

GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES



1. DEFINITIONS

In these Conditions the following words have the following meanings:

"Business Day" means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business.

"Buyer" means Anesco Limited a company registered in England and Wales with company number 07443091, whose registered office is at The Green, Easter Park, Benyon Road, Reading, Berkshire RG7 2PQ.

"Buyer's Representative" means the person appointed by the Buyer from time to time as their representative for the purposes of these Conditions.

"Conditions" means the terms and conditions set out in this document.

"Contract" means the contract for the purchase of Goods and/or Services (as applicable) made by or on behalf of the Buyer with the Supplier formed in accordance with these Conditions and incorporating the Order and Proposal (if any).

"Goods" means the goods, products or materials detailed or referred to in the Buyer's Order.

"Good Industry Practice" means the exercise of the degree of skill, diligence, prudence, efficiency, foresight, care and timeliness which would be expected from a reputable company within the relevant industry or business sector in the same or similar circumstances and seeking to fulfil their obligations under a contract the same or similar (in whole or in part) to this Contract.

"Manufacturer's Warranty" means the warranty provided by the manufacturer and/or the Supplier's own supplier/subcontractor of the Goods and/or Services.

"Order" means an order in writing for the Goods and/or Services (as applicable) issued by the Buyer to the Supplier together with all documents referred to in it.

"Party" means a party to the Contract, and Parties means all or both such parties to the Contract.

"Proposal" means any written proposal or quotation provided by the Supplier to the Buyer as amended by these Conditions, the Order or otherwise in writing between the Parties.

"Services" means the services referred to in an Order.

"Supplier" means any person, firm or company to whom an Order is addressed.

"Supplier's Representative" means the person appointed by the Supplier from time to time as their representative for the purposes of these Conditions.

"Supplier's Warranty" means the Supplier's warranties detailed in clause 12 of these Conditions.

"Warranties" means the Supplier's Warranty and the Manufacturer's Warranty.

"Warranty Period" means the warranty period in respect of the Supplier's Warranty and/or Manufacturer's Warranty (as applicable) which shall be a minimum of 12 months and longer if the Supplier's Warranty and/or Manufacturer's Warranty as published and or available in respect of the Goods have a longer period during which the Supplier and /or Manufacturer guarantees, warrants or assures the performance or functionality of the Goods and/or warrants they are free of defects, faults or other imperfections.

2. CONSTRUCTION

In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes faxes and e-mails.
- (f) Where there is a conflict between these Conditions and an Order or a Proposal (if any) then the terms of these Conditions shall prevail unless expressly stated otherwise in writing referring specifically to this Condition 2(f).
- (g) Where there is a conflict between the terms of an Order and a Proposal then the terms of the Order shall prevail.

3. APPLICATION

These Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether

or not inconsistent with these Conditions) contained or referred to in any correspondence or documentation submitted by or originating from the Supplier (including any Proposal) or elsewhere or otherwise implied by custom, trade, practice or course of dealing.

4. ACCEPTANCE OF ORDER

- (a) The Supplier's acknowledgement of the Order, or the commencement of delivery of Goods or performance of work or Services ordered (as applicable), constitutes the Supplier's deemed acceptance of the Order and the formation of the Contract subject to these Conditions.
- (b) The Buyer is not liable for any Order unless:
 - (i) it has been placed on behalf of the Buyer by the Buyer's Representative; and
 - (ii) the Supplier confirms its acceptance of such Order and these Conditions as set out in Condition 4(a).

5. DELIVERY AND PERFORMANCE

- (a) The Supplier shall deliver the Goods and/or provide the Services (as applicable) at the date, time and place specified on the relevant Order or Proposal (as applicable) and time for delivery or performance of a Contract is of the essence. If Goods are incorrectly delivered or Services are incorrectly provided, the Supplier is liable for any additional expense incurred by either Party in handling and delivering the Goods and/or providing the Services at the correct date, time and place.
- (b) The Supplier is solely responsible for unloading the Goods at the agreed point of delivery. Unless otherwise agreed in writing by the Buyer, the Supplier shall unload the Goods immediately on their arrival at the point of delivery. The Supplier shall indemnify the Buyer against any loss, liability and cost arising as a result of the Buyer or its sub-contractors assisting the Supplier in the unloading, loading or other removal of the Goods from the point of delivery. Delivery of the Goods shall be completed on the completion of unloading the Goods at the agreed point of delivery.
- (c) The Supplier shall ensure that:
 - (i) any Goods are properly packed and secured in such a manner as to enable them to reach their destination in a good, safe, clean and dry condition; and
 - (ii) each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered.
- (d) The Buyer accepts no liability for packaging materials unless expressly agreed in advance.
- (e) The Supplier shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in Goods delivered in any instalment shall entitle the Buyer to the remedies set out in Condition 6.
- (f) The Supplier's performance of the Contract and activities in fulfilment of the Order shall as a minimum requirement be in accordance with Good Industry Practice in all respects.

6. ACCEPTANCE OF GOODS AND SERVICES AND REMEDIES

- (a) The Supplier will grant the Buyer and its authorised representatives, agents or customers access to its premises (or the premises of any permitted subcontractor) for the purpose of inspecting or testing the Goods or Services at any reasonable time. Such inspection does not relieve the Supplier of any liability or imply that the Supplier has accepted the Goods or Services.
- (b) If the Goods and/or Services are not delivered or provided in accordance with Condition 5, or do not comply with the Warranties referred to in Condition 12 or are not otherwise in accordance with the relevant Contract then, without limiting its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods and/or Services:
 - (i) reject the Goods and/or Services (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - (ii) cancel any Contract of which such Goods and/or Services are the subject;
 - (iii) return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use;
 - (iv) refuse to accept any subsequent delivery of Goods or provision of Services (as applicable) which the Supplier attempts to make;
 - (v) require the Supplier to repair or replace the Goods and/or carry out the Services again in accordance with Condition 12; and/or
 - (vi) claim damages for any other costs, loss or expense incurred by the Buyer which are attributable to the Supplier's failure to carry out its obligations under the Contract.
- (c) In addition, if the Goods and Services or any part of them (whether or not inspected or tested by the Buyer) do not comply with the requirements of the Contract, the Buyer may elect to repair such Goods or carry out the Services again (either by itself or through a third party) at the Supplier's expense.
- (d) If the Buyer rejects any Goods and/or Services the Buyer may:
 - (i) request a refund from the Supplier of any money paid in respect of such rejected Goods and/or Services;

(ii) if the Goods and/or Services have been paid for but no refund given, purchase replacement goods or services from an alternative source at the Supplier's cost; or

(iii) if the Goods and /or Services have not been paid for, purchase goods or services from an alternative source and charge any additional costs (that it would not have incurred if the Supplier had complied with the Contract) to the Supplier.

- (e) These Conditions shall apply to any repaired or replaced Goods and/or any re-performed Services supplied by the Supplier.

7. IMPORTED PRODUCTS

The Supplier makes delivery and the supply of Goods is deemed to occur in the UK (unless the Buyer expressly agrees otherwise in writing on the Order). The cost of all Goods and Services is all inclusive of any and all import taxes, duties, levies and similar charges and such costs shall be for the Supplier's account exclusively.

8. RISK AND TITLE

Risk for and title to the Goods shall pass to the Buyer on the Buyer's acknowledgement of delivery, without prejudice to any right of rejection which may accrue to the Buyer under these Conditions or otherwise.

9. PRICE

- (a) The price for the Goods and/or the Services shall be the price set out in the Order. The price for each of the Goods and Services to be paid by the Buyer to the Supplier will include all costs, both direct and indirect, of supplying the Goods and Services except that where the Goods and Services are subject to VAT, the amount legally due must be specified as a separate item of account on the Supplier's invoice.
- (b) If the Buyer places an Order on a "price to be agreed" basis, the Supplier will obtain the Buyer's confirmation of the price to be paid before invoicing the Buyer for the Goods and Services.

10. PAYMENT

- (a) The Buyer will pay only for the Goods and Services specified in the Order.
- (b) The Supplier may invoice the Goods and Services specified in any Order on or after the completion of delivery.
- (c) If the Goods and Services have been accepted by the Buyer in accordance with the Contract, the Buyer shall make all payments due to the Supplier under such Contract in pounds sterling within 30 days of the date of receipt of the relevant invoice.
- (d) The Buyer reserves the right to delay payment (but without forfeiting any prompt payment discount) if the Supplier fails to comply with Condition 5(c)(ii).
- (e) The Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable from time to time on the supply of Goods and/or Services.
- (f) The Buyer may offset any amount owing to it from the Supplier against any amount owed to the Supplier by the Buyer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Buyer.

11. INTELLECTUAL PROPERTY RIGHTS

If the Supplier or its employees or agents design the Goods or perform the Services pursuant to a commission, specific requirement or instruction from the Buyer (whether to fulfil an Order or otherwise), any intellectual property rights created in relation to such Goods or Services shall vest in the Buyer and the Supplier shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this Condition 11.

12. WARRANTY LIABILITY AND INDEMNITY

- (a) The Supplier agrees, warrants and undertakes for the benefit of the Buyer and the Buyer's customers that:
- (i) the Goods and Services will conform to the specifications, descriptions, data sheets or other details referred to in the Order and/or Proposal (as applicable) as to quantity, quality and description and to the specifications, descriptions, data sheets and other details published by or otherwise available from the Supplier and/or the Manufacturer in respect of the Goods (or any other specifications, requirements or instructions made known to the Supplier);
 - (ii) the Goods will be of good and satisfactory quality, fit for purpose, of good quality materials and workmanship and free from defects of any kind;
 - (iii) the design, construction and quality of the Goods and provision of the Services will comply with any relevant statutory rules or regulations in force at the time of delivery or performance, including UK safety standards and British Standards; and
 - (iv) the Supplier shall provide the Services in accordance with the terms of the Order and/or Proposal (as applicable), with a good, professional standard of care, skill and diligence, using properly experienced and qualified people and shall be in accordance with Good Industry Practice.
- (b) In addition the Supplier shall provide the Buyer with the benefit of the Manufacturer's Warranty (and any additional warranties secured from the Supplier's own suppliers) in respect of the Goods for the maximum available period of the Manufacturer's Warranty together with the benefit of all Supplier's Warranty published and/or otherwise agreed with the Buyer at time of placement of Order. These Warranties shall be provided for the benefit of the Buyer, the Buyer's customers or any users or purchasers to whom the Goods are sold on.
- (c) The Supplier will immediately, at its own cost rectify any defect in the Goods, repair or replace the same (at the option of the Buyer) or shall remedy any deficient Services or defective Services results, notified by the Buyer to the Supplier within

the Warranty Period. This remedy shall be without prejudice to any remedy available from the Manufacturer under the Manufacturer's Warranty which may be for a longer or shorter time period to the Supplier's Warranty.

- (d) The Supplier shall indemnify and keep indemnified the Buyer, its agents, employees, subsidiaries, associated companies and assigns in respect of all loss, liability and cost (including any interest, penalties, legal and other professional fees and expenses awarded against or incurred or paid by the Buyer) directly or indirectly arising from:
- (i) any alleged or actual infringement of any intellectual property right owned by a third party resulting from the purchase, use or resale by the Buyer, its agents, employees, subsidiaries, associated companies, customers and assigns of the whole or any part of the Goods or Services;
 - (ii) any claim made against the Buyer or Buyer's customers by a third party arising out of, or in connection with the supply of the Goods and/or Services, to the extent arising out of the breach, negligent performance or failure or delay in performance of a Contract by the Supplier, its employees, agents or subcontractors;
 - (iii) any claim made against the Buyer or Buyer's customers by a third party (including Buyer's employees, personnel and subcontractors) for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods and/ or provision of Services, to the extent that the defect in the Goods or the provision of the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (iv) Any damage to property of the Buyer or Buyer's customers arising out of, or in connection with, defects in Goods and/ or provision of Services, to the extent that the defect in the Goods or the provision of the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- (e) The rights and remedies of the Buyer provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided at law or in equity. The Supplier's Warranty and Manufacturer's Warranty shall extend to cover the customers of the Buyer and any purchasers or users of the Goods to whom the Goods are sold on without any need for the Supplier or its purchasers to formally assign the benefit of the Warranties.

13. INSURANCE

- (a) During this Contract and for a period of one year afterwards, the Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities (which a company complying with Good Industry Practice would take out) under any Contract and in respect of the Goods and Services including, without limitation against all the Supplier's liabilities under Condition 12. The Supplier shall not do anything or permit the doing of anything which would invalidate or void the insurances of the Supplier and/or the Buyer nor prejudice the Buyer's entitlement under any insurances.
- (b) The Supplier will provide all facilities, assistance and advice requested by the Buyer or the Buyer's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance or non-performance of the Order or the Contract.

14. TERMINATION

- (a) Without limiting its other rights and remedies, the Buyer may terminate the whole or any part of an Order or the Contract at any time with immediate effect by written notice to the Supplier if:
- (i) the Supplier breaches or fails to comply with any of its duties or obligations under the Contract or fails to fulfil the Order requirements;
 - (ii) the Supplier is acquired by or merges with any third party;
 - (iii) 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (iv) 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 other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (v) (being a company) 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, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier; (being an individual) the Supplier is the subject of a bankruptcy petition or order;
 - (vi) 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 its assets and such attachment or process is not discharged within 14 days;
 - (vii) (being a company) 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;
 - (viii) (being a company) a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
 - (ix) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - (x) 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 Condition 14(a)(iii) to Condition 14(a)(ix) inclusive;

- (xi) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - (xii) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Buyer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
 - (xiii) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- (b) Without limiting its other rights and remedies, the Buyer may terminate an Order or Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work and deliveries under the Order or Contract (as applicable). The Buyer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
 - (c) Termination of the Contract, however arising, shall not affect any of the parties rights that have accrued at termination.
 - (d) Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. CONFIDENTIALITY

- (a) The Supplier shall and shall ensure that its employees, agents or subcontractors shall treat all technical, commercial, product, customer or business information, drawings, designs and specifications submitted to it by the Buyer as confidential and shall not disclose it to any third party without the Buyer's prior written consent or use it for any purpose except where authorised to do so by the Buyer.
- (b) Condition 15(a) does not apply to information which:
 - (i) is at the date of disclosure or becomes at any time after that date publicly known other than by the Supplier's breach of this Condition;
 - (ii) can be shown by the Supplier to the Buyer's satisfaction to have been known by the Supplier before disclosure by the Buyer to the Supplier and was free from restrictions on use and disclosure when received by Supplier;
 - (iii) is or becomes available to the Supplier otherwise than from the Buyer and free of any restrictions as to its use or disclosure; or
 - (iv) is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

16. LICENCES AND CONSENTS

If a licence or consent of any government or other authority is required for the supply or carriage of the Goods or performance of the Services by the Supplier, the Order or the Contract, the Supplier will obtain such licence or consent at its own expense and produce evidence of it to the Buyer on demand.

17. NOTICES

Any notice given by one Party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Business Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the Parties or to any other address notified in writing by one Party to the other for the purpose of receiving notices in connection with a Contract. Each Party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

18. GENERAL

- (a) If any provision (or part of a provision) of these Conditions or the Contract is found by any court or administrative body to be invalid, unenforceable or illegal, the other provisions will remain in full force and effect. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- (b) The Supplier shall not (without the Buyer's prior written consent) assign, transfer, charge or sub-contract all or any of its rights or obligations under the Contract. The Buyer may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract in any way as the Buyer, in its sole discretion, sees fit.
- (c) Excepting rights of the Buyer's customers to have the benefit of the Warranty and Manufacturer's Warranty, a person who is not a Party to a Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Contract.
- (d) Notices given under a Contract shall be in writing and sent for the attention of the relevant Buyer Representative or Supplier Representative and to the address given in the Order.
- (e) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- (f) Except as set out in these Conditions, no variation of the Contract (including these Conditions), including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Buyer's Representative.
- (g) Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either Party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other Party in any way.

19. DISPUTES AND GOVERNING LAW

- (a) This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales.
- (b) The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- (c) Any dispute or difference shall, in the first instance, be referred to senior management of each Party for resolution.