

TERMS AND CONDITIONS OF PURCHASE

MSCM ("Buyer")

Supplier ("Seller")

Buyer shall only purchase goods, rights and services ("Deliverables") from Seller on these terms and conditions ("Terms"). These Terms are important and should be studied carefully. **Seller's attention is drawn in particular to the provisions of Sections 4.1 and 7.10.**

1 The Contract

- 1.1 Buyer's contract with Seller for the purchase of Deliverables comprises Buyer's purchase order ('Purchase Order'), these Terms and anything else Buyer expressly agrees in writing (the 'Contract').
- 1.2 These Terms shall apply and be incorporated into the Contract and are the only conditions upon which Buyer is prepared to deal with Seller. Terms govern the Contract to the entire exclusion of all other terms and conditions.
- 1.3 In the event of a conflict between the terms of the Contract the following order of priority will apply: (1) Terms (2) Purchase Order; (3) express written agreement from Buyer. Buyer is not contractually bound until a Purchase Order is placed (and then only to the extent of the issues specifically covered by that Purchase Order) and is accepted by Seller with a formal order acknowledgement in writing, by fax or email.

2 Purchase Order

- 2.1 Purchase Order shall be raised by Buyer upon Seller detailing those Deliverables to be delivered to Buyer; and
 - 2.1.1 Purchase Order shall contain such additional terms and conditions as shall apply to a Contract;
 - 2.1.2 Upon return by Seller of an acknowledgement such Purchase Order shall become effective;
 - 2.1.3 Purchase Order shall remain effective until ten (10) Working Days after delivery of all Deliverables to Buyer in accordance with section 6.
- 2.2 In respect of Purchase Order and acknowledgements sent by email:
 - 2.2.1 The parties, intending to be legally bound by the Contract, expressly waive any rights to contest the validity of a Contract effected by the use of a Purchase Order and acknowledgement transmitted by email in accordance with these Terms on the sole ground that they were so transmitted;
 - 2.2.2 A contract effected by the use of email shall be concluded in England and Wales and at the time when Seller's emailed acknowledgement reaches the computer system of Buyer;
 - 2.2.3 To the extent permitted by law, the parties hereby agree that in the event of dispute, the records of emailed Purchase Order and acknowledgements, which they have maintained in accordance with these Terms, shall be admissible before the Courts and shall constitute evidence of the facts contained therein unless evidence to the contrary is adduced;
 - 2.2.4 The parties undertake to implement and maintain security procedures and measures in order to ensure the protection of emailed Purchase Order and acknowledgements against the risks of unauthorised access, alteration, delay, destruction or loss;
 - 2.2.5 Security procedures and measures include the verification of origin, the verification of integrity, the non-repudiation of origin and receipt and the confidentiality of emailed Purchase Order and acknowledgements. Security procedures and measures for the verification of origin and the verification of integrity, in order to identify the sender of the Purchase Order or acknowledgement and to ascertain that the Purchase Order or acknowledgement received is complete and has not been corrupted, are mandatory for any emailed Purchase Order or acknowledgement; and
 - 2.2.6 If the use of security procedures and measures results in the rejection of, or in the detection of an error in an emailed Purchase Order or acknowledgement, the receiver shall inform the sender thereof, within the specified time limit. The receiver of an emailed Purchase Order or acknowledgement which has been rejected, or which contains an error shall not act upon the Purchase Order or acknowledgement before receiving instructions from the sender. Where a rejected or erroneous Purchase Order or acknowledgement is retransmitted by the sender,

the Purchase Order or acknowledgement shall clearly state that it is a corrected transmission.

- 2.3 Seller shall ensure (unless an alternative time limit has been specified in the Purchase Order) that the acknowledgement is received by Buyer:
 - 2.3.1 (in the case of a Purchase Order sent by fax) within one working day of the time of receipt by Seller of the Purchase Order;
 - 2.3.2 (in the case of a Purchase Order sent by hard copy) within three working days of the time of receipt by Seller of the Purchase Order;
 - 2.3.3 (in the case of a Purchase Order sent by email) within one working day of the time of receipt by Seller of the Purchase Order;
- 2.4 If Buyer does not receive the acknowledgement within the time limit, it may, upon giving notification which for the purposes of this clause 2.4 (via email, fax or post) to Seller to that effect, treat the Purchase Order as null and void as from the expiration of that time limit.
- 2.5 A complete and chronological record of all Purchase Order and acknowledgements exchanged by the parties in the course of a trade transaction shall be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the legislative requirements of English law, and, in any event, for a minimum of six years following the completion of the transaction.
- 2.6 Purchase Order and acknowledgements shall be stored by the sender in the transmitted format and by the receiver in the format in which they are received.
- 2.7 Parties shall ensure that electronic or computer records of Purchase Order and acknowledgements sent by email shall be readily accessible, are capable of being reproduced in a human readable form and of being printed, if required. Any operational equipment required in this connection shall be retained.

3 Price

- 3.1 The price of the Deliverables will be as stated in the Purchase Order and unless otherwise stated will be (i) exclusive of VAT (which will be payable by Buyer subject to receipt of a valid VAT invoice); (ii) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT; (iii) payable in pounds sterling; and (iv) fixed for the duration of the Contract.

4 Payment

- 4.1 Invoices for Deliverables may be sent to Buyer on or after completion of Performance (as defined in section 5.3) and must quote Purchase Order number. Failure by Seller to adhere to this requirement will result in invoices and/or Deliverables being rejected. **No sum may be invoiced more than six months after completion of Performance.**
- 4.2 Unless otherwise stated Buyer will pay all invoices within 60 days of the end of month in which Buyer receives the invoice.
- 4.3 Buyer may set off against such charges any money owed to Buyer by Seller.

5 Specifications

- 5.1 If Deliverables are goods, Purchase Order is deemed to include the supply of all relevant documentation and certification and any commissioning of those goods necessary to enable the Buyer to use them for their intended purposes.
- 5.2 If Deliverables are services, Purchase Order includes complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable Buyer to benefit from them for their intended purposes.
- 5.3 Purchase Order shall include any legal rights necessary to use any Deliverables for their intended purposes. References in these Terms to "Performance" are to complete performance of all Seller's obligations as described in these Terms.
- 5.4 The quantity, quality and description of Deliverables will be as specified in Purchase Order and in accordance with section 7.1, or as otherwise agreed in writing.
- 5.5 Seller has sole responsibility for complying with all applicable regulations and other legal and regulatory

- requirements concerning the suitability for use of the Deliverables for their intended purpose.
- 5.6 Buyer may on reasonable notice inspect any contract goods and Seller's premises during manufacture and storage. If Buyer is not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the Contract, Seller will take such steps as are necessary in Buyer's reasonable opinion to ensure compliance. If Buyer is still not satisfied Buyer may cancel the Contract without penalty.
- 5.7 If Buyer notifies Seller in writing of any change in desired specification (including as to quality and delivery), parties will negotiate (acting reasonably) a formal written amendment to the Purchase Order which once agreed will be binding on the parties and will form part of the Contract.
- 5.8 To protect Buyer's business Buyer may need information as to precisely how Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of Seller. Seller will meet any reasonable such request as soon as reasonably possible, and will keep records adequate for that purpose for at least six years after Performance. Without limitation these records must provide full traceability for all goods comprised in, or used in making, any goods which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and performance standards.
- 5.9 Seller will comply with any reasonable requirements Buyer may have as regards packaging and packing of Deliverables including as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Seller will ensure that all packaging, packing, labelling and documentation comply with the specification shown on the Purchase Order and all applicable legislation.
- 6 Delivery and risk**
- 6.1 Deliverables will be delivered to or performed at (as the case may be) the address stated in the Purchase Order on the specified date during usual business hours.
- 6.2 Seller shall use all reasonable endeavours to ensure that Deliverables are delivered or performed in accordance with the timescales detailed on the Purchase Order. A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of Deliverables and must be displayed prominently. Where Deliverables are to be supplied in instalments, the Contract is still to be treated as a single contract.
- 6.3 Buyer may reject any Deliverables which are not fully in accordance with the Contract. Acceptance of deliverables does not occur until Buyer has had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of a latent defect, a reasonable time after the defect becomes apparent.
- 6.4 Seller is liable for conducting applicable packaging recycling, collection and all costs associated unless specifically identified on the Purchase Order.
- 6.5 Without prejudice to Buyer's right to reject under Section 6.3 above, risk of damage to or loss of any goods passes to Buyer on delivery. In the event of rejection of Deliverables, risk shall pass back to Seller upon Buyer giving notice of rejection.
- 6.6 Property and ownership of any goods will pass to Buyer following delivery and acceptance in accordance with Section 6.3 above.
- 6.7 If Buyer provides any articles to Seller (e.g. for modification or copying) such articles will remain Buyer's property at all times. Those articles must be kept confidential and secure and Buyer reserves the right to enter Seller's premises at any time on reasonable notice to ensure Seller and each of its officers, employees, agents and subcontractors are complying with such obligations. While those articles are in Seller's custody Seller must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of Contract. Buyer shall retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which Buyer provides to Seller.

- Seller indemnifies Buyer and each of its officers, employees, agents and subcontractors against any loss and all claims and liabilities incurred by Buyer arising out of or in connection with Seller's breach of this provision including (without limitation) any alleged or actual infringement of any third party's intellectual property rights.
- 6.8 If services are performed on Buyer's premises Seller will ensure best industry standards are adopted for the health and safety both of Seller's personnel and of any other individuals affected by Seller's actions. Buyer may refuse or terminate access to any individual whom Buyer reasonably considers undesirable to have on Buyer's premises. Seller's personnel must while on Buyer's premises comply with Buyer's reasonable and statutory requirements as to security, health and safety routines, times and areas of access, and otherwise. Seller indemnifies Buyer against any damage and injury caused to Buyer's staff and/or property by Seller's officers, employees, agents or subcontractors whilst performing the services on Buyer's premises.
- 6.9 Any equipment provided by Buyer to Seller on a free issue basis will remain Buyer's absolute property throughout and will be at Seller's risk while the equipment is in Seller's possession. Seller shall not part with possession (save to Buyer) unless with Buyer's express prior consent.
- 7 Warranties and liability**
- 7.1 Seller warrants and represents that (i) the quantity, quality, description and specification for the Deliverables will confirm in all material respects with the Purchase Order; (ii) goods will be of the best available design, of best quality material and workmanship, free from fault and defects and in accordance with standards reasonably to be expected of such goods; (iii) Deliverables will comply with all applicable statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; (iv) all claims made by Seller about any Deliverables, and all material information in data provided by Seller is correct and can be relied upon; (v) services will be performed with due skill and care by appropriately qualified and trained personnel in accordance with generally recognised commercial practices and standards; and (vi) neither the sale nor supply of any Deliverable, nor its proper use by Buyer for an intended purpose, will breach any property rights in or about that Deliverable including (without limitation) intellectual property rights of any third party.
- 7.2 All warranties, conditions and other terms implied by statute or common law in Buyer's favour will apply to any Deliverables bought from Seller.
- 7.3 Seller warrants that the Deliverables will be suitable for the intended purposes expressly notified by Buyer, or any purpose which Seller might reasonably anticipate.
- 7.4 Seller will indemnify and keep indemnified Buyer and each of its officers, employees, agents and subcontractors immediately upon Buyer's written demand against any loss, costs, claim, expense or liability (in each case whether direct, indirect or consequential) incurred by Buyer in connection with Seller's performance of its obligations under this Contract.
- 7.5 If Seller fails to comply with any obligation under the Contract Buyer will be entitled at its sole discretion to reject any Deliverable and Seller will not be entitled to receive payment for that Deliverable.
- 7.6 If in the reasonable opinion of Buyer any Deliverable does not comply with the Contract, Buyer may require Seller to repair, replace, or re-perform such Deliverable (as the case may be) within 5 days or Buyer may at its sole discretion reject such Deliverable and demand repayment of any sum already paid by Buyer.
- 7.7 Buyer will not be liable to Seller for any delay or failure to perform any of Buyer's obligations under this Contract if the delay or failure was due to a cause beyond Buyer's reasonable control.
- 7.8 If any goods or rights were bought or obtained by Seller from a third party then any benefits or indemnities that Seller holds from that other party, in respect of those items, will be held on trust for Buyer.
- 7.9 Seller will insure itself and keep insured until the Contract is complete, against all normal insurance risks relevant to

Seller's work for or with Buyer, on terms and for amounts consistent with normal industry standards. Seller will demonstrate to Buyer the terms and currency of any such insurance on request.

7.10 **Buyer's liability in respect of all claims, losses or damages of whatever nature (and in each case whether direct, indirect or consequential), whether arising from tort, breach of contract, indemnity or otherwise under or in connection with the Contract shall not exceed the aggregate of the charges paid by Buyer to Seller in the 12 months preceding the first of any such claims.**

7.11 Nothing in this Contract shall exclude or limit either party's liability for any death or personal injury caused by negligence or for any other liability which cannot be excluded or limited by law.

8 Rights

8.1 In respect of any rights Buyer reasonably requires to use the Deliverables for the intended purpose, Seller shall either (i) transfer, or procure to be transferred to Buyer (with full title guarantee) the ownership of such rights (for Deliverables that are unique to Buyer or where Seller using reasonable endeavours is able to do so), or (ii) otherwise, grant a licence, or procure the grant to the Buyer of a licence, for such rights on an assignable, irrevocable and royalty free basis.

8.2 If Seller carries out any development work at Buyer's request and wholly or primarily at Buyer's expense Buyer will own all intellectual property rights generated by that work, and section 8.3 will apply to those rights.

8.3 Seller will do anything reasonably required by Buyer during or after Performance to perfect any transfer or licence of rights to Buyer under this section or to assist Buyer in registering or authenticating (but not at Seller's cost enforcing or defending) those rights.

9 Termination

9.1 Any commitment of Buyer to receive and pay for Deliverables may be cancelled by Buyer at its sole discretion provided that Buyer shall reimburse Seller for all irrecoverable costs incurred or unavoidably committed by Seller up to the point of cancellation. Buyer will be entitled to the benefit of the part-finished Deliverables in question.

9.2 Buyer may terminate the Contract without any liability to Seller if: (i) Seller materially or persistently breaches its terms and fails to rectify the breach within five working days, or (ii) Seller's business fails.

9.3 Seller's business will be treated for this purpose as having failed if: (i) Seller makes any voluntary arrangement with Seller's creditors; (ii) (being an individual or firm) Seller becomes bankrupt; (iii) (being a company) Seller becomes subject to an administration order or goes into liquidation; (iv) any third party takes possession of, or enforces rights over, any of Seller's property or assets under any form of security; (v) Seller stops or threatens to stop carrying on business; (vi) Seller suffers any process equivalent to any of these, in any jurisdiction; or (vii) Buyer reasonably believes that any of the events mentioned above are about to occur and Buyer notifies Seller accordingly.

9.4 Any right of cancellation or suspension under this section is additional to any rights available to Buyer under the law of any relevant jurisdiction.

10 Enforcement

10.1 Seller will, and will ensure that each of its officers, employees, agents and subcontractors will, keep strictly confidential all information which Seller learns about Buyer or Buyer's customers and use that information only for the performance in good faith of Seller's contractual obligations to Buyer. This restriction will apply until the fifth anniversary of the Contract completion date and does not apply to information which was demonstrably public knowledge at the time of usage by Seller.

10.2 Buyer's relationship is as independent contractor only, not as partner or as principal and agent. The Contract is non-assignable by Seller. Seller may with the prior written consent of Buyer sub-contract or delegate Performance in particular respects but not generally and not as regards Seller's responsibility to Buyer nor Seller's direct contact with Buyer in any respect.

10.3 Seller will procure that none of Seller's employees affiliates and sub-contractors shall behave in a way which had the actions been Seller's would have breached the Contract. No waiver by Buyer of any breach of contract by Seller will be considered as a waiver of any subsequent breach of the same or any other provision, or as a release of the provision which Seller breached. No delay by Buyer in enforcement and no toleration shown by Buyer shall imply any waiver or compromise of its rights.

10.4 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.

10.5 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official post, couriered, faxed on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by e-mail).

10.6 The Contract will be governed by the law of England, and Seller submits to the non-exclusive jurisdiction of the English courts.

10.7 Where the dispute cannot be resolved through first level negotiation after a period of two weeks the dispute may be escalated by the Buyer to the Seller's Senior Management. Failure to resolve the dispute after a further period of two weeks will lead to alternative dispute resolution or binding arbitration.