

STANDARD TERMS AND CONDITIONS OF PURCHASE

1 TERMS OF AGREEMENT

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

2 DEFINITIONS

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

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

"**Intellectual Property Rights**" means any and all tangible and intangible: (i) copyrights and other rights associated with Services of authorship throughout the world, including but not limited to copyrights, neighbouring rights, moral rights, and mask Services, and all derivative Services thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

"**Goods**" means tangible goods, specified in the Purchase Order, to be delivered on the Delivery Date

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

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

"**Subcontractor**" means a third party performing Services under an agreement (a "**Subcontract**") with Supplier.

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

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

3 DELIVERY

- 3.1 Unless Customer expressly instructs otherwise, Supplier will deliver all Goods and Services to Customer at the Delivery Address set forth in the Purchase Order. Seller assumes responsibility for all packaging, shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.
- 3.2 Time is of the essence in Supplier's performance of its obligations set out in the Purchase Order. Supplier will immediately notify Customer if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. Customer's acceptance of Supplier's notice will not constitute Customer's waiver of any of Supplier's obligations.
- 3.3 Supplier will preserve, pack, package and handle the Deliverables and Goods so as to protect the Deliverables and Goods from loss or damage and in accordance with best commercial practices in the absence of any specifications Customer may provide.
- 3.4 Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous substances or mixtures, including, without limitation, with respect to its accompanying information, classification, packing, labelling, reporting, carriage and disposal.

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- 3.5 Supplier shall include, with each delivery of Goods, a packing list identifying the Purchase Order number, the Customer part number for each of the Goods (if applicable), a description and the quantity of each of the Goods, and the date of shipment.
- 3.6 Where required by the Customer, the Supplier shall remove from the Customer's premises all packaging and temporary fixings necessary for the delivery of the Goods or performance of the Services and leave the delivery area and all Customer premises clear of waste.

4 INSPECTION AND ACCEPTANCE

- 4.1 Customer may reject any or all of the Goods or Services delivered after the Delivery Date or which does not conform to the applicable requirements stated in the Purchase Order, the SOW, or both, within ten (10) business days of Supplier's delivery of the Goods or Services.
- 4.2 At Customer's option, Customer may:
- i. return the late or non-conforming Goods or Services to Supplier for a refund or credit; or
 - ii. require Supplier to replace the late or non-conforming Goods or Services; or
 - iii. repair the non-conforming Goods or complete the non performing Services so that it meets the requirements stated in the Purchase Order, the SOW or both.

As an alternative to (i) to (iii) inclusive, Customer may accept the non-conforming Goods or Services conditioned on Supplier providing a refund or credit in an amount Customer reasonably determines to represent the diminished value of the non-conforming Goods or Services.

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

5 RISK AND TITLE

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

6 PRICE

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

7 INVOICES

Upon delivery of the Goods and/or completion of the Services, the Supplier shall provide to the Customer a valid invoice, including the following information:

- i. a reference to this Purchase Order and the relevant Master Agreement number (if any);
- ii. a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
- iii. an individual reference number for the Customer to quote with remittance of payment;
- iv. the price relating to the Goods and/or Services, broken down to reflect the same price components set out in the Purchase Order and break-out from the price any taxes and other charges.

- 7.1 Supplier shall, promptly and upon request, provide Customer with all relevant records to calculate and verify the amount set out in any invoice.
- 7.2 Customer may withhold approval and/or money due to the Supplier under this Purchase Order if the Goods or Services (or any part of them) are defective.

8 PAYMENT

Customer shall pay Supplier the price by the end of the calendar month following the calendar month during which the invoice was issued by Supplier.

9 CHANGES

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

10 REPRESENTATIONS AND WARRANTIES

- 10.1 Supplier represents and warrants that
- i. it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order;
 - ii. the Services, and Customer’s use of the Services, do not and will not infringe upon any third party’s Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law;
 - iii. the Services conforms to Customer’s specifications, Supplier’s quotation or proposal, and Supplier’s brochures or catalogues, and if none of the foregoing is applicable, then such Services is suitable for the intended use;
 - iv. the Goods conform to the description, specifications and service levels set out in the Purchase Order;
 - v. the Goods comply with all applicable quality standards and, to the extent not covered by the foregoing, all applicable legislation;
 - vi. the Goods are fit for the purpose for which goods of the same kind are commonly supplied or bought as well as for any other purpose which the Customer specifies;
 - vii. the Goods are free from material defects in design, material and workmanship.
- 10.2 Customer warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

11 ASSIGNMENT AND SUBCONTRACTING

- 11.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without Customer’s prior written consent.
- 11.2 Supplier may not subcontract any of its rights or obligations under the Purchase Order without Customer’s prior written consent. If Customer consents to the use of a Subcontractor, Supplier will: (i) guarantee and will remain liable for the performance of all subcontracted obligations; (ii) indemnify Customer for all damages and costs of any kind, subject to the limitations in Section 15 (Indemnification), incurred by Customer or any third party and caused by the acts and omissions of Supplier or Subcontractors; and (iii) make all payments to its Subcontractors. If Supplier fails to timely pay a Subcontractor for Services performed, Customer will have the right, but not the obligation, to pay the Subcontractor and offset any amount due to Supplier by any amount paid to the Subcontractor. Supplier will defend, indemnify and hold Customer harmless for all damages and costs of any kind, without limitation, incurred by Customer and caused by Supplier’s failure to pay a Subcontractor.
- 11.3 To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

12 TERM

- 12.1 The Purchase Order will remain in effect with respect to any SOW already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Goods or Services are completed and accepted.

13 TERMINATION

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

14 CONFIDENTIAL INFORMATION AND PUBLICITY

Supplier shall obtain Customer's written consent prior to any publication, notification, presentation, public announcement, or press release concerning its relationship as a supplier to Customer.

15 INDEMNIFICATION

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

16 LIABILITY

- 16.1 Notwithstanding anything else in the Purchase Order or otherwise, Customer will not be liable to Supplier with respect to the subject matter of the Purchase Order under any contract, negligence, strict liability or other legal or equitable theory for any amounts in excess in the amount Customer paid to Supplier in the six months preceding the event or circumstance giving rise to such liability.

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- 16.2 In no event will Customer be liable to Supplier for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Purchase Order, whether or not Customer was advised of the possibility of such damage.
- 16.3 The limitations will apply notwithstanding any failure of essential purpose of any limited remedy provided herein. Nothing in the Purchase Order limits either party's liability for bodily injury of a person, death, or physical damage to property or any liability which cannot be excluded under applicable law.

17 INSURANCE

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

18 COMPLIANCE WITH LAWS

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

19 GENERAL

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

20 GOVERNING LAW

- 20.1 The validity, interpretation, and performance of this Purchase Order will be controlled by and construed under the laws of England and Wales.
- 20.2 The English Courts shall have exclusive jurisdiction over any claim arising under this Purchase Order.
- 20.3 Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.