

TERMS AND CONDITIONS OF PURCHASE**Terms & Conditions of Purchase****1.0 Definitions**

1.1 In these Conditions:

"BUYER" means **TDI Innovations Limited** whose registered office is 25 Meer Street, Stratford Upon Avon CV37 6QB (registered in England under number 06480668)

"CONDITIONS" means the standard terms and conditions of purchase set out in this document and includes any special terms and conditions agreed in Writing between the Buyer and the Seller

"CONTRACT" means the contract for the sale and purchase of the Goods and the supply and acquisition of the services

"DELIVERY ADDRESS" means the address stated on the Order

"GOODS" means the goods (including any instalment of the goods or any part of them) described in the Order

"ORDER" means the Buyer's purchase order to which these Conditions are annexed

"PRICE" means the price of the Goods and/or the charge for the Services

"SELLER" means the person so described in the Order

"SERVICES" means the services (if any) described in the Order

"SPECIFICATION" includes any plans, drawings, data or other information relating to the Goods or Services

"WRITING" includes e-mail, post, facsimile transmission and comparable means of communication.

"INTELLECTUAL PROPERTY" means any patent, Ip materials, registered design[s], unregistered design[s] right, trademark, service mark, copyright [including copyright in software, design right, utility model or other industrial or intellectual property anywhere in the world together with any current applications for any registered items of the forgoing

"IP MATERIALS" means any documents, records, tapes, discs, flash storage, and any other materials containing copyright works, know-how or software.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2.0 Basis of Purchase

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

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3.0 Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. No inspection or test carried out by the Buyer shall relieve the Seller of its responsibilities under or in relation to the Contract.
- 3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4.0 Price of the Goods and Services

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts, levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increase material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

5.0 Terms of Payment

- 5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 60 days from the date of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3 Any and all invoices issued must be issued stating the correct and proper purchase order relevant to the invoice. Any invoice[s] received without the correct issued purchase order will not be processed or paid in any way.
- 5.4 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.
- 5.5 The price for any goods and services stated on any invoice relating to the applicable order shall be:
- 5.5.1 Exclusive of any applicable value added tax (which shall be payable by the buyer on receipt

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6.0 Delivery

- 6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- 6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

7.0 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8.0 Warranties and Liability

- 8.1 The Seller warrants and represents to the Buyer that the Goods:
 - 8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for purpose;
 - 8.1.2 will be free from defects in design, material and workmanship;
 - 8.1.3 will correspond with any relevant Specification or sample; and
 - 8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
 - 8.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
 - 8.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as

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discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

8.4 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 8.4.1 breach of any warranty given by the Seller in relation to the Goods or Services;
- 8.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 8.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 8.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

8.5 The Seller agrees and undertakes to the Buyer that it shall immediately on demand enter into the standard form of collateral warranty from time to time of the Seller in favour of any customer or any other third party to whom the Buyer supplies any Goods or who will ultimately be an end user of the Goods. If the Seller fails to enter into such warranty, then the Buyer is hereby irrevocably authorised to sign such warranty for and on behalf of the Seller.

9.0 Termination

9.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

9.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:-

- 9.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 9.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- 9.2.3 the Seller ceases, or threatens to cease, to carry on business; or
- 9.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

9.3 The Buyer shall be entitled to suspend any Services or work or the provision of any Goods at any time by giving written notice to the Seller. The Seller shall recommence any relevant supply upon receiving further written notice from the Buyer.

9.4 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving written notice to the Seller if at any time the Seller is in breach of any provision of the Contract.

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10.0 Supplementary Terms and Conditions in relation to Sub-Contracts

- 10.1 In addition to the other terms and conditions set out in this document, the terms and conditions set out in this clause 10 shall also apply where the Seller is a sub-contractor of the Buyer.
- 10.2 The Seller shall be deemed to have notice of all of the terms and conditions of any contract entered into between the Buyer and its customer ("the Main Contract"). Accordingly, the Main Contract shall be deemed to be incorporated into the Contract between the Seller and the Buyer. The Buyer shall provide the Seller with a copy of the Main Contract, other than the details of prices and any other confidential information, upon written request from the Seller.
- 10.3 The Seller shall indemnify the Buyer against each and every liability which the Buyer may suffer or incur to any person whatsoever and against all claims, demands, proceedings, damages, compensation, costs and expenses by reason of any breach by the Seller of the Contract.
- 10.4 The Seller shall complete the provision of all Goods and Services within the time stipulated in the Order or (as the case may be) the Main Contract. Time shall be of the essence of the completion of the provision of any relevant Goods or Services.
- 10.5 The Seller shall take out and maintain such insurances and provide evidence of such insurances as the Buyer shall require or (as the case may be) are required under the provisions of the Main Contract.
- 10.6 The Seller shall, at all times, comply with all health and safety rules, regulations, statutes and requirements of any nature whatsoever and shall indemnify the Buyer against any liability which the Buyer may suffer or incur as a result of any breach of this clause.
- 10.7 The Seller shall obtain all information and details from the site sufficiently in advance of the commencement of work to ensure that it is in a position to comply with the programme of works. Where the Seller is working to finished levels, it is responsible for the accuracy of such levels and it must satisfy itself before commencing work as to the suitability of the sub-floors or any other surface to which anything is to be fixed or applied. The Seller shall supply a fully dimensioned drawing showing all holes, chases, fixing plugs, cut-outs or any structural alterations required to receive any relevant items of the Seller and this drawing shall be delivered to the Buyer before the commencement of the work for approval.
- 10.8 The Seller shall be deemed to have notice of all conditions of any nature whatsoever at the site and shall, accordingly, ensure that it makes any relevant inspections and visits prior to the commencement of any work. The Seller shall indemnify the Buyer against any adverse site conditions of any nature.
- 10.9 Notwithstanding any other provision of the Contract, the Seller agrees and undertakes as follows:-
- (i) to indemnify the Buyer and to ensure adequately against all employer's liability and third party risks;
 - (ii) to provide all labour, plant, materials, tools, tackle, equipment, services and anything else necessary to complete the provision of the Goods and Services to engage and at all times be responsible for the supervision and control of its own labour;
 - (iii) to pay rates of wages and observe hours of labour and all other applicable conditions in accordance with the National Joint Council Agreement for the building industry;
 - (iv) to ensure safe, adequate and correct working practices and equipment and to be responsible for the safe construction, erection and fixing of all guards, protective devices, aids to access, platforms, temporary structures and the like which are necessary for carrying out any relevant work;
 - (iv) to complete and leave all work in a clean and tidy condition as required by the Buyer's site staff and on completion to clear away and satisfactorily dispose of all surpluses and deposits of rubbish;
 - (vi) to send a responsible and properly authorised representative to the Buyer's

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head office or site meetings as required by the Buyer.

10.9 In the event that a customer under the main contract becomes insolvent or is otherwise unable to pay his debts, no payment will be made to the Seller unless or until the Buyer has received payment in full under the main contract.

11.0 Intellectual Property

- 11.1 All rights to intellectual property arising in the course or as a consequence of the seller supplying Goods and or services to the buyer, shall belong to us
- 11.2 Any tooling produced in relation to any order or contract and all Intellectual Property in such tolling shall belong to the buyer. On termination of a contract or on payment by the buyer of any invoice relating to such tooling [whichever is earlier], the seller shall immediately on our request deliver all tooling and any accompany drawings/models to the buyer. Failure to do so will mean we are granted an irrevocable license to enter the seller's premises or premises at which the tolling resides and remove it ourselves.
- 11.3 You warrant to us that the intellectual property referred to in Clause 11.1 shall be free from all third-party claims of ownership and that except as stated in writing in the contract all work undertaken by you in which the intellectual property might arise shall be your own original work.
- 11.4 you hereby assign to us, by way of future assignment, all copyright or other Intellectual Property rights which arise in respect of any goods or services [and you agree to waive or procure the waiver of any equivalent moral rights] immediately on their coming into existence.
- 11.5 if full legal title to any intellectual Property shall automatically belong to us by virtue of this Clause 9, you shall hold such intellectual property on trust for us absolutely, and shall immediately at our request execute or procure the execution of any document required by us to vest in us the full legal title to such intellectual property and to enable us [or our nominee] to enjoy the benefit of such intellectual property
- 11.6 you will return to us or [at our specific request] destroy or delete on demand an IP materials, drawings, specifications, films or other items or information belonging to us or our clients together with any copies in whatever format held.
- 11.7 you will be responsible for and insure against loss or damage to the full value of any IP materials, drawings, specifications, films or other items or information belonging to us or our clients while they are in possession of you or your agents or in transit to and from our premises, nominated locations or those of our clients. You will also maintain product and public liability insurance of no less than £10,000,000 and shall at our request provide us with copies of such insurance policies.

12.0 General

- 12.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract unless prior permission is given in writing.
- 12.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.5 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.