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# Supply Of Goods Terms

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## SUPPLY OF GOODS TERMS (LINKED TO MASTER SERVICES AGREEMENT)

### 1. Interpretation

- 1.1 Except as defined in these Supply of Goods Terms, capitalised terms shall have the meanings given to them in the Master Services Agreement found [here](#) (“Agreement”).
- 1.2 To the extent applicable to the supply of Goods, in the event of conflict with the terms of these Supply of Goods Terms and the Agreement, the provisions in these Supply of Goods Terms shall take precedence and in the event of a conflict with the terms of these Supply of Goods Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these Supply of Goods Terms.

### 2. The Goods

- 2.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 2.2 To the extent that the Goods are to be manufactured in accordance with the Client's specification, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Statement of Work. This paragraph 2.2 shall survive termination of the Agreement.
- 2.3 The Supplier reserves the right to amend the Statement of Work if required by any applicable statutory or regulatory requirements.
- 2.4 Where the Goods are being supplied by a Third Party supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Third Party supplier.

### 3. Prices

- 3.1 Prices for Goods in the Supplier's stock ready to be shipped will be established at the time the order is accepted by the Supplier. If the Client places an order for Goods not in stock at the time of order (a “Backorder”) or the Client places an order for scheduled delivery, such orders shall be irrevocable and the price for such Goods shall be the price established at the time the Backorder or scheduled delivery is accepted by the Supplier.
- 3.2 Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after acceptance of a Backorder or scheduled delivery due to an increase in its Third Party supplier's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but the Supplier shall only increase its price by such level as is necessary to reflect such increases.
- 3.3 Unless otherwise stated, prices exclude any copyright levies, waste and environmental fees, and similar charges that by law or statute may or shall charge or collect upon resale.

### 4. Delivery

- 4.1 The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date.
- 4.2 If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:

- (a) a delay from the manufacturer, third party supplier or other third party;
  - (b) an event of Force Majeure; or
  - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3 If ten (10) Business Days after the day on which the Supplier attempted to make delivery of Goods the Client has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods, or charge the Client for any shortfall below the price of the Goods.
- 4.4 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Client may not cancel an instalment because of any delay in delivery or defect in another instalment.

## 5. Warranties

- 5.1 Subject to paragraph 5.4 of these Supply of Goods Terms, the Supplier warrants that, for such period as is offered by the manufacturer (if any) ("**Warranty Period**"), the Goods shall:
- (a) conform in all material respects with the relevant section of the Statement of Work;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to paragraph 5.3 of these Supply of Goods Terms, if:
- (a) the Client gives notice in writing to the Supplier during the Warranty Period, within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranties set out in paragraph 5.1 of these Supply of Goods Terms;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Client (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in paragraph 5.1 of these Supply of Goods Terms if:
- (a) the Client makes any further use of such Goods after giving notice of defects in accordance with paragraph 5.2 of these Supply of Goods Terms;
  - (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Statement of Work supplied by the Client;
  - (d) the Client alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from the Statement of Work as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Insofar as the Goods comprise or contain goods or components which were not manufactured or produced by the Supplier, the Client shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass onto the Client.
- 5.5 The Supplier's only liability to the Client if the Goods fail to comply with the warranties set out in paragraph 5.1 of these Supply of Goods Terms is as set out in this paragraph 5 of these Supply of Goods Terms.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.

5.7 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 Risk in Goods shall pass to the Client on completion of unloading the Goods at the agreed delivery location.

6.2 Title to Goods shall only pass to the Client once the Supplier receives payment in full (in cash or cleared funds) for them.

6.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 16.2(d) of the Agreement; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 The Supplier may recover Goods in which title has not passed to the Client. The Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles), in order to satisfy itself that the Client is complying with the obligations in paragraph 6.3 of these Supply of Goods Terms, and to recover any Goods in which property has not passed to the Client.

## **7. Cancellation**

Notwithstanding paragraph 2.4 of these Supply of Goods Terms, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Client except with the agreement in writing of the Supplier and on terms that the Client shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.