

## STANDARD CONDITIONS OF PURCHASE

In these General Conditions or Trading ("Conditions") "The Buyer" shall mean COLSTON ENGINEERING SERVICES LIMITED.

### 1. DEFINITIONS

In these Conditions, unless the context otherwise requires, the following words have the following meanings:

- 1.1 'Buyer' - the Company and any person or firm to whom it may have assigned the benefit of the Contract.
- 1.2 'Contract' - the contract constituted by the Seller's acceptance of the Purchase Order as indicated below, and any other documents (or parts thereof) specified in the Purchase Order, such as Drawings and Specifications, should there be any inconsistency between the documents comprising the contract they shall have precedence in the order herein listed.
- 1.3 'Contract Price' - the price or prices specified in the Purchase Order.
- 1.4 'Force Majeure' - any circumstances beyond the reasonable control of the Seller or Buyer.
- 1.5 'Goods' - the goods (including raw materials, processed materials or fabricated products as defined within) or services (or any of them) as described in the Purchase Order.
- 1.6 'Purchase Order' - the Purchase Order placed by the Buyer for the supply of the Goods.
- 1.7 'Results' - all reports, specifications, software, drawings or other information in any form created by the Seller pursuant to the supply of Goods.
- 1.8 'Seller' - the person, firm or company to whom the Purchase Order is addressed.
- 1.9 'Specification' - the technical description (if any) of the Goods contained or referred to in the Purchase Order.

### 2. GENERAL

- 2.1 Unless stated otherwise on the Purchase Order these Conditions shall govern the Contract to the exclusion of any terms and conditions, warranties or representations, written or oral, expressed or implied which the Seller may seek to impose.
- 2.2 Any concession allowed by the Buyer at any time shall not constitute a waiver of its rights under the Contract or otherwise.

### 3. VARIATION

- 3.1 No variation of these Conditions or of the Contract shall be effective unless agreed in writing between an authorised representative of the Seller and an authorised representative of the Buyer.

### 4. QUALITY AND DESCRIPTION

- 4.1 The Seller warrants to the Buyer that the Goods and Services supplied, including but not limited to the installation of any equipment, shall:
  - (a) Be of satisfactory quality and free from defects in design, material or workmanship and be fit for their intended purpose,
  - (b) Conform to the quantity, description and drawings contained or referred to in the Purchase Order,
  - (c) Be of sound material and workmanship,
  - (d) Be equal in all respects to the Specification or to the samples or patterns provided or given by either party,
  - (e) Be capable of any standard or performance specified in the Purchase Order,
  - (f) Be new and free from any lien, charge or other encumbrance and,
  - (g) Comply with all statutory requirements and regulations relating to the sale of Goods.
- 4.2 In the absence of a specification or sample, all Goods supplied shall be within the normal limits of Industrial quality.
- 4.3 All delivery and quality issues relating to the Goods shall be managed in accordance with the Colston Engineering Services Limited Supplier Quality Assurance Contract Requirements (CES 16). Any non-conformance may result in the Buyer withholding payment until the due process is followed. Any deviation to this process must be agreed in writing with the Purchasing Manager prior to implementation.
- 4.4 As per CES 16 clause 15.6, no change to the manufacturing processes, materials, locations or documentation shall be made, on the Sellers behalf, without prior written communication to the Buyer. If it is

subsequently found that such a change has occurred, then the Buyer shall have the right to quarantine or reject Goods affected by the change and withhold payment until the change is assessed and agreed by both parties.

- 4.5 It is agreed that the Design Life of the installed equipment is 30 years, unless otherwise agreed in writing.
- 4.6 Should the Seller be aware of any obsolescence that may affect the future maintenance and repair of any equipment, the Seller is obliged to advise the Buyer of an alternative solution and support any required validation activity to ensure continuity of supply.
- 4.7 In instances where obsolescence is evident the Seller shall provide the Buyer with the option to undertake a last time buy of any spares or other maintenance items.
- 4.8 The Buyer shall have no liability in respect of any representation or warranty made prior to the Contract unless it was made fraudulently.

### 5. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS (IPR)

- 5.1 The Seller warrants that the Goods will not cause any infringement of letters patent, registered design, trade or service mark, know-how, copyright or other intellectual property rights ("IPR") of any third party resulting from the use or resale of the Goods the subject of the Purchase Order or any part of them.
- 5.2 Both Parties shall ensure that all relevant IPR is protected and managed in accordance with the necessary Confidentiality Rights as stipulated in the Buyer's standard Confidentiality Agreement document (copy to be provided on request).
- 5.3 The Buyer shall, in the event of the Seller being sold or business transferred to a third party or becoming insolvent, have intellectual rights to processes or property without cost.

### 6. COSTINGS AND PRICE

- 6.1 The Buyer shall have the right of access to all costings from goods and services upon request and these should not be unreasonably withheld.
- 6.2 The Contract Price is fixed and firm, VAT exclusive but otherwise all inclusive of packaging, packing, shipping, carriage, insurance, delivery of the Goods and any duties or levies, unless otherwise agreed.
- 6.3 No increase in the costs/Contract Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing and their issuance of an amended Purchase Order detailing such revised Contract Price and the Seller has acknowledged the said order.

### 7. SUPPLIES, INVOICING AND PAYMENT

- 7.1 The Buyer shall not be liable for any Goods supplied, or services rendered, unless covered by an official Purchase Order or an official amendment thereto.
- 7.2 Each invoice shall only be paid by the Buyer providing it contains at least the following information: Purchase Order Number, Value, VAT, Quantity, Invoice Number, Unit Price and Date of Delivery.
- 7.3 Any contradictions between the Purchase Order and Invoice may result in suspended payment of the Invoice. It is the responsibility of the Seller to ensure that the invoice submitted agrees in its entirety with the Purchase Order.
- 7.4 Unless otherwise stated in the Purchase Order, the Buyer shall pay for Goods within 60 days of delivery provided that they are in accordance with any applicable Specification and the terms of the Contract. Without prejudice to any other right or remedy the Buyer reserves the right to offset any sum of money owing at any time by the Seller to the Buyer against any sum, or which at any time thereafter may become payable by the Buyer to the Seller under the Contract or under any other contract between the Buyer and the Seller.

### 8. DELIVERY, ACKNOWLEDGEMENT, DELAY, LIQUIDATED DAMAGES AND OTHER CONSEQUENCES

- 8.1 The Goods must be delivered suitably packed and carriage paid to such destination as the Buyer may direct, in the Purchase Order or otherwise.
- 8.2 The Seller shall deliver the Goods by the date specified in the Purchase Order.

8.3 The Seller shall acknowledge the date on the Purchase Order or advise of an alternative date, however shall use best endeavours to achieve the date on the Purchase Order. Time is of the essence to this Agreement.

8.4 Should the Seller receive a delivery schedule from the Buyer it is agreed that the dates contained therein shall be the dates that the Seller shall deliver the Goods to the Buyer, unless the Buyer is advised otherwise, in writing, in accordance with these Purchase Conditions.

8.5 If the Seller fails to acknowledge an order from the Buyer within 1 working day it is agreed that those dates on the order shall be those that the Seller shall deliver to.

8.6 If owing to Force Majeure the Seller is unable to deliver the Goods by the specified date, then provided that the Seller shall have given the Buyer immediate notice in writing of its intention to claim an extension of time, the Buyer shall grant the Seller such extension of time as may be reasonable.

8.7 Should the Seller fail to deliver the Goods by the specified date for any reason other than Force Majeure the Buyer (without prejudice to any other right or remedy which it may have) shall be entitled to, whether as a deduction from any sums due to the Supplier or otherwise, 2% of the total Contract Price due to the Supplier in respect of those Goods for each week (or part thereof) in which the Supplier fails to deliver them, subject to a maximum of 10% of the Contract Price.

8.8 Should the Seller fail to deliver the Goods by the specified date for any reason other than Force Majeure the Buyer (without prejudice to any other right or remedy which it may have) shall be entitled to:

(a) Cancel or vary that part of the Purchase Order which has not been delivered by the specified date,

(b) Obtain replacement goods from another supplier, and

(c) Charge to the Seller any additional costs, losses or expenses which the Buyer may reasonably incur due to the Seller's failure to deliver the Goods by the specified date.

8.9 The Buyer shall be entitled to rescind any contract for Goods which have not been delivered in whole or in part or to require the Seller to suspend delivery for any period if the activities for which the Goods were Purchase Ordered are stopped or seriously interfered with by any situation of Force Majeure.

8.10 In addition to any other right that the Buyer may have under these Conditions it shall be entitled to postpone the date of delivery for whatsoever period it thinks fit upon giving notice in writing to the Seller provided that the Buyer shall pay such of the Seller's reasonable storage charges as in the circumstances the Buyer shall in its absolute discretion see fit.

8.11 Only the complete order quantity for the date specified shall be delivered unless agreed in writing by the Buyer. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

8.12 If Goods are delivered to a delivery point not on the Purchase Order, the Seller will be responsible for any additional reasonable and justifiable expense incurred in delivering them to their correct destination. The Buyer will not be responsible for paying an invoice until the Goods are delivered to the correct location.

## 9. RISK AND DAMAGE/LOSS IN TRANSIT

9.1 Risk in to the Goods shall transfer to the Buyer when the installed Goods or equipment are tested and accepted by the Buyer as fit for purpose and fully conformant to all applicable Drawings and Specifications.

9.2 The Seller will repair or replace free of charge, Goods damaged or lost in transit provided the Buyer shall give the Seller written notification otherwise than by a qualified signature on any Delivery Note, of such damage or loss within such time as will enable the Seller to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or where delivery is made by the Seller's own transport, within a reasonable time.

## 10. TIME

Time for performance and other dates specified in the Purchase Order shall be of the essence.

## 11. PROPERTY

11.1 Property in the Goods shall pass to the Buyer on delivery (without prejudice to the Buyer's right of rejection under these Conditions) or when the invoice for such Goods is received by the Buyer whichever occurs first.

11.2 If the Seller postpones delivery at the request of the Buyer under clause 8.6 the property in the Goods shall pass to the Buyer 7 days after the date of receipt of notification from the Seller that the Goods are due and ready for delivery or on such other date as may be agreed, but the Goods shall nevertheless remain a the Seller's risk until delivery has been completed in accordance with the Purchase Order and the Buyer has confirmed in writing that the Goods have been received.

## 12. REJECTION

12.1 If any of the Goods delivered or installed do not comply with the Contract or the Seller does not comply with its obligations under clause 4, the Buyer shall be entitled to reject those Goods or any part of them by notice in writing to the Seller given within a reasonable time of their delivery.

12.2 The Buyer shall, when giving notice of rejection, specify the reasons for it and shall return the rejected Goods to the Seller [or at the Buyer's option request that the Goods be collected by the Seller or require to rectify all such non-conformance but without prejudice to any other right which the Buyer may have against the Seller] at the Seller's risk and expense. In such case the Seller shall within a reasonable time replace those rejected Goods with goods which are in all respects in accordance with the Contract.

12.3 The making of payment shall not prejudice Buyer's right of rejection.

12.4 Any sums paid by the Buyer to the Seller in respect of any rejected Goods not replaced by the Seller within a reasonable time, together with any additional expenditure over and above the Contract Price reasonably incurred by the Buyer in obtaining other goods in replacement, shall be paid by the Seller to the Buyer.

## 13. INDEMNITY

13.1 The Seller shall indemnify the Buyer in full and on demand against all claims, cost, and expenses (including reasonable legal expenses), loss, injury or damage whether direct, indirect or consequential which the Buyer may suffer or incur as a result of or in connection with the use or sale of any article or material supplied by the Seller to the Buyer by:

(a) Any act or omission (including negligence) of the Seller its sub-sellers, employees or agents in supplying, delivering and installing the Goods in accordance with the Contract and the Conditions.

(b) A breach of any warranty given by the Seller in relation to the Goods including, but not limited to, the warranties contained in clauses 4 and 15,

(c) Any claim that the Goods infringe any IPR (including Letter Patent, Registered or unregistered design, Trade Mark or Copyright) whether in Britain or overseas except where Goods have been manufactured solely in accordance with particular designs or specifications of the Buyer,

(d) Failure to comply with the requirements in clause 8.2 and 10 or,

(e) Any liability which the Buyer may incur whether by court proceedings or by a bona fide out-of-court settlement as a result of a claim against the Buyer under the Consumer Protections Act 1987 in respect of an alleged defect in the Goods or in other items into which the Goods are incorporated where the defect is attributable to the Goods.

13.2 The Seller shall not be liable to the Buyer for any damage or injury to the extent that it is caused by or arises out of the acts or omissions of the Buyer or of others (not being the Seller's servants or agents).

13.3 In the event of any claim being made against the Buyer by reason of any matter referred to and in respect of which the Seller is liable under this clause the Seller shall be promptly notified of it and may at its own expense conduct all negotiations for the settlement of it and any litigation that may arise from it. The Buyer shall not unless and until the Seller shall have failed to take over the conduct of the negotiations or litigation, made any admission which might be prejudicial to it. The conduct by the Seller of such negotiations or litigation shall be conditional upon the Seller having first given to the Buyer such reasonable security as shall from time to time be required by the Buyer to cover the amount ascertained, or agreed, or estimated as the case may be of any compensation, damages, expense and costs for which the Buyer may become liable. The Buyer shall at the request of the Seller afford all available assistance for any such purpose and shall be repaid any out of pocket expenses incurred in so doing.

## 14. ASSIGNMENT AND SUB-CONTRACTING

14.1 The Seller shall not assign the whole or any part of the Contract without the prior written consent of the Buyer.

14.2 The Seller shall not without the consent in writing of the Buyer sub-contract the Contract or any part of it other than for materials, minor details or for any part of the Goods of which the makers are named in the Purchase Order or Specification. Any such consent shall not relieve the Seller of any of its obligations under the Contract.

14.3 Where the Buyer has consented to the placing of sub-contracts copies of each sub-order shall be sent by Seller to Buyer as requested by the Buyer.

## 15. SERVICES

15.1 Where the Seller is providing any services, the 'Goods' as used in these Conditions shall be interpreted to include the provision of such services. In providing those services the Seller warrants that it shall use only qualified and experienced personnel acting with all care and diligence and it accepts full responsibility for such personnel, their property, their acts and omissions.

15.2 Where consultancy or design work is involved in the services provided by the Seller, the Seller accepts full professional responsibility for the services and will carry them out with such skill and expertise necessary to ensure they are of the standards required under the Contract. The Seller shall take out and maintain for a period of 6 years

from completion of the consultancy or design work Professional Indemnity insurance to a level of at least one million pounds.

15.3 All rights in any IPR arising in the Results shall be the property of the Buyer who shall have the right to use the Results for any purpose without further payment.

15.4 The Seller shall, at the Buyer's request, without delay do all things necessary or desirable to substantiate the rights of the Buyer under clause 15.3.

#### **16. INSPECTION, SURVEILLANCE AND EXPEDITING**

16.1 The Buyer's representatives and those of its customer(s) shall at all reasonable times have access to the Seller's premises and those of the Seller's sub-contractors for the purposes of inspection, testing, surveillance and expediting and to reject Goods that do not comply with the terms of the Contract. Any such inspection or failure to inspect shall not relieve the Seller of any obligation with respect to the Contract and shall not affect the Buyer's right to reject the Goods after delivery.

16.2 The Seller shall be obliged to comply with the Buyer's reasonable instructions arising from such inspection, testing, surveillance and expediting and shall upon request provide the Buyer with copies of all test reports and all data discovered as a result of testing.

#### **17. DELIVERABLES**

The deliverables shall, in addition to the Goods, include all documentation specified or referred to in the Purchase Order as being required. Such documentation is to be supplied to the Buyer's satisfaction in the timescales specified in the Purchase Order. Receipt of deliverables is a condition precedent to payment

#### **18. CONFIDENTIALITY AND BUYER'S RIGHT**

The Results, and any drawings, specifications or other documents or information issued by the Buyer to the Seller shall remain the property of the Buyer and be covered by the Confidentiality Agreement (to be provided on request), and information derived there from or otherwise communicated to the Seller as secret and confidential and shall be regarded as secret and confidential and shall not be published or copied or disclosed to any third party nor used for any other purpose (apart from in connection with the Contract) without the prior written consent of the Buyer.

#### **19. TERMINATION**

19.1 Without prejudice to its other rights, the Buyer shall be entitled to terminate or cancel a Contract in whole or in part at any time giving not less than 15 days notice in writing. The Seller shall be entitled to reasonable payment for the work satisfactorily completed up to time of termination. Upon receipt of a termination notice the Seller shall immediately cease all work in performance of the Contract and shall make every reasonable effort to obtain cancellation of all sub-contract made by it relating to the Contract.

19.2 The Buyer may cancel a Contract at any time without any cost to the Buyer by serving a notice in writing on the Seller if the Seller fails to comply with any provisions of the Contract.

19.3 The Seller shall not cancel the Contract without the consent of the Buyer, such consent to be conditional on the Seller indemnifying the Buyer against all loss (including consequential loss) damage, claims or actions arising out of such cancellation.

#### **20. SPECIAL TERMS AND CONDITIONS**

20.1 Where the Purchase Order quotes Special Conditions, they shall supplement these Purchase Conditions, should the Purchase Order specify that the Goods shall be compliant with any specifications or conditions including, but not limited to, those of the UK Government, the Seller shall ensure that the most recent published version of the said specification or conditions is complied with.

20.2 In the event of conflict between the Conditions of the Order contained herein the Special Conditions shall prevail.

20.3 If the Seller contracts under a formal Purchase Agreement those conditions will apply.

#### **21. INSOLVENCY AND BANKRUPTCY**

If either before or after acceptance of the Purchase Order the Seller becomes bankrupt or insolvent or compounds with its creditors, or being a limited company, commences to be wound-up or if a Receiver is appointed of any part of the Seller's assets, the Buyer shall be at liberty by notice in writing, to cancel the Purchase Order or the Contract as the case may be, without being liable for loss or damage of any kind arising from such cancellation, and without prejudice to any rights or remedy which shall have accrued or shall accrue thereafter to the Buyer.

#### **22. PUBLICITY**

The Seller may not describe, illustrate or refer to the Goods in any form of advertising without the Buyer's written consent.

#### **23. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of these Conditions (whether express or implied) is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

#### **24. GENERAL CONDITIONS IN THE TENDER**

No conditions submitted or referred to by the Seller when tendering, acknowledging or fulfilling an order shall form part of the Contract unless otherwise agreed to in writing by the Buyer.

#### **25. TOOLING AND TEST EQUIPMENT**

Where the tooling or test equipment is owned by the Buyer, the Seller shall advise the Buyer of any required maintenance to facilitate the supply of the Goods as required by the Contract. Where the tooling or test equipment is owned by the Seller he shall be liable to maintain Tooling and Fixtures at his cost to produce product for the Design Life of the Goods.

#### **26. CONTINUITY OF SUPPLY**

26.1 The Seller shall ensure continuity of supply of Goods and services and where agreed, hold warranty stocks for the life of the Contract and for any subsequent After Sales requirement from the Buyer for the Design Life of the Goods.

26.2 Termination of this contract shall not relieve either party from due performance which, by their nature, continue after termination of this Contract including, but not limited to product liability, open payments, warranty, IPR, Confidentiality, Spares or Repair parts.

#### **27. EXCLUSIVITY OF SUPPLY**

27.1 Goods and Services exclusive or specific to the Buyer shall not be sold or passed to a third party without written permission from the Buyer.

27.2 Any instance of a third party requesting information regarding Goods and Services shall be passed on to the Buyer.

27.3 Should such Goods or Services be supplied to a third party by the Seller, then the Buyer can seek costs aligned with the value of the lost sale.

#### **28. HAZARDOUS GOODS**

28.1 Hazardous Goods must be marked by the Seller with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of the hazard and the name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Seller shall observe the requirements of UK and International Agreements relating to packing, labelling and carriage of Hazardous Goods.

28.2 All information held by, or reasonably available to, the Seller regarding any potential hazardous known or believed to exist in the transport, handling or use of the Goods supplied shall be properly communicated to the Buyer.

#### **29. TECHNICAL SUPPORT**

The Seller shall supply such technical support for design, manufacture and maintenance, as applicable, of Goods supplied including field support where specified to maintain and support the ongoing performance of the Contract.

#### **30. INSURANCE**

The Supplier shall ensure they have at least £2,000,000 (two million pounds) Third Party Insurance and suitable Product Liability Insurance.

#### **31. WARRANTY**

The Seller shall as soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 36 months from Goods transferring to the Buyer's Customer or 42 months from delivery to the Buyer, whichever is the shorter, where such defects occur under proper usage and are due to faulty design, the Seller's erroneous use date, or inadequate or faulty materials or workmanship or any other breach of Seller's warranties expressed or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 36 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. The Seller shall ensure that reasonable endeavours are taken to provide repair or replacement Goods within 14 working days.

#### **32. FREE-ISSUE MATERIAL**

Where the Buyer, for the purposes of the Contract, issues materials free of charge to the Seller such materials shall be and remain the property of the Buyer. The Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Buyer's discretion. Waste of such materials arising from bad workmanship or

negligence of the Seller shall be made good at the Seller's expense. Without prejudice to any other rights of the Buyer, the Seller shall deliver up such materials whether further processed or not to the Buyer on demand.

**33. DETERIORATION**

Except where stated otherwise for the Buyer's Purchase Order the Seller shall protect any item or part that might deteriorate during transportation or storage.

**34. RESPONSIBILITY FOR INFORMATION**

The Seller shall be responsible for any errors or omissions in any drawings, calculations packing details or other particulars supplied by him, whether such information has been approved by the Buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the buyer.

**35. LAW**

These Conditions and the Contract shall in all respects be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.

The Effective Date of these Purchase Conditions will be the latest signature date given below. The Buyer and Seller agree that these Purchase Conditions will apply to all Purchase Orders issued by the Buyer to the Seller from the Effective Date.

<b>Signed for and on behalf of:-</b>			
	<b>&lt;enter name of supplier&gt;</b>	<b>Colston Engineering Services Limited</b>	
<b>Signature:</b>			
<b>Name:</b>		David Scott	Matthew Heaton
<b>Position in Company:</b>		Purchasing Officer	Managing Director
<b>Date:</b>			