

# CONDITIONS OF SUPPLY OF GOODS AND SERVICES (Safety Programme Manager Ltd)

## 1. DEFINITIONS AND INTERPRETATION

- (a) In these Conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:-

"Customer"	the purchaser of Services and/or Goods from us as detailed in the Proposal;
"Conditions"	the conditions set out herein;
"Contract"	the contract(s) for the provision of Services and/or Goods between the us and the Customer constituted by the submission of the Proposal and acceptance thereof in terms of Clause 2;
"Goods"	the goods which we have proposed to provide to you as set out in the Proposal, whether relative to the Services or not, as such Goods may be varied by agreement between you and us from time to time;
"Price(s)"	the price as detailed in the Proposal or the price to be calculated as detailed in the Proposal (subject to Clause 3);
"Proposal"	the proposal to which these Conditions are attached;
"Services"	the services which we have proposed to perform as set out in the Proposal as such Services may be varied by agreement between you and us from time to time;
"us"	the Supplier of Goods and/or Services as detailed in the Proposal ("our and "we" being construed accordingly);
"you"	the Customer as detailed in the Proposal ("your" being construed accordingly);

- (b) References to Clauses shall mean the clauses of these Conditions and headings and punctuation are for ease of reference only and shall not affect interpretation.

## 2. ACCEPTANCE OF CONDITIONS

- (a) The Proposal submitted by us to you constitutes an offer by us to provide the Services and/or Goods specified therein and is subject to these Conditions. You shall have 30 days from date of the Proposal to confirm in writing acceptance or rejection thereof by execution of the Proposal, unless otherwise specified in the Proposal, failing which such offer will lapse.
- (b) All Contracts between you and us, whether verbally or in writing, are, unless otherwise agreed in writing between the parties, subject to these Conditions which shall be deemed to be incorporated in any and all Contracts whether or not the Conditions are attached to the Proposal(s) or not.
- (c) The Proposal and these Conditions shall constitute the whole agreement between you and us to the exclusion of any other terms and conditions which may have been submitted by you or subject to which the Proposal is accepted or purported to be accepted by you, unless otherwise expressly agreed by us in writing or permitted in terms of these Conditions. In the event of any conflict between these Conditions and the attached Proposal, the terms of the Conditions shall prevail.
- (d) Without prejudice to Clause 2(c) above, in the event of any conflict between these Conditions and the conditions in any communications from you whether upon initial acceptance of these Conditions or at any time thereafter, these Conditions shall prevail.
- (e) Contracts between the parties may not be modified or varied unless specifically accepted by the Supplier in writing or permitted in terms of the Conditions.

## 3. PRICE

- (a) Unless otherwise stated, the Price(s) shall be exclusive of any applicable Value Added Tax (and any other taxes or charges (including but not limited to import duties or charges) which shall be payable by you at the applicable rate from time to time. All prices are fixed and may not be changed without the Supplier's agreement.
- (b) Where the Price(s) is quoted on a day-rate basis, it is based upon a working day of eight hours (less a one hour break). If the provision of the Goods and/or Services by us involves a working day in excess of eight hours, overtime shall be charged at our standard hourly rate from time to time (details of which are available on request).
- (c) Any expenses and/or outlays properly incurred by us in providing the Goods and/or Services which are not already incorporated in the Price (including without limitation outlays and/or expenses incurred relative to accommodation, travel and food) shall be payable by you immediately upon receipt by you of any invoice issued therefor.
- (d) Subject to Clause 3(c) and subject to any agreement between you and us in writing, you shall pay all sums due under the Contract, including without limitation the Price(s), within seven days of the date of any invoice issued therefor.
- (e) If you fail to make payment of any sums due to us in terms of the Contract within fourteen days of the due date then, without prejudice to any other rights or remedies available to us, we shall be entitled to (i) cancel the Contract or suspend further service to you and appropriate any payment made by you to such of the Goods and/or Services as we may think fit or (ii) charge you interest on the amount unpaid at the rate of 4% per annum above Bank of Scotland base rate from time to time from the due date until payment is made in full.
- (h) You shall not be entitled to withhold payment of any amount payable under the Contract to us because of any disputed claim in respect of the Goods and/or Services or any other alleged breach of the Contract.

## 4. SCOPE OF WORK

- (a) We shall use our reasonable endeavours to perform the Services and/or supply the Goods in accordance with the Proposal.
- (b) We shall be entitled to vary the Proposal at any time and you shall be deemed to have accepted any such variation(s) within 7 days of despatch of such variation(s) unless you advise us in writing within such period that you reject such variation. If any variation is rejected as aforesaid we shall have the option to revert to the original Proposal or to cancel the Proposal without penalty.
- (c) You shall be liable for obtaining all third party consents which we require in order to provide the Goods and/or Services, including without limitation consents relative to intellectual property rights and rights of access.

## 5. TITLE AND RISK, INSPECTION AND RETURN OF GOODS

- (a) You shall inspect the Goods (if any) upon delivery to you and notify us immediately in writing of any defects in the Goods. If no such notification is received within 7 days of such delivery, the Goods shall be deemed to be complete, in good order and condition and in every way satisfactory to you.
- (b) Subject to Clause 6, where the Goods are being sold to the Customer, title in the Goods will not pass to you (notwithstanding delivery of the Goods), until payment is made in full of all sums (including interest and charges) due from you to us whether under this Agreement or otherwise. Notwithstanding the foregoing, risk shall pass to you upon dispatch of the Goods by us.
- (c) Until such time as title in the relevant Goods has passed to you, you shall hold the Goods as our fiduciary agent and shall be entirely responsible for ensuring that the Goods are properly protected, operated, insured and clearly identified as our property.
- (d) You shall not be entitled to pledge or in any way charge by way of security for indebtedness (or permit any third party to do so) any of the Goods which remain our property, but if you do so, all monies owing by you to us shall (without prejudice to any other right or remedy we may have) immediately become due and payable.

## 6. INTELLECTUAL PROPERTY

- (a) You acknowledge and agree that any and all intellectual property rights in the Goods supplied hereunder and any and all intellectual property, including but not limited to intellectual property, created, developed, subsisting or used by us in performance of the Contract (to avoid any doubt including any copyright in any software) ("the Intellectual Property") shall vest in or (as the case may be) remain the exclusive property of us or such third party as we shall designate and nothing in these Conditions confers any right on you in this respect. You hereby warrant that you will not use, copy, alter or modify the Goods for any purpose other than as expressly permitted by us. Where the Goods are manufactured to your design or specification, you warrant that such design or specification does not infringe the right of any third party.
- (b) You hereby agree to waive any and all moral rights which you may have (and similar or equivalent rights anywhere in the world insofar as it is possible to do so) for any work in which copyright is vested in us whether hereunder or otherwise.

- (c) You shall keep secret and confidential at all times all and any information relating to the Proposal(s), the Conditions and our processes, business methods, customer base and materials which may come into your possession or within your knowledge at any time before during or after the Contract term and are deemed to be confidential by us ("Confidential Information"). You shall not use, copy or disclose to any third party any such Confidential Information unless for the proper purposes of this Contract or having obtained our prior written consent. Disclosure of any such Confidential Information by the Supplier to the Customer shall not affect the ownership of such Confidential Information or the Supplier's right to it. The obligations contained in this Clause 6(c) shall survive termination or performance of the Contract.

- (d) The provisions of Clause 6(c) shall not apply to any information which the Customer can demonstrate by documentary evidence to the Supplier's reasonable satisfaction: (i) is in or enters the public domain except as a result of a breach of this Contract; or (ii) was properly in possession or properly within its knowledge and at the Customer's free disposal prior to it receiving or becoming aware of the relevant confidential information; or (iii) is or becomes available in good faith to the Customer from a third party which is not subject to any obligation of confidence to the Supplier; or (iv) was developed independently of the Customer receiving or becoming aware of the Confidential Information; or (v) the Customer is required by law or the requirements of a recognised stock exchange to disclose to any court or other relevant authority.

- (e) You shall keep us fully and effectively indemnified in respect of all losses, liabilities, damages, costs and expenses arising from any failure by you to use the Intellectual Property strictly in terms of the licence granted under this Clause 6. The obligations contained in this Clause 6(e) shall survive termination or performance of the Contract.

## 7. WARRANTIES

- (a) We warrant to use our reasonable endeavours to perform the Services and/or supply the Goods in accordance with the Proposal and to perform the Services with reasonable skill and care.
- (b) We shall use our reasonable endeavours to meet the delivery date(s)/performance timescale as detailed in the Proposal but no warranty is given in this regard.
- (c) We do not make and hereby disclaim any express or implied warranty regarding the Services and/or Goods and/or the Intellectual Property (other than those set out in Clause 7(a)) insofar as it is competent to do so, including without limitation any warranty of merchantability or fitness for any particular purpose of any of the Goods notwithstanding that such purpose may have been known or become known to us.

## 8. LIABILITY

- (a) No liability will attach to us for any delay or failure in the performance by us of any of our obligations under the Contract if such delay or failure is due to causes beyond our reasonable control or to the delay or failure on the part of any third party.
- (b) Subject to the other provisions hereof and except insofar as our liability may not be excluded or limited by law, you acknowledge and agree that our entire liability hereunder shall be limited to the total consideration actually received by us pursuant to this Contract, which you acknowledge and agree is reasonable in all the circumstances. If you require additional protection, you acknowledge and agree that you shall be responsible for obtaining appropriate insurance cover.
- (c) Notwithstanding the generality of Clause 8(b), we expressly exclude liability for any consequential loss or damage (whether for loss of profits or otherwise).
- (d) We shall be entitled to set off any and all sums due by us to you under this Contract against any and all sums due by you to us whether under this Contract or otherwise.
- (e) We shall have no liability for any representation, statement, claim or assurance made or given in relation to the Goods and/or Services prior to this Contract being entered into.
- (f) All advice given and recommendations made in relation to this Contract are made without prejudice and no liability will be borne by us out of error or omission.

## 9. CANCELLATION

- Should the Contract be cancelled by you, we reserve the right to charge you the amount of any loss (including loss of profit), costs, charges and expenses incurred by us as a result of the cancellation. In the event of a delay in or suspension of the performance of the Contract by your instructions or lack of instructions, we shall have the right at our sole option to increase the Price(s) to cover the same and you shall be liable to us for any extra expense thereby incurred by us.

## 10. TERMINATION

- (a) Without prejudice to the remainder of these Conditions, the Contract (and any licence granted hereunder) may be terminated forthwith by us by notice in writing to you if (i) you fail to make payment of any sums due to us in terms of the Contract within 14 days of the due date (without prejudice to any other rights or remedies available to us); (ii) you commit a material breach of any of your obligations under the Contract which is not capable of remedy; (iii) you commit a material breach of any of your obligations under the contract which is capable of remedy and such a breach is not remedied within 30 days of being specifically required so to do by us; (iv) there is a persistent breach by you of any term of the Contract, being the repeat of any breach which we have previously notified in writing to you; (v) any encumbrancer takes possession of, or an administrator, an administrative receiver, a receiver, a trustee, a liquidator or other similar official is appointed over the whole or any material part of your undertaking, property or assets or any of your holding companies from time to time; (vi) there is a presentation of a petition for the passing of an effective resolution for your winding up, otherwise than for the purpose of reconstruction or amalgamation without insolvency which has previously been approved in writing by us; or (vii) you are subject to a change of control as such term is defined in Section 840 of the Income and Corporation Taxes Act 1988 as amended from time to time.
- (b) If any of the events outlined in Clause 10(a) above occur, we shall be entitled to terminate any and all other contracts with you then outstanding and withdraw any proposals open for acceptance by you at that time.
- (c) Notwithstanding the above, we reserve the right to give one year's notice of termination on any contract.
- (d) Termination of the Contract shall not affect the rights and remedies accrued by the parties as at the date of such termination or any rights or obligations which due to the nature thereof are intended to survive termination.

## 11. FORCE MAJEURE

- Neither party will be liable to perform obligations under this Contract (with the exception of payment of monies due) if it becomes unable to do so as a result of any of the following, whether happening in the United Kingdom or elsewhere:

- (a) force majeure;
- (b) act of God;
- (c) refusal of licence or other governmental act;
- (d) fire, explosion, accident, industrial dispute, computer breakdown, inability to obtain materials or anything beyond the party's control.

## 12. NOTICES

- Any notice required under the Contract may be delivered personally or sent by first class recorded delivery post or airmail or transmitted by facsimile transmission in each case to the registered office or business address of the party to whom the notice is addressed and any such notice shall be deemed to have been validly served if sent by post on the expiry of forty eight hours of the time of posting and if delivered personally or transmitted by facsimile transmission at the time of delivery or transmission provided that any such telex or facsimile transmission is confirmed by letter sent within twenty four hours of transmission.

## 13. GENERAL

- (a) Any failure or neglect by us to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of our rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice our right to take subsequent action.
- (b) You shall not assign or sub-contract any of your rights or duties under the Contract without our prior written approval. We shall be entitled to assign or otherwise transfer the benefit and/or burden of the Contract without restriction.
- (d) The Contract shall be governed and construed in accordance with the Laws of Scotland and you shall submit to the non-exclusive jurisdiction of the Scottish Courts in all matters relating to the subject matter of the Contract.