

**I. GENERAL PROVISION**

1. Legal relations between the Supplier and the Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as „Supplies“) shall be solely governed by these Conditions and the Supplier's written acknowledgment of order (together, the „contract“) to the exclusion of any terms and conditions which the Purchaser purports to apply. The scope of delivery shall be determined by the Supplier's written acknowledgment of order.
2. The Supplier herewith reserves any intellectual property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted Supplies.
3. The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the Purchaser may make one back-up copy of standard software.
4. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.
5. The term „claim for damages“ used in these Conditions also includes claims for indemnification for wasted expenditure.

**II. PRICES, TERMS OF PAYMENT, AND SET-OFF**

1. Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. for travelling and transport as well as allowances.
3. Payments shall be made to the Supplier's paying office free of any deductions or withholdings except as permitted by Condition II.4 below.
4. The Purchaser may set off only those claims which are undisputed or no appealable.
5. If any amount payable by the Purchaser to the Supplier is not paid on the due date for payment, the Purchaser shall in addition pay interest on the overdue amount at the rate (as well before and after judgment) of 5% per annum above Bank of England base rate for the time being in force in respect of the period from the due date for payment to the date of actual payment of the overdue amount.

**III. RETENTION OF TITLE**

1. All goods comprised in the Supplies („Retained Goods“) shall remain the Supplier's property until each and every amount owed to the Supplier by the Purchaser under the contract and under all other contracts between the Supplier and the Purchaser has been paid in full.
2. Until ownership of the Retained Goods has passed to the Purchaser, the Purchaser shall:
  - (a) hold the Retained Goods on a fiduciary basis as the Supplier's bailee;
  - (b) store the Retained Goods (at no cost to the Supplier) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Supplier's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Retained Goods; and
  - (d) maintain the Retained Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks.
3. The Purchaser may resell the Retained Goods before ownership has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Purchaser's business at full market value; and
  - (b) any such sale shall be a sale of the Purchaser's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such a sale.
4. The Purchaser's right to possession of the Retained Goods shall terminate immediately if:
  - (a) the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
  - (b) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the contract or any other contract between the Supplier and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or
  - (c) the Purchaser encumbers or in any way charges any of the Retained Goods.
5. The Supplier shall be entitled to recover payment for the Retained Goods notwithstanding that ownership of any of the Retained Goods has not passed from the Supplier.
6. The Purchaser grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Retained Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
7. Supplier's right to possession has terminated, the Purchaser shall be deemed to have sold all goods of the kind sold by the Supplier to the Purchaser in the order in which they were invoiced to the Purchaser.
8. On termination of the contract, howsoever caused, the Purchaser's (but not the Supplier's) rights contained in this Condition III shall remain in effect.

**IV. TIME FOR SUPPLIES; DELAY**

1. Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, such time shall be extended accordingly. The same shall apply if the Supplier does not receive its own supplies in due time or in due form.
3. If the Supplier is responsible for the delay (hereinafter referred to as „Delay“) and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5% for every completed week of Delay, but in no case more than a total of 5%, of the price of that part of the Supplies which due to the Delay could not be put to the intended use by the Purchaser.
4. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in Condition IV.3 above are excluded in all cases of delayed Supplies, even upon expiry of a time agreed by the Supplier to affect the Supplies. This shall not apply in cases of liability based on fraud or fraudulent misrepresentation, or due to loss of life, bodily injury or damage to health.
5. If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given by the Supplier, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5% of the price of the items of the Supplies. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

**V. PASSING OF RISK**

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - (a) if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the Supplies against the usual risks of transport at the Purchaser's expense;
  - (b) if the Supplies include assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a fault-free trial run.

2. The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

**VI. RECEIVING SUPPLIES**

The Purchaser shall not refuse to receive Supplies due to minor defects.

**VII. DEFECTS AS TO QUALITY**

The Supplier shall be liable for defects as to quality (hereinafter referred to as „Defects“) as follows:

1. Defective parts or defective services shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Any claim for repair or replacement of a Defect must be made within the timescale specified in Condition VII.3 and in any event within 12 months of the supply by the Supplier of the Supplies to which the claim relates.
3. Notifications of Defect by the Purchaser shall be given in written form within 10 days of the Purchaser becoming aware of the Defect.
4. In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred by Condition VII.2 above. If the Purchaser makes any unjustified notification of a Defect, the Purchaser shall reimburse to the Supplier all expenses incurred by the Supplier in connection with such notification and in dealing with any alleged Defect to which it relates.
5. The Supplier shall be given the opportunity to repair or to replace any defective Supplies within a reasonable period of time.
6. If repair or replacement is unsuccessful, the Purchaser shall be entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to Condition VII.9 shall be unaffected.
7. There shall be no claims based on Defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies.
9. The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, restrictions to liberty and/or intentionally or grossly negligent breach of contract on the part of the Supplier. Any other or additional claims of the Purchaser exceeding the claims provided for in this Condition VII, based on a Defect, are excluded.

**VIII. INTELLECTUAL PROPERTY RIGHTS; DEFECTS IN TITLE**

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' intellectual property rights and copyrights (hereinafter referred to as „IPR“) with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Condition VII.2 as follows:
  - (a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this
  - (b) The Supplier's liability to pay damages is governed by Condition X.
  - (c) The above obligations of the Supplier shall apply only if the Purchaser (i) immediately notifies the Supplier of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the Supplier's discretion. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.
3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not reasonably foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
4. In addition, with respect to claims by the Purchaser pursuant to Condition VIII.1(a) above, Conditions VII. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
5. Where other defects in title occur, Condition VII shall apply mutatis mutandis.
6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Condition VIII, based on a defect in title, are excluded.

**IX. IMPOSSIBILITY OF PERFORMANCE; ADAPTATION OF CONTRACT**

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10% of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on fraud, fraudulent misrepresentation, loss of life, bodily injury or damage to health. The Purchaser's right to rescind the contract shall be unaffected.
2. Where unforeseeable events within the meaning of Condition IV.2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

**X. OTHER CLAIMS FOR DAMAGES**

1. The Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
2. The above shall not apply in the case of liability in the case of fraud, fraudulent misrepresentation, loss of life, bodily injury or damage to health, or breach of a condition which goes to the root of the contract. However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by fraud or fraudulent misrepresentation or based on liability for loss of life, bodily injury or damage to health.

**XI. VENUE AND APPLICABLE LAW; THIRD PARTIES**

1. The contract and any claims arising out of or relating to the contract or these Conditions shall be governed by and construed in accordance with English law.
2. The Supplier and the Purchaser submit to the non-exclusive jurisdiction of the English courts in relation to any claims, actions or proceedings arising out of or relating to the contract and/or these Conditions.
3. The Supplier and the Purchaser do not intend that any term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**XII. SEVERABILITY**

The legal invalidity of one or more provisions of the contract and/or these Conditions in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to be obligated to continue the contract.