

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

These Terms and Conditions for the Purchase of Goods and Services ("**Terms**") govern the purchase of goods and/or services by Smith Myers Communications Limited, a company incorporated and registered in England and Wales with company number 02187609, with its registered office at The Omega Centre, Stratton Business Park, Biggleswade, Bedfordshire SG18 8QB ("**SMC**")

1. INTERPRETATION

- 1.1 In these Terms:
 - 1.1.1 "**Contract**" means a contract between SMC and Supplier incorporating these Terms and relating to the sale and purchase of the Goods and/or Services identified in an Order;
 - 1.1.2 "**Customer**" means the person of firm for whom SMC is supplying Goods and/or Services to;
 - 1.1.3 "**Deliverables**" means all documents, products and materials developed by as part of or in relation to the Services in any form or media;
 - 1.1.4 "**Goods**" means the goods to be supplied by Supplier to SMC;
 - 1.1.5 "**Order**" means a written order from SMC to Supplier for the supply of Goods and/or Services setting out the Specification of the relevant Goods, Services and Deliverables;
 - 1.1.6 "**Services**" means the services and Deliverables to be provided by Supplier to SMC;
 - 1.1.7 "**Specification**" means the description or specification for the Goods and/or Services set out in the Order;
 - 1.1.8 "**Supplier**" means the person or firm from whom SMC purchases the Goods and Services.
- 1.2 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by SMC to purchase the Goods and/or Services described in the Order in accordance with these Terms.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - 2.2.1 Supplier issuing written acceptance of the Order; or
 - 2.2.2 any act by Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.
- 2.3 These Terms apply to the Contract to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Supplier shall from the date(s) set in the Order and for the duration of the Contract provide the Goods and/or Services to SMC in accordance with the terms of the Contract.
- 2.5 Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3. SUPPLY OF GOODS

- 3.1 Supplier shall ensure that the Goods:
 - 3.1.1 correspond with their description and any applicable Specification;
 - 3.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by Supplier or made known to Supplier by SMC expressly or by implication, and in this respect SMC relies on Supplier's skill and judgement;
 - 3.1.3 are free from defects in design, material and workmanship and remain so for 12 months after delivery; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
 - 3.1.5 are authentic and comply to a system preventing the introduction of counterfeit goods into the supply chain.
- 3.2 SMC shall have the right to inspect and test the Goods at any time before delivery.
- 3.3 If following such inspection or testing SMC considers that the Goods do not, or are unlikely to, comply with Supplier's undertakings in clause 3.1 above, SMC shall inform Supplier and Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.4 Notwithstanding any such inspection or testing, Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect Supplier's obligations under the Contract, and SMC shall have the right to conduct further inspections and tests after Supplier has carried out its remedial actions.
- 3.5 Any person authorised by the Company, including the Customer or Regulatory Authority, shall not be unreasonably refused permission by the Supplier to enter any works, warehouse or other premises under the Supplier's control for the purpose of surveillance or inspection of any tools or materials procured or used for the manufacture of the goods or process of manufacture on the completed goods themselves before dispatched to the Company or their Customer.
- 3.6 The Supplier shall be aware of their contribution to product safety and the importance of ethical behaviour.

4. DELIVERY OF GOODS

- 4.1 Supplier shall ensure that:
 - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach the delivery location in good condition;
 - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Supplier shall deliver the Goods:
 - 4.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;

- 4.2.2 to SMC's premises at The Omega Centre, Stratton Business Park, Biggleswade, Bedfordshire SG18 8QB, or such other location as is set out in the Order, or as instructed by SMC prior to delivery; and
- 4.2.3 during SMC's normal business hours, or as instructed by SMC.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the delivery location.
- 4.4 Title and risk in the Goods shall pass to SMC on completion of delivery.

5. SUPPLY OF SERVICES

- 5.1 Supplier shall meet any performance dates for the Services specified in the Order or notified to Supplier by SMC.
- 5.2 In providing the Services, Supplier shall:
 - 5.2.1 co-operate with SMC in all matters relating to the Services, and comply with all instructions of SMC;
 - 5.2.2 perform the Services with the best care, skill and diligence in accordance with best practice in Supplier's industry, profession or trade;
 - 5.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Supplier's obligations are fulfilled in accordance with the Contract;
 - 5.2.4 ensure that the Services and Deliverables will conform with all descriptions and Specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to Supplier by SMC;
 - 5.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.2.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to SMC, will be free from defects in workmanship, installation and design;
 - 5.2.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - 5.2.8 observe all health and safety rules and regulations and any other security requirements that apply at any of SMC's premises;
 - 5.2.9 hold all materials, equipment and tools, drawings, specifications and data supplied by SMC to Supplier ("**SMC Materials**") in safe custody at its own risk, maintain SMC Materials in good condition until returned to SMC, and not dispose or use SMC Materials other than in accordance with SMC's written instructions or authorisation; and
 - 5.2.10 not do or omit to do anything which may cause SMC to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and Supplier acknowledges that SMC may rely or act on the Services.

6. CUSTOMER REMEDIES

- 6.1 If Supplier fails to deliver the Goods and/or perform the Services by the applicable dates, SMC shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 6.1.1 to terminate the Contract with immediate effect by giving written notice to Supplier;
 - 6.1.2 to reject the Goods (in whole or in part) and return them to Supplier at Supplier's own risk and expense;
 - 6.1.3 to refuse to accept any subsequent delivery of the Goods or performance of the Services which Supplier attempts to make;
 - 6.1.4 to recover from Supplier any costs incurred by SMC in obtaining substitute goods or services from a third party;
 - 6.1.5 where SMC has paid in advance for Services that have not been provided by Supplier, to have such sums refunded by Supplier; or
 - 6.1.6 to claim damages for any additional costs, loss or expenses incurred by SMC which are in any way attributable to Supplier's failure to meet such dates.
- 6.2 These Terms shall extend to any repaired or replacement Goods supplied by Supplier and to any substituted or remedial services provided by Supplier.
- 6.3 SMC's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. CHARGES AND PAYMENT

- 7.1 The charges for the Goods and Services shall be set out in the Order or, if no price is quoted, the price set out in Supplier's published price list in force as at the date the Contract came into existence. The charges shall be the full and exclusive remuneration of Supplier in respect of the Goods and Services. Unless otherwise agreed in writing by SMC, the charges shall include every cost and expense of Supplier directly or indirectly incurred in connection with the delivery of the Goods and the performance of the Services.
- 7.2 Supplier shall invoice SMC in accordance with the agreed invoicing and payment schedule set out in the Order. Each invoice shall include such supporting information required by SMC to verify the accuracy of the invoice, including but not limited to the relevant purchase order number and SMC shall pay the invoiced amounts in accordance with the agreed invoicing and payment schedule set out in the Order to a bank account nominated in writing by Supplier.
- 7.3 All amounts payable by SMC under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by Supplier to SMC, SMC shall, on receipt of a valid VAT invoice from Supplier, pay to Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Goods and Services.
- 7.4 If SMC fails to pay any amount properly due and payable by it under the Contract, Supplier shall have the right to charge interest on the overdue amount at the rate of two per cent per annum above the base rate for the time being of Barclays Bank plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause 7.5 shall not apply to charges that SMC disputes in good faith.
- 7.5 Supplier shall maintain complete and accurate records of the time spent and materials used by Supplier in providing the Services, and shall allow SMC to inspect such records at all reasonable times on request.
- 7.6 SMC may, without limiting its other rights or remedies, set off any amount owed to it by Supplier under the Contract against any amount payable by SMC to Supplier under the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Supplier acknowledges that all SMC Materials and all proprietary rights in SMC material are and shall remain the exclusive property of SMC or its licensors. Supplier shall keep SMC Materials in safe custody at its own risk, maintain them in good condition until returned to SMC, and not dispose or use the same other than in accordance with SMC's written instructions or authorisation.
- 8.2 In respect of any Goods that are transferred to SMC under the Contract, including without limitation the Deliverables or any part of them, Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to SMC, it will have full and unrestricted rights to transfer all such items to SMC.
- 8.3 Supplier assigns to SMC, with full title guarantee and free from all third party rights, all intellectual property rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.4 Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.5 Supplier shall, promptly at SMC's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as SMC may from time to time require for the purpose of securing for SMC the full benefit of the Contract, including all right, title and interest in and to the intellectual property rights assigned to SMC in accordance with clause 8.3.

9. INDEMNITY

- 9.1 Supplier shall keep SMC indemnified in full against all costs, expenses, damages and losses, including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by SMC as a result of or in connection with:
 - 9.1.1 any claim made against SMC for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods or Services, to the extent that the claim is attributable to the acts or omissions of Supplier, its employees, agents or subcontractors;
 - 9.1.2 any claim made against SMC by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Supplier, its employees, agents or subcontractors; and
 - 9.1.3 any claim made against SMC by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of Supplier, its employees, agents or subcontractors.
- 9.2 SMC's rights and remedies under these Terms are in addition to its rights and remedies implied by statute and common law.
- 9.3 This clause 9 shall survive expiry or termination of the Contract.

10. TERMINATION

- 10.1 SMC may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving Supplier written notice, whereupon Supplier shall discontinue all work on the Contract. SMC shall pay Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of profits or any consequential loss.
- 10.2 The Contract may be terminated in the following circumstances:
 - 10.2.1 by either party immediately upon notice in writing to the other in the event that the other party is in breach of its obligations under the Contract and, in the case of a breach which can be remedied, that party has not remedied such breach within 30 days of receipt of a written notice specifying the breach and requiring its remedy; or
 - 10.2.2 by either party immediately upon notice in writing in the event that the other party goes into compulsory or voluntary liquidation (except for the purposes of solvent reconstruction or amalgamation) or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of its assets or in the event that it makes an assignment for the benefit of or composition with its creditors generally or engages in or suffers any similar procedure in any jurisdiction.
- 10.3 On termination of the Contract for any reason:
 - 10.3.1 Supplier shall immediately deliver to SMC all Deliverables whether or not then complete, and return all SMC Materials. If Supplier fails to do so, then SMC may enter Supplier's premises and take possession of them. Until they have been returned or delivered, Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
 - 10.3.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
 - 10.3.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. CONFIDENTIALITY

- 11.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. GENERAL

- 12.1 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

- 12.2 Neither party shall have any liability to the other party under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by the acts or omissions of the other party or any acts, events, omissions or accidents beyond the affected party's reasonable control.
- 12.3 A person who is not a party to the Contract shall not have any rights under or in connection with it, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise. Notwithstanding that any term of the Contract may be or become enforceable by a person who is not a party to it, the terms of the Contract or any of them may be varied, amended or modified or the Contract may be suspended, cancelled or terminated by agreement in writing between the parties or the Contract may be rescinded (in each case), without the consent of any such third party.
- 12.4 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.5 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 12.6 Supplier shall not, without the prior written consent of SMC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. SMC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.7 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 12.8 The Contract constitutes the entire and only agreement between the parties in relation to its subject matter and replaces and extinguishes all prior or simultaneous agreements, undertakings, arrangements, understandings or statements of any nature made by the parties or any of them whether oral or written (and, if written, whether or not in draft form) with respect to such subject matter. Each of the parties acknowledges that they are not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter of the Contract, save those expressly set out in the Contract, and that they shall have no rights or remedies with respect to such subject matter otherwise than under the Contract save to the extent that they arise out of the fraud or fraudulent misrepresentation of another party.
- 12.9 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.