised representative of the Purchaser.

### 4. Quantities

The quantities shall be as stated in the Order. No quantity in excess of that stated on the Order will be paid for without the written authority of the Purchaser before delivery. The Purchaser reserves the right to reject incomplete deliveries and to refuse delivery, reject or refuse to pay for, and/or (at the Supplier's expense and risk) return any unauthorised and/or unaccepted shortfall or excess. Any signature by or on behalf of the Purchaser on any delivery note of the Supplier shall not signify acceptance of the quantity of the Goods.

### 5. Alterations

No alterations or modifications to the quantities, type, physical structure, specifications or standards are to be undertaken by the Supplier at the request of any employee of the Purchaser or its agents or representative or any other person unless and until written confirmation is received from a duly authorised representative of the Purchaser.

### 6. Testing and Inspection

- 6.1 Prior to delivery, the Supplier shall inspect and test the Goods for compliance with the Order.
- 6.2 The Purchaser shall be entitled to request the Supplier to supply certified copies of records of such inspection and tests free of charge and the Supplier shall promptly and fully comply with such request.
- 6.3 The Purchaser shall be entitled to inspect and/or test the Goods at any reasonable time or times during manufacturing, processing and/or storage of the Goods. If the Purchaser exercises this right, the Supplier shall grant to the Purchaser or its nominated representative a right of access and shall afford to the same all such facilities as may be reasonably required for such purposes.
- 6.4 In the event that the Goods or any part thereof fail inspection and/or testing, the Purchaser (without prejudice to any of its other rights) reserves the right to charge the Supplier any cost in respect of travel and accommodation incurred by the Purchaser for subsequent re-inspection and/or re-testing (if any).
- 6.5 Any inspections or tests carried out under sub-Clauses 2 and/or 3 above shall not in any way relieve the Supplier from any of its obligations under the Order or from those existing either at common law or by statute or any part thereof.

### 7. Quality

- 7.1 Without prejudice to the Purchaser's statutory rights or rights under these terms and conditions, the Goods shall:
  - (i) conform to the quality, standards, description, Specifications and/or references quoted in the Order and/or to any samples submitted, and to the satisfaction of the Purchaser
  - (ii) be of the very best design, materials and workmanship
  - (iii) be capable of any standard of performance specified in the Order.
- 7.2 In the event that the Goods or any part thereof fail to meet the Specifications, standards, quality or samples as aforesaid, the Purchaser (without prejudice to any of its other rights) reserves the right to reject and/or return the Goods to the Supplier at the Supplier's expense.
- 7.3 Any signature by or on behalf of the Purchaser on any delivery note will not signify acceptance of the quality of the Goods.
- 7.4 Part or all of this order may be in aid of a Ministry of Defence Contract and may therefore be subject to quality assurance checks at your premises by a Ministry of Defence Quality Representative who will advise you accordingly.
- 7.5 The Purchaser reserves the right to carry out a vendor appraisal at your premises.

### 8. Delivery

- 8.1 Time shall be of the essence of this Order.
- 8.2 Unless otherwise specified by the Purchaser, supply of the Goods shall be effected by the Supplier at the Supplier's own risk and expense (including the risk of deterioration in the Goods necessarily incident to the course of transit) to the place and on the date(s) specified in the Order.
- 8.3 In the event of the Goods not being delivered on the date(s) specified in the Order, the Purchaser reserves the right to cancel the Order pursuant to Clause 13.
- 8.4 The Purchaser shall be under no obligation to accept delivery of the Goods before the date(s) specified in the Order.
- 8.5 The delivery of the Goods shall be made to the delivery address as shown on the Order unless the Supplier is subsequently advised in writing by the Purchaser of a change of delivery address. In the event that the Supplier delivers the Goods to the wrong address, the Purchaser reserves the right to refuse to accept delivery at that address or to charge the Supplier for the cost of subsequent transfer.

### 9. Packing

- 9.1 All Goods must be adequately packed for mode of delivery and type of goods at no cost to the Purchaser.
- 9.2 Each package must:

- (a) bear the Purchaser's Order number
  - (b) be accompanied by a readily accessible packing note detailing the contents; and
  - (c) conform with applicable export and/or import regulations.
- 9.3 The Supplier shall be held responsible for any damage incurred due to bad or insufficient packing.
- 10. Purchaser's Property**
- 10.1 The Supplier shall ensure that any drawings, data, goods, tools, materials, equipment or any other property provided by, through or on behalf of the Purchaser for use by the Supplier shall at all times be:
- (a) clearly identified and marked as being the property of the Purchaser; and
  - (b) stored separately from any other property belonging to the Supplier or third party.
- 10.2 The Purchaser reserves the right to repossess such property and the Supplier shall grant an irrevocable right and licence to the Purchaser its servants or agents to enter with or without vehicles upon all or any of its premises or any land or premises occupied by the Supplier. The right shall continue to subsist notwithstanding the termination of the Order for any reason and is without prejudice to any other rights of the Purchaser hereunder or otherwise.
- 11. Price and Payment**
- 11.1 Prices shall remain as stated in the Order and shall not be subject to variations.
- 11.2 Prices quoted shall be exclusive and Value Added Tax but shall be deemed to be inclusive of any other form of purchase tax and/or import duties applicable from time to time unless the contrary is expressly stated or is clear from the face of the document on which the price is quoted. Value Added Tax at the appropriate rate where chargeable shall only be paid by the Purchaser on receipt of a valid Value Added Tax Invoice.
- 11.3 Payment shall be made in accordance with the payment terms stated on the Order (if any).
- 11.4 The period agreed for payment shall begin to run from the date of acceptance of the Goods by the Purchaser or receipt of the Invoice, whichever is the later.
- 11.5 The Purchaser reserves the right to deduct from any monies due or becoming due to the Supplier, any monies due from the Supplier to the Purchaser in respect of materials supplied or services rendered by the Purchaser or any other sums due to the Purchaser from the Supplier. For the purpose of this clause 11.5, the Purchaser shall be deemed to include any member of the CAE group of companies.
- 12. Title**
- 12.1 Subject to the provisions of Condition 12.2, the property and risk in the Goods shall pass to the Purchaser on acceptance by the Purchaser of the Goods or (in the case of delivery by instalments) on the acceptance by the Purchaser of each instalment.
- 12.2 If the Supplier postpones delivery at the request of the Purchaser, the property in the Goods shall pass to the Purchaser seven days after the date of receipt of notification from the Supplier that the Goods are due and ready for delivery, or on such other date as may be agreed. However, the Goods shall nevertheless remain at the Supplier's risk until actual delivery has been completed.
- 13. Cancellation**
- Without prejudice to its other rights, the Purchaser reserves the right to cancel this Order for any reason and at any time upon giving the Supplier notice in writing. Save in the event of breach by the Supplier, a reasonable price will be paid by the Purchaser for all work in progress at the date of cancellation, which is subsequently accepted by the Purchaser. The Purchaser shall not be liable for any other direct or indirect cost or loss to the Supplier including consequential loss.
- 14. Guarantee**
- 14.1 If within 12 months from the Goods having been put into service any defect in the Goods shall be discovered or arise under normal use attributable to faulty design, materials or workmanship, the Supplier shall, without prejudice to any other rights or remedies of the Purchaser, promptly remedy the defect either by repair to the Purchaser's satisfaction or replacement without charge to the Purchaser.
- 14.2 The Supplier shall not be entitled to reject any claim made in respect of any defect arising within the guarantee period on the basis that the Purchaser failed to make the complaint during such period.
- 14.3 The provisions of this condition shall apply to replacement or repaired Goods effective from the date of putting into service of such replacement or repaired Goods, but shall not prejudice any of the Purchaser's rights resulting from any defects in the Goods.
- 14.4 Where the parties agree, a guarantee period in excess of 12 months as per Clause 14.1 shall be deemed to be amended to provide for such longer period.
- 15. Insurance**
- The Supplier shall maintain adequate insurance to the full value of the Goods or any other goods, tools, materials, equipment or any other property provided by, through or on behalf of the Purchaser for use by the Supplier while these are in the Supplier's possession or while the risk lies with the Supplier, in accordance with Clause 8.2 and 12.2.
- 16. Indemnity**
- 16.1 The Supplier shall indemnify the Purchaser against the following:
- (i) loss or damage or injury (including death) whatsoever and whensoever arising, caused to the Purchaser, or for which the Purchaser may be liable to any person, due to the negligence, or act or omission of the Supplier or its servants or agents arising from any alleged fault or defect (howsoever arising) in the materials, workmanship or quality of the Goods manufactured by or for or supplied to the Supplier and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto
  - (ii) all claims in respect of death or injury, howsoever caused to or by any of the employees, servants, agents or sub-contractors of the Supplier while on the Purchaser's premises in performance of this Order.
- 16.2 The Supplier shall maintain adequate insurance against the liabilities in Condition 16.1.
- 17. Rejection and Rescission**
- 17.1 If the Goods do not comply with the Order or any of the terms and conditions of the Order are breached or not complied with by the Supplier, or if it is in the Purchaser's opinion clear that the Supplier will be unable to perform its part of the Order, the Purchaser shall at its discretion be entitled (but not obliged) to treat the Order as repudiated or reject the Goods and/or rescind

the Order (notwithstanding the property in the Goods may have passed) by giving written notice to the Supplier, and the following conditions shall where appropriate apply:

- (i) the Purchaser shall return to the Supplier at the Supplier's risk and expense any rejected Goods or any Goods already delivered which by reason of non-delivery of the balance are not reasonably capable of use by the Purchaser or at its option may require the Supplier to collect the same; and
- (ii) the Purchaser may at its discretion require the Supplier either to restore or rectify the Goods to the satisfaction of the Purchaser and at the Supplier's expense to replace any Goods so rejected upon the same conditions as herein stated; and
- (iii) the Supplier will repay to the Purchaser any monies paid by the Purchaser in respect of rejected or undelivered Goods; and
- (iv) the Supplier shall be fully accountable to the Purchaser for any loss the Purchaser may have suffered arising from or out of such repudiation, rejection and/or rescission; and
- (v) any such repudiation, rejection and/or rescission shall be without prejudice to the accrued rights of either party.

## **18. Confidentiality**

- 18.1 This Order and the subject matter thereof shall be treated as confidential between the parties and shall not be disclosed or publicised by the Supplier to any third parties for any reason without the Purchaser's prior written consent.
- 18.2 The Supplier shall not advertise, announce or otherwise publicise in any form or co-operate or allow to be advertised, announced or otherwise publicised that Goods are to be or have been supplied by it to the Purchaser or otherwise use the Purchaser's name or any other form of identity without the Purchaser's prior written consent.
- 18.3 The Supplier shall not copy or otherwise make available to any third party any Specifications, drawings, patterns, tools, toolings of any kind, written instructions or other instructions or technical papers supplied by the Purchaser or produced by the Supplier at the Purchaser's cost for the purpose of this Order, and the same shall remain the property of the Purchaser and must be returned to the Purchaser on demand free of charge.

## **19. Statutory and Other Requirements**

Without prejudice to any other rights and remedies of the Purchaser, the Supplier warrants that:

- (a) the design, manufacture, construction, supply, use and quality of any Goods to be manufactured or supplied by it comply in all respects with any statute, statutory rule, order, directive or statutory licence, consent or permits which may be in force at the time
  - (b) the Goods and all supporting literature and documentation comply with all trade descriptions (within the meaning of the Trade Descriptions Act 1968 and Consumer Protection Act 1987 or any statutory modification or re-enactment thereof) applicable.
- 19.2 Where applicable and unless agreed in writing by the Purchaser, the Supplier warrants that the Goods have any necessary export or import licences and comply with all relevant government regulations.
  - 19.3 The Supplier shall indemnify the Purchaser against all claims, proceedings, damages, losses, expenses or liabilities the Purchaser may suffer or incur by reason of any breach or alleged breach of warranties contained in this condition.

## **20. Infringement of Intellectual Property Rights**

- 20.1 Without prejudice to the Purchaser's other rights and remedies, the Supplier shall fully indemnify and hold harmless the Purchaser against any and all actions, claims, demands, proceedings, damages, costs, charges and expenses (including without limitation legal fees and costs and consequential loss and damage resulting directly or indirectly at any time from the purchase, exploitation, marketing, supply or other use of the Goods) in respect of any alleged or actual infringement of any patent registered design, copyright or other intellectual property right ("Rights").
- 20.2 If at any time allegation of infringement of any Rights is made in respect of any Goods or in the Purchaser's reasonable opinion is likely to be made, then the Supplier if it is able to do so and if the Purchaser shall first have consented (which consent may be given or withheld at the Purchaser's entire discretion) may either:
  - (i) procure for the Purchaser the right to continue to use the Goods without infringing any rights in any or all ways in and for any or all purposes for which it dealt with or was dealing or intended to deal with the Goods prior to the allegation or its likelihood arising; or
  - (ii) replace the Goods with goods which do not infringe any rights, so long as such replacement goods shall be entirely compatible with and of no lesser functionality than the allegedly infringing Goods and shall comply in all material respects with the Goods' specifications

and provided that any such procurement or replacement as aforesaid shall not affect any other right or remedy of the Purchaser arising under the Agreement in respect of the loss or damage it has suffered.

## **21. Documentation and Information**

- 21.1 The Supplier will supply to the Purchaser (where appropriate), no later than the date of delivery or installation of the Goods:
  - 21.1.1 any operator's manuals, instruction manuals, list of recommended spares and other supporting literature in relation to the Goods; and
  - 21.1.2 sufficient information about the use for which the Goods have been designed and have been tested; and
  - 21.1.3 detailed information about any conditions or procedures required to ensure that, when put to use, the Goods will be safe and without risk to health.
- 21.2 If the Goods are perishable or have a life expectancy of a fixed duration, or if there are any circumstances known to the Supplier which could adversely affect the life span of the Goods, the Supplier shall forthwith advise the Purchaser in writing of all such necessary and appropriate information relating thereto which such information shall upon receipt by the Purchaser but not before form part of the description of the Goods.

## **22. Force Majeure**

- 22.1 The Purchaser shall not be liable to the Supplier for failure to accept delivery of the Goods resulting from any cause beyond the Purchaser's reasonable control including, but not limited to, any breakdown of plant or apparatus, fire, explosion, accident, strike or lock out.
- 22.2 If the Supplier fails to perform any part of this Order by reason of any event or cause specified in the preceding sub-clause, the Purchaser may at its discretion suspend or cancel the delivery of the Goods and/or the performance of this Order without any liability to the Supplier for payment.

**23. Assignments**

The Supplier shall not, without the prior written consent of the Purchaser, assign, transfer or sub-contract the Order or any part thereof.

**24. Bankruptcy or Liquidation**

Without prejudice to its other rights, the Purchaser will have the right forthwith to cancel the Order by notice in writing to the Supplier in the event that an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Supplier or if a receiver or trustee in bankruptcy is appointed of the Supplier's estate or (the Supplier being a company) a voluntary arrangement is proposed or approved or an administration order is made or a receiver or administrative receiver is appointed of any of the Supplier's assets or undertaking or a winding up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator, or to present a winding up petition or make a winding up order, or if the Supplier takes or so offers any similar analogous action on account of debt.

**25. Waiver**

Failure by the Purchaser to exercise or enforce any right conferred by this Order shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

**26. Law and Jurisdiction**

This Order shall be governed and construed and interpreted in accordance with English law. The parties hereby agree to submit to the sole jurisdiction of the English Courts in respect of any dispute arising out of or in connection herewith.

**27. Millennium Clause**

- 27.1 Acceptance of this Contract by the Supplier is deemed to be confirmation that supplied equipment and products will be compliant with British Standards Institution Conformity Requirements definition BSI DISC PD2000-1.
- 27.2 Failure of the supplied equipment or products to meet BSI DISC PD2000-1 shall render the Supplier liable for all costs and damages of the Contractor associated with this performance failure.

WHERE ANY SPECIAL CONDITIONS OF PURCHASE APPLICABLE TO THIS ORDER ARE THOUGHT TO BE IN CONFLICT WITH THESE GENERAL TERMS AND CONDITIONS OF PURCHASE, THE SPECIAL CONDITIONS SHALL PREVAIL.