

ALIAxis UK TERMS AND CONDITIONS FOR PURCHASING GOODS AND/OR SERVICES**1. DEFINITIONS**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Company: means the company stated on the Purchase Order.

Contract: the Purchase Order and the Seller's acceptance of the Purchase Order.

Goods: any Goods agreed in the Contract to be bought by the Company from the Seller (including any part or parts of them).

Letter of Acceptance: a letter of acceptance from the Company in respect of the Goods and/or Services.

Purchase Order: the Company's written instruction to buy the Goods and/or Services, incorporating these conditions and where applicable the Specification.

Seller: the person, firm or company who accepts the Company's Purchase Order.

Seller's Quotation: a quotation by the Seller in respect of the Goods and/or Services.

Services: any services agreed in the Contract to be bought by the Company from the Seller.

Specification: the Company's written requirements in respect of the Goods and/or Services.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions. The Contract shall, unless otherwise agreed in writing by the parties, comprise the entire agreement and shall supersede all previous arrangements, discussions or agreements between the parties, but for the avoidance of doubt, any representations made by the Seller to the Company regarding the quality or specification of the Goods or Services shall be deemed to form part of the Contract.

2.2 Each Purchase Order for Goods and/or Services by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods and/or Services subject to these conditions and no Purchase Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, in whole or in part accepts the offer.

2.3 No standard terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such standard terms and conditions. In the event of any dispute or conflicting terms the order of priority shall be the Letter of Acceptance, Purchase Order, Specification and the Seller's Quotation.

- 2.4 These conditions apply to all the Company's purchases and any variation to these conditions or to the Specification shall have no effect unless expressly agreed in writing and signed by a director or an authorised signatory of the Company.

3. QUALITY AND DEFECTS

- 3.1 The Goods shall be new and unused, of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and Specification and/or patterns supplied or advised by the Company to the Seller.
- 3.2 The Seller shall be deemed to have knowledge of the purpose for which the Goods and/or Services are required and the Goods shall be fit for purpose and of merchantable quality, properly packed and secured. The Goods shall be equal in all respects to any samples, patterns, demonstration or specification provided or given by either party and shall be capable of any standard of performance specified in the Purchase Order. The Services to be supplied shall be of a standard acceptable to the Company.
- 3.3 The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 and Supply of Goods and Services Act 1982. The Seller shall comply with all legislation applicable to the provision of the Goods and/or Services including compliance with any health and safety requirements in respect of the Goods and/or Services or policies or procedures operated by the Company or its customers at any of their sites.
- 3.4 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times. Such inspection/testing does not imply acceptance of the Goods.
- 3.5 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.6 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.7 Where the Seller is providing Services, such Services must be supplied using all the reasonable care, skill and diligence expected of properly qualified and experienced persons and in accordance with any requirements or specifications set out in the Purchase Order.
- 3.8 Where a Purchase Order includes manufacture to the Company's design(s) the Seller shall inform the Company as soon as possible of any invention or improvement in design or method of manufacture arising out of the performance of the Purchase Order and any intellectual property rights in respect of the same shall belong solely to the Company. The Seller will give the Company, at the Company's expense, all necessary assistance to enable the Company to obtain the benefit of all and any such rights whether registrable or not in any part of the world.
- 3.9 If any of the Goods and/or Services fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12.

4. INDEMNITY

The Seller shall keep the Company indemnified in full against all direct and indirect liabilities (all of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other

professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- (a) defective workmanship, quality or materials;
- (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or Services; and
- (c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

5. DELIVERY

- 5.1 The Goods shall be adequately protected against damage and deterioration in transit and delivered, carriage paid, and where applicable the Services provided to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods and/or provision of the Services. The Seller shall off-load the Goods at its own risk as directed by the Company.
- 5.2 The time and date for delivery shall be specified in the Purchase Order, or in a programme agreed by the Company.
- 5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods and/or provision of the Services to the Company. The invoice must show the relevant Purchase Order number.
- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. If the Company requires it, information relating to the Goods and/or Services must be supplied free of charge on delivery including, without limitation, a certificate of conformity.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Company in the Purchase Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.7 If the Goods and/or Services are not delivered or provided on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
 - (a) cancel the Contract in whole or in part and reject the Goods and/or Services;
 - (b) refuse to accept any subsequent delivery or provision of the Goods and/or Services which the Seller attempts to make;
 - (c) recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another supplier; and
 - (d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods or provide the Services on the due date.
- 5.8 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller

to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.

- 5.9 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense. If the Goods are delivered in advance of the due date the Company may reject the Goods at the Seller's expense or accept them, but will not be bound to pay for the same until the month following the month in which delivery should have taken place.
- 5.10 The Company shall have the right to postpone or cancel any Purchase Order at anytime. In relation to cancelled Purchase Orders the Company's only liability to the Seller shall be for Goods and/or Services delivered prior to such cancellation.

6. RISK/PROPERTY

The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking and signature by the Company of a delivery note where the Seller delivers the Goods or loading being complete in the event of collection) when ownership of the Goods shall pass to the Company. Where Goods are rejected by the Company risk shall pass to the Seller upon such rejection. The Seller shall maintain adequate insurance in respect of the provision of the Goods and/or Services and shall provide a copy of its insurance policy and premium receipt upon request by the Company.

7. PRICE

- 7.1 The price of the Goods and/or Services shall be stated in the Purchase Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 7.2 No variation in the price nor extra charges shall be accepted by the Company. No payment will be made for crates or packing material unless agreed on the Purchase Order.

8. PAYMENT

- 8.1 Subject to the Seller's compliance with these conditions, the Company shall pay the price of the Goods and/or Services within 60 days of the end of the month when delivery of the Goods and/or Services to the Company has been made, but time for payment shall not be of the essence of the Contract.
- 8.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

9. CONFIDENTIALITY

The Seller 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 Seller by the Company or its agents and any other confidential information concerning the Company's business or its products including a Purchase Order and its subject matter which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller. The Seller shall not publicise the fact it is supplying Goods and/or Services to the Company without the Company's prior written consent.

10. THE COMPANY'S PROPERTY/TOOLING

Materials, equipment, tools, dies, jigs, patterns, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods and/or Services shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing. Such items shall where possible be marked the property of the Company and shall not be used by the Seller for any purpose other than supplying the Goods and/or Services pursuant to the Purchase Order.

11. TERMINATION

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract immediately if:

- (a) the Seller commits a material breach of any of the terms and conditions of the Contract; or
- (b) any distress, execution or other process is levied upon any of the assets of the Seller; or
- (c) the Seller 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 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 Seller or notice of intention to appoint an administrator is given by the Seller 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or
- (d) the Seller ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. REMEDIES

Without prejudice to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Company:

- (a) to rescind the Purchase Order;
- (b) to reject the Goods and/or Services (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Seller;
- (c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries/provision of the Goods and/or Services but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. ASSIGNMENT

13.1 The Seller shall not be entitled to sub-contract its rights or obligations or assign the Contract or any part of it without the prior written consent of the Company.

13.2 The Company may assign the Contract or any part of it to any person, firm or company.

14. FORCE MAJEURE

14.1 Neither party shall be liable for failure to perform its obligations under this Contract if such failure results from circumstances beyond the party's reasonable control (excluding for the avoidance of doubt a labour strike/dispute or lockout in respect of a party) (a "*Force Majeure Event*").

14.2 If either party is affected by a Force Majeure Event, it will use all reasonable endeavours to avoid or cure the Force Majeure Event and will promptly notify the other party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.

14.3 If either party is prevented by Force Majeure Event from performance of its obligations for a continuous period in excess of one month the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 Any notice to be served under these conditions must be in writing and may be delivered by prepaid first class post or by fax. Delivery shall be deemed to have taken place immediately in the case of fax transmission or 48 hours after posting.
- 15.6 The parties to the Contract 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.
- 15.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.