

## **Terms and Conditions of Purchase**

### **1. Interpretation**

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

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
"Contract"	the Purchase Order and the Supplier's acceptance of it in accordance with condition 3.3;
"Customer"	the party ordering Goods and/or Services from the Supplier, as set out in the Purchase Order;
"Deliverables"	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
"Equipment"	the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it);
"Goods"	the goods agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it);
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Purchase Order"	the Customer's written instruction to supply the Equipment, Goods and/or Services, in each case incorporating these conditions;
"Services"	the services agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it);

"Software"	any and all computer programs and computer software (of whatever type and in whatever form or media) installed on or supplied with the Equipment or the Goods at the time of its delivery and either necessary for its operation in the manner contemplated by the Customer or otherwise referred to in the Purchase Order;
"Specification"	means the description or specification for the Equipment, Goods and or Services agreed in writing by the Customer and the Supplier, or provided by the Supplier to the Customer;
"Supplier"	the person, firm or company who accepts the Purchase Order in accordance with condition 3.3;
"Use"	in relation to Software, includes the right to use the Software on the Equipment or Goods and any back-up or standby equipment, to make such copies as are necessary to use the Software on each part of the Equipment and Goods and to make copies for back-up purposes as well as all other ancillary rights implied by law.

- 1.2. Headings do not affect the interpretation of these conditions.
- 1.3. A reference to a 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.
- 1.4. Words in the singular include the plural and in the plural include the singular.
- 1.5. A reference to "writing" or "written" excludes fax but includes email.

## 2. **Application of conditions**

- 2.1. These conditions shall:
  - 2.1.1. apply to and be incorporated in the Contract;
  - 2.1.2. be in substitution for any oral or other arrangements made between the Customer and the Supplier; and
  - 2.1.3. prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.

2.2. No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these conditions or any of them shall be binding on the Customer unless in writing and signed by a duly authorised representative of the Customer.

2.3. Where the Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Equipment, Goods and/or Services supplied pursuant to that Purchase Order.

### 3. **Effect of Purchase Order**

3.1. The Customer shall only be bound by an order if it is issued on the Customer's standard Purchase Order form.

3.2. The Purchase Order constitutes an offer by the Customer to purchase the Equipment, Goods and/or Services subject to these conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract on these conditions. Any counter-offer made by the Supplier to supply the Equipment, Goods and/or Services on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Customer.

3.3. The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier.

### 4. **Supplier's warranty**

4.1. The Supplier warrants and represents to the Customer that:

4.1.1. the Equipment, Goods and Services will conform with the quality, description and other particulars stated in the Specification and the Purchase Order;

4.1.2. the Equipment, Goods and Services will conform to all samples, drawings, descriptions and specifications provided to the Customer by the Supplier;

4.1.3. the Equipment and Goods will conform with all standards referred to on any part of the Equipment and Goods and in any product packaging and/or documentation in, with or in relation to which the Equipment and Goods are supplied;

4.1.4. the Equipment and Goods will be of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Supplier, and will be free from all defects in materials, workmanship and installation for a period of 12 months from the later of their date of delivery or the date of first use by the Customer;

4.1.5. the Equipment, Goods and Services will comply with all performance and other specifications stated in the Specification and Purchase Order, and all applicable legislation for the time being in force;

- 4.1.6. unless the Customer and the Supplier have agreed, in writing (signed on behalf of the Customer) additional conditions for any software before or at the same time as this Purchase Order, the Supplier has and will continue to have the full right and title to license the Customer and hereby grants to the Customer without further charge the irrevocable right and licence to Use the Software;
  - 4.1.7. where the Software is licensed directly to the Customer by the Supplier's licensor, the Supplier will procure for the Customer rights in all respects no less favourable than those it would have granted had it granted the rights directly under the express licence at condition 4.1.6;
  - 4.1.8. at the time of installation the Software will be free from viruses, worms, time locks or anything else that would impair performance of the Software;
  - 4.1.9. the Supplier will allow the Customer, at any time within 12 months from the date of delivery of the Equipment, to enter with the Supplier into a maintenance agreement for the Equipment (together with any relevant Software) in all respects on the Supplier's standard conditions (including without limitation as to price and duration);
  - 4.1.10. where, at any time, the Customer has not entered into a maintenance agreement of the kind referred to at condition 4.1.9, it will be entitled to maintain the Equipment and any Software itself, or by or through any third party, and in that case the definition of Use will extend to permitting such maintenance of the Software; and
  - 4.1.11. the Supplier will provide the Customer with high quality user manuals and training and other documentation for the Equipment and the Software without further charge in such form and quantities as the Customer may reasonably stipulate at any time.
- 4.2. The Customer's rights under the Contract are in addition to the statutory terms implied in favour of the Customer by the Sale of Goods Act 1979 and any other statute.
- 4.3. The provisions in this condition 4 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial equipment provided by the Supplier.

## 5. **Quantities**

Unless the Customer has agreed otherwise in writing, the Supplier shall deliver the exact specified quantities of items comprised in accordance with the Purchase Order. Without affecting its other rights and remedies, the Customer reserves the right to reject incomplete deliveries and to return excess quantities at the Supplier's risk and expense.

## 6. **Inspection and testing of Equipment**

- 6.1. The Supplier shall:

- 6.1.1. carefully test and inspect the Equipment and Goods before delivery to ensure that it complies with the requirements of the Purchase Order; and
  - 6.1.2. if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).
- 6.2. The Customer reserves the right to call for certificates or test certificates for the Equipment and Goods at any stage of manufacture or assembly. Such certificates shall clearly state the Customer's order numbers and any item or equipment numbers. If, as a result of any inspection or test, the Customer finds that the Equipment or Goods or any items comprised within it do not comply with the Purchase Order, or are unlikely to comply with it on completion of manufacture, processing or performance, the Customer may inform the Supplier, and the Supplier shall take such steps as are necessary to ensure compliance.

## **7. Delivery, installation and acceptance**

- 7.1. The Supplier shall deliver the Equipment and Goods on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Equipment and Goods under the Contract. If any delivery specified in the Purchase Order cannot be met, the Customer may:
- 7.1.1. cancel the Contract in whole or in part without incurring any liability to the Supplier;
  - 7.1.2. refuse to accept any subsequent delivery of items comprised in the Equipment and Goods which the Supplier attempts to make;
  - 7.1.3. purchase substitute items elsewhere; and
  - 7.1.4. hold the Supplier accountable for any loss and additional costs incurred.
- 7.2. The Equipment and Goods shall be properly packed and secured in such manner as to enable it to reach its destination in good condition. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.
- 7.3. The Equipment and Goods shall be delivered by the Supplier carriage free to the place of delivery specified in the Purchase Order, or where no place of delivery is specified therein, the Supplier will follow the Customer's written and oral instructions regarding delivery as updated from time to time by the Customer, and acknowledges the importance of following such instructions so as to ensure that the Customer's business and the operation of the airport is not disrupted by deliveries. The Equipment and Goods shall be received at the place of delivery, subject to the Customer's inspection and approval. Any Equipment and Goods which the Customer rejects as not conforming with the Purchase Order shall be returned at the Supplier's risk and expense.

- 7.4. Unless the Customer and the Supplier have, before or at the same time as the Purchase Order, agreed in writing, additional conditions regarding preparation of or environmental requirements at the site at which the Equipment is to be installed, the Supplier acknowledges and agrees that the Equipment is suitable to be installed and used at the premises at which the Customer intends to use it and that there are no additional conditions regarding site preparation or environmental requirements.
- 7.5. In relation to installation and acceptance tests:
- 7.5.1. except where condition 7.5.5 applies, the Supplier shall, without further charge to the Customer, install the Equipment at the premises at which the Customer intends to use it and subject the Equipment to its standard installation and acceptance tests;
- 7.5.2. if the Equipment passes those tests, the supplier will issue an acceptance certificate to that effect to the Customer, but receipt by the Customer of such an acceptance certificate will not constitute legal acceptance by the Customer;
- 7.5.3. if the Equipment does not (on any attempt) pass those tests, the Supplier will (without affecting the Customer's other rights and remedies) promptly and at its expense carry out all necessary remedial work and re-submit the Equipment to the tests as set out in condition 7.5.1 and condition 7.5.2;
- 7.5.4. If all the tests have not been successfully completed within 15 days after delivery, the Customer shall have the same rights as it would have had if the Supplier had not performed its obligations under condition 7.1;
- 7.5.5. if the Customer and the Supplier have, before or at the same time as the Purchase Order, agreed otherwise in writing (signed on behalf of the Customer), then the Customer (itself or through a third party) will be responsible for installing the Equipment and condition 7.5.1 to condition 7.5.4 shall not apply.
- 7.6. Notwithstanding condition 7.5, the Customer shall not be deemed to have accepted the Equipment or Goods until it has had 10 days to inspect the same after delivery. The Customer may also reject the Equipment or Goods as though it had not been accepted after delivery in the event that any latent defect in the Equipment or Goods has become apparent.

## 8. **Risk and property**

- 8.1. The Equipment and Goods shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Purchase Order, or as otherwise specified by the Customer in accordance with condition 7.3. The Supplier shall off-load the Equipment and Goods at its own risk as directed by the Customer.
- 8.2. Ownership of the Equipment and Goods shall pass to the Customer on completion of delivery (including off-loading) in accordance with the Purchase Order, except that if the Equipment or Goods is paid for before delivery ownership shall pass to

the Customer once payment has been made. The passing of ownership in the Equipment and Goods is without prejudice to any right of rejection to which the Customer may be entitled under the Contract or otherwise.

9. **Supply of Services**

9.1. The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

9.2. The Supplier shall meet any performance dates for the Services that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

9.3. In providing the Services, the Supplier shall:

9.3.1. co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

9.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

9.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

9.3.4. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;

9.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;

9.3.6. 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 the Customer, will be free from defects in workmanship, installation and design;

9.3.7. obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

9.3.8. comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;

9.3.9. observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;

9.3.10. hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier ("**Customer Materials**") in safe custody at its own risk, maintain the Customer Materials in good



condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;

- 9.3.11. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

## 10. **Prices**

All prices shall be as stated in the Purchase Order, except that if the Supplier quotes or offers to a third party lower prices or better terms for equipment, goods or services of similar quality, quantity or description to the Goods, Services or Equipment (or the items comprised in any of them), the Customer shall be entitled to purchase the relevant Goods, Services or Equipment (or the relevant items comprised in it) on the same terms and shall be entitled to a refund of the amount of the difference in respect of all such Equipment supplied after whichever is the earlier of the first quotation or the first supply at the lower price. All prices are fixed and inclusive of expenses, delivery, packaging, packing, shipping, carriage, insurance and other charges and dues, and are not subject to adjustment save as specifically provided in these conditions or the Purchase Order.

## 11. **Payment**

- 11.1. Unless otherwise stated in the Purchase Order, the Supplier shall be entitled to invoice the Customer in respect of the relevant Goods, Services or Equipment from the date on which it delivers the same to the Customer. Payment of invoices shall be made within 45 days of receipt of a valid invoice.
- 11.2. Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Contract.
- 11.3. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 11.4. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

## 12. **Insurance and Indemnity**

- 12.1. During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving



details of cover and the receipt for the current year's premium in respect of each insurance.

12.2. The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result or in connection with:

12.2.1. any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use, manufacture or supply of the Equipment, Goods and Services; or

12.2.2. defective workmanship, quality or materials in or in relation to the Equipment and Goods; or

12.2.3. any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer'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 Equipment, Goods or provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

### 13. **Confidentiality and the Customer's property**

13.1. The Supplier 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 Supplier by the Customer or its agents, and any other confidential information concerning the Customer's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Customer.

13.2. All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Customer to the Supplier shall at all times be and remain the exclusive property of the Customer, and shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer, and shall not be disposed or used other than in accordance with the Customer's written instructions or authorisation. The Supplier shall return all copies of any such material to the Customer immediately on the Customer's first written request.

13.3. This condition 13 shall survive the termination of the Contract, however arising.

### 14. **Termination**

14.1. The Customer may cancel the Contract (or all or part only of the Contract) by giving written notice to the Supplier at any time before delivery or performance, in which case the Customer shall pay the Supplier the price for the cancelled

Equipment, Goods or Services less any cost savings accruing to the Supplier by reason of the cancellation.

14.2. Without prejudice to any other rights or remedies to which the Customer may be entitled, the Customer may terminate the Contract without liability to the Supplier if:

14.2.1. the ability of the Customer to accept delivery of the Equipment, Goods or Services is delayed, hindered or prevented by circumstances beyond its reasonable control; or

14.2.2. the Supplier commits any breach of its obligations under the Contract and fails to remedy that breach within 14 days of receiving written notice from the Customer requiring its remedy; or

14.2.3. an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Supplier; or

14.2.4. an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.5. a receiver is appointed of any of the Supplier's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession of or sells the Supplier's assets; or

14.2.6. the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

14.2.7. the Supplier ceases, or threatens to cease, to trade; or

14.2.8. there is a change of control of the Supplier within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or

14.2.9. the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly or implicitly stated to survive termination.

## 15. **Remedies**

If any Equipment, Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, the Customer may (without prejudice to any other right or remedy) exercise any one or more of the following rights or remedies:

- 15.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 15.1.2. reject the Equipment, Goods or Services (in whole or in part) and in respect of Goods and Equipment, return the same to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Equipment and Goods so returned shall be paid immediately by the Supplier; or
- 15.1.3. require the Supplier, at the Supplier's expense, either (at the Customer's option) to remedy any defect in the Equipment or Goods and carry out such other work as is necessary to ensure that the Equipment or Goods are in all respects in accordance with the Purchase Order or to supply replacement equipment or goods;
- 15.1.4. to purchase replacement goods, services or equipment from another source and the Supplier shall reimburse the Customer for all costs and expenses reasonably incurred in doing so, including but not limited to the costs of obtaining the substitutes from that third party;
- 15.1.5. refuse to accept any further deliveries of the Equipment or Goods, or any subsequent performance of the Services, without liability to the Supplier;
- 15.1.6. to require a refund from the Supplier of any sums paid in advance for Equipment, Goods or Services that the Supplier has not delivered or performed; and
- 15.1.7. in any case, to claim such damages as it may have sustained in connection with the Supplier's breach of the Contract not otherwise covered by this condition 15.

## 16. **General**

- 16.1. **Force Majeure.** The Customer may defer the date of delivery or payment, or cancel the Contract or reduce the amount of Equipment, Goods or Services ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Customer or any other party, including but not limited to those of airlines and service providers), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, or extreme adverse weather conditions, or default of suppliers or sub-contractors.
- 16.2. **Waiver.** 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.

- 16.3. **Variation.** No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 16.4. **Assignment.** The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.5. **Third party rights.** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 16.6. **Notices.** Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract (or such other address as may have been notified by that party for such purposes), or sent by email to the other party's email address as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.
- 16.7. **Governing law and jurisdiction.** 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 law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contractor its subject matter or formation (including non-contractual disputes or claims).