

# Terms and Conditions (March 2014)

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## DEFINITIONS:

In these Conditions:

**“Supplier”** means Teckpro Ltd.

**“Buyer”** means the person or entity so named in a sales quotation or estimate and/or within the Supplier’s acknowledgement of order form.

**“Contract”** means the contract, howsoever made, between the Supplier and the Buyer for the sale and purchase of the Goods and/or Services (defined hereafter) subject to these terms and conditions.

**“Goods”** means the products (or any part of them) which the Supplier agrees to sell and the Buyer pursuant to the Contract.

**“Services”** shall include any advisory or other service to be provided by the Supplier pursuant to the Contract whether in relation to the supply of Goods or otherwise and where the Contract is for or includes work or work and materials and/or the supply of labour.

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made.

## 1. EFFECT

- 1.1. These Conditions and stipulations will prevail over any put forward by the Buyer. Unless it is otherwise agreed in writing, the Buyer hereby accepts that Goods and Services under this Contract will be supplied in accordance with these conditions.
- 1.2. For the avoidance of doubt these Conditions shall apply to the exclusion of any terms and conditions at any time imposed by the Buyer and shall supersede any previous agreement or agreements between the Seller and the Buyer;
- 1.3. Any quotation or estimate given by the Supplier is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Supplier in pursuance of a quotation or estimate or otherwise shall be binding on the Supplier unless and until it is accepted in writing on the Supplier’s acknowledgement of order form;
- 1.4. The only terms of the Contract shall be those contained expressly or by reference in the Supplier’s acknowledgement of order form, and any statement or representation written or oral made or given prior to the date of the Contract is hereby excluded unless expressly incorporated therein;

## 2. PRICES

- 2.1. Unless otherwise agreed the prices stated are Ex Works (Newark, Nottinghamshire, England). The prices stated are for the full contracted quantity and include packing to Supplier’s normal standards. Where, additional charges are incurred to meet with packing requirements requested by the Buyer, such charges will be separately invoiced.

- 2.2. The price of the Goods and Services is exclusive of Value Added Tax or any other tax, duty, tariff or charge arising in the United Kingdom or elsewhere. Any such taxes, duties or charges shall be payable by the Buyer and must be added to the price stated.
- 2.3. If after the date of the Supplier's acceptance of order any increase shall occur in the costs of any materials, labour, transport or other items including overheads which the Supplier cannot reasonably mitigate and has to pay or incur in the performance of the Contract, then the amount of any increase in such costs shall be added to the price or prices stated in the acceptance of order and the Buyer shall pay the resultant increased price or prices. In the case of any dispute a certificate of the Supplier's auditors certifying the amount of such increase shall save in the case of manifest error be conclusive and binding on the Buyer and the Supplier;
- 2.4. Where the price has been quoted in the Supplier's quotation or estimate based on certain batch quantities and specific delivery periods or in the case of design work on the information available at the time, the Supplier reserves the right to vary the price for the Goods should the Buyer order different quantities from those stated and/or require delivery over a different period or if further information is forthcoming which substantially alters the basis upon which the quotation or estimate was made;
- 2.5. The cost of any variation or modification in the design specification, material or drawings of the Goods or Services, or any development thereof requested by the Buyer for whatever reason after the date of the Supplier's acceptance of order shall, if such variations or modifications are accepted by the Supplier, be borne by the Buyer.
- 2.6. The Supplier reserves the right to alter any price quoted without notice.

### **3. DELIVERY**

- 3.1. The Supplier will use its reasonable endeavours to comply with any date or dates for despatch or delivery of the Goods and for the supply or completion of the Services (as the case may be) as stated in the Contract, but, unless the Contract otherwise expressly provides, such date or dates shall constitute only statements of expectation and shall not be binding. The Buyer shall accordingly accept delivery of the Goods when tendered and time of delivery shall not be of the essence of the Contract;
- 3.2. If, notwithstanding that the Supplier has used its reasonable endeavours, the Supplier fails to despatch or deliver the Goods or to supply or complete the Services by such date or dates, such failure shall not constitute a breach of the Contract nor shall the Buyer be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting there from;
- 3.3. If the Supplier shall be prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control (including, without prejudice to the generality of the foregoing, force majeure, trade disputes including disputes involving the Supplier's own workforce, inability to obtain materials or labour, power or machinery breakdown or failure) further performance of the Contract shall be suspended for so long as the Supplier is so prevented or hindered provided that in the event that the performance of the Contract shall be suspended for more than six consecutive calendar months the Buyer and the Supplier shall be entitled by notice in

writing to the other forthwith, to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Buyer shall pay at the Contract rate for all goods and services supplied or all work done and materials used by the Supplier up to the actual date of such termination. The Supplier shall not have any liability to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Supplier's inability to perform its obligations under the Contract in the aforementioned circumstances;

- 3.4. When expedited delivery or completion is agreed to by the Supplier and necessitates overtime or other additional costs, the Buyer shall reimburse the Supplier for the amount of such overtime payment or other costs. Where postponement of delivery or completion is agreed by the Supplier the Buyer shall, if required by the Supplier pay all costs and expenses (including a reasonable charge for storage of the Goods) occasioned thereby but the goods shall be held at the Buyer's risk as from the time of postponement and the Buyer shall be responsible for insurance of the Goods;
- 3.5. If no time for delivery or completion is specified in the Contract the Buyer shall be bound to accept the goods when the same are ready for delivery by the Supplier; the Supplier shall be under no obligation to deliver or complete the same until the expiry of a reasonable time from the date of the contract;
- 3.6. In respect of Contracts under which the Supplier sells outside the United Kingdom the Buyer must obtain all necessary export or import licences, exchange control consents, and all other approvals of national and regional governments and authorities required to enable performance of the Contract as soon as reasonably practicable.
- 3.7. Where the Goods are delivered or Services are supplied by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in Clause 7(c) no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.
- 3.8. If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Buyer's fault, and the Supplier is accordingly liable to the Buyer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 3.9. The Supplier reserves the right to deliver up to 5% more or 5% less than the quantity ordered, and the quantity so delivered shall be deemed to be the quantity ordered, with the consequent adjustment to the price.
- 3.10. If Supplier delivers the goods to Buyer's premises in the United Kingdom (UK) then delivery shall be at the time and place of actual delivery at Buyer's ship-to address.
- 3.11. Where delivery is to take place outside of the EU, Supplier shall not be required to commence performance until all payment documentation (as referred to in Clause 6d) and necessary export/import documents and consents have been obtained in favour and/or to the satisfaction of Supplier and is available to the supplier in the UK.
- 3.12. In cases where Buyer causes a delay in the delivery of Goods that are ready for despatch or in the

case of Force Majeure as described in Clause 12, Supplier will arrange storage which shall be at Buyer's risk. Any charge for such storage or demurrage shall be paid by Buyer. Delivery into storage shall constitute delivery under Conditions.

#### **4. TITLE AND RISK**

- 4.1. Title in the Goods shall pass to Buyer upon full payment for such Goods. Risk incidental to the goods shall pass to the Buyer on delivery.
- 4.2. The Buyer is authorised to use or agree to sell the Goods subject to the express condition that the entire proceeds of any sale are held in trust for the Supplier and are not mixed with other monies and are at all times identifiable as the Supplier's monies.
- 4.3. Subject to 4.2 above, the Goods shall be kept separate from property of the Buyer or any third party and be clearly marked as belonging to the Supplier.
- 4.4. The power of sale in 4.2 above shall cease automatically in the event of Buyer being in default of any payment due to the Supplier, becoming insolvent, or a party to winding-up, receivership proceedings or other insolvency events.

#### **5. EXPORT/IMPORT RESTRICTIONS**

- 5.1. Buyer shall be liable to pay at the order rate for all Goods delivered and services rendered to him or his order in part performance by Supplier, notwithstanding that subsequent export or import restrictions or the cancellation, withdrawal or non-renewal of export or import licences prevents further performance in whole or in part and no part of any payment already made for Goods or services already so delivered or rendered shall be repayable by Supplier.

#### **6. REFERENCES**

- 6.1. At the Supplier's discretion, each Contract may be subject to the receipt of Buyer's credit references (which unless otherwise stated shall be one bank reference and two trade references) to the satisfaction of the Supplier.

#### **7. PAYMENT**

- (a) Unless otherwise agreed in writing, the Supplier shall at the time of order invoice the Buyer for 50% of the total Purchase Order amount. An invoice will be raised for the remaining balance at the time of delivery.
- (b) The Buyer shall make full payment, in Sterling, to the Supplier within 30 (Thirty) days of the date of invoice. The Supplier at its discretion reserves the right to charge interest on overdue accounts at 4% per annum above Barclays Bank base lending rate current at the date any payment becomes overdue.
- (c) The Supplier reserves the right to suspend deliveries and withdraw credit terms and all sums invoiced shall become forthwith due and owing, if the Buyer defaults in making prompt payments under contract with the Supplier or commits any other breach of contract with the Supplier.
- (d) The Supplier reserves the right to alter credit terms at any time when in the Supplier's opinion the Buyer's financial condition or previous payment record so warrants.
- (e) Unless otherwise agreed in writing, Buyer shall make payment for export Goods by means of a Telegraphic Transfer prior to delivery by the Supplier.

## **7. LOSS, SHORTAGE OR DAMAGE**

No claim for non-delivery will be considered unless received in writing by Supplier within 14 (fourteen) days from date of his Advice Note or equivalent document nor for shortage or damage unless received in writing by Supplier and also by any carrier within 5 (five) days from date of the delivery of the Goods.

Supplier undertakes to repair (at his option) or replace any Goods proved to his reasonable satisfaction to have failed within 12 (twelve) months of delivery by reason of faulty materials or workmanship used in their manufacture or (if in the Supplier's opinion such replacement or repair is impracticable) to refund any price paid for the failed Goods PROVIDED that:

(a) This undertaking shall not extend to failures not reported to Supplier within 14 (fourteen) days of receipt, where such failures result from defects which ought reasonably to have been discovered if inspection and/or test of the Goods had been practicable;

(b) Buyer informs Supplier promptly on discovery of the alleged failure and promptly returns the Goods, carriage paid with full written report on the failure unless Supplier agrees to inspect and replace or repair in situ. Unless otherwise agreed the repaired or replacement Goods will be delivered to the original point of delivery.

The Goods have been stored, installed, maintained and used properly having regard in particular to Supplier's and other agreed applicable specifications and instructions. This undertaking shall not apply in cases of fair wear and tear to any Goods or parts thereof;

The goods have not been modified, altered or tampered with internally or externally. This includes removal of any serial number labels supplied with the goods.

This undertaking shall not apply to any Goods or parts thereof obtained by Supplier from another; Buyer shall refund to Supplier the cost to Supplier of any replacement, repair or re-delivery of the Goods effected by Supplier where the failure is not within the scope of this undertaking Buyer shall have no right to reject later than the period mentioned in this Condition 8. Any liability howsoever arising whether in contract or in tort or under statute in respect of quality, fitness, condition, use, trade or other description, specification or representation of or relating to the Goods supplied is hereby excluded and Buyer shall have no rights other than as stated in this Condition in respect of Goods which have failed after delivery and as provided in section 2 (1) of the Unfair Contract Terms Act 1977.

## **8. TERRITORIAL RESTRICTIONS**

Buyer shall not without express written approval of Supplier (which shall not be unreasonably withheld) export or use the Goods or sell or hire them to a person who to his knowledge intends to export or use them outside the country of declared destination except as parts of larger assemblies or as spares or replacement parts for larger assemblies previously exported. This restriction shall not however prevent export use, sale or hire of the Goods to or within any country of the EC.

## **9. PATENTS ETC. INFRINGEMENT**

Supplier shall (in lieu of all other liability to Buyer for loss where patents, copyrights registered designs and similar rights have been infringed by use of the Goods) indemnify Buyer against claims by owners or licensees of patents and registered designs of the country of declared first destination of the Goods granted at the date hereof for infringement thereof by use or sale of the Goods PROVIDED that:

- i. the Goods are used in accordance with Supplier's guide-lines;
- ii. this indemnity shall not extend to infringements resulting from use by Supplier of Buyers parts, designs or specific instructions or from use or sale in combination with other items where infringements would not have otherwise occurred;
- iii. Buyer shall immediately inform Supplier of claims, shall make no settlement or admission and shall permit Supplier alone (and at Supplier's expense) to deal with claims;
- iv. Supplier's liability under this Condition 9 is limited to the amount of royalties or payments in lieu thereof ordered or agreed to be paid to the owner and/or licensee of the patent or design and in no case shall exceed the price of the infringing Goods.

## **10. COPYRIGHT AND CONFIDENTIALITY**

The Copyright in all Suppliers documents (including drawings) furnished to Buyer for the purpose of the Contract shall at all times remain vested in Supplier and neither they nor their contents shall be used without Supplier's express written consent for any purpose other than that for which they were furnished.

## **11. RE-SCHEDULES AND CANCELLATIONS**

The Supplier shall not consider any changes to the scheduled shipment date or quantities and no cancellation shall be effective unless such changes or cancellations have been agreed in writing by the Supplier.

**11.1** Where such cancellations are accepted, the Buyer shall pay a cancellation charge for each cancelled unit as follows.

- (a) For cancellations accepted between 30 and 15 days from acknowledged shipment date, 25% of unit price.
- (b) For cancellations accepted less than 15 days from acknowledged shipment date, 50% of unit price.

**11.2** If the order cancelled forms part of a larger contract where special pricing based on quantity was obtained, then the Supplier reserves the right to re-calculate entire contract based on new quantity according to price list in force at time of order and charge the Buyer the higher of the difference between new price and old price on entire order, or the cancellation charges referred to in 11.1

## **12. FORCE MAJEURE**

Notwithstanding anything to the contrary, Supplier shall not be liable for any delay or failure to fulfil any obligation hereunder, due to any cause beyond Supplier's reasonable control.

## **13. SPECIFICATIONS**

- (a) Buyer hereby accepts responsibility for the Goods (and all combinations of the Goods with services, software or other goods) achieving Buyer's intended results and for the selection of and results obtained from any services, software or other goods with which the Goods are used in combination.
- (b) Supplier does not warrant that the Goods are of any particular quality or conform to any particular specification unless agreed to in writing by the Supplier.
- (c) The Buyer shall not remove any identification mark or trademark placed on the Goods.

## **14. MATERIALS**

When the Buyer provides the Supplier with any item such as materials, goods, tools or the like in connection with the order, the Buyer does so at his own risk and the Supplier accepts no responsibility for insuring such property except by arrangement in writing. Any patterns, jigs or tools provided by the Supplier shall remain Supplier's property unless stated otherwise in writing by Supplier.

## **15. DEVELOPMENT**

- (a) (a)The Buyer warrants that any design or instruction furnished or given to Supplier will not cause the Supplier to infringe any intellectual property right of a third party, when executing the Buyer's order. Buyer hereby indemnifies Supplier against all claims and expenses thereby arising.
- (b) (b)With respect to Goods which are subject to experimental, development or prototype work undertaken by the Supplier ownership of the design rights and all other intellectual property rights originated by the Supplier in performing such work shall rest in the Supplier absolutely, unless agreed in writing to the contrary.

## **16. SOFTWARE**

Unless otherwise stipulated by Supplier all software supplied in whatever form is supplied under the conditions of the Software Agreement for the relevant software and not by way of sale and is subject in the case of Supplier's software to Supplier's relevant terms and conditions of licence and in the case of other software to terms and conditions equivalent to those agreed between Supplier and Supplier's licensor.

## **17. DETERMINATION OF CONTRACT**

If Buyer shall break any provision of these conditions or any other contract with Supplier, or suffer distress or execution, or commit an act of bankruptcy, make arrangement with creditors or go into liquidation (except for amalgamation or reconstruction) or have a receiver appointed, Supplier may

(without prejudice to any other claim or remedy) suspend performance of or determine these conditions or any other contract by written notice and shall be entitled to payment for the Goods already delivered, work in progress and tooling costs under the agreement in question and all other costs and commitments incurred by Supplier plus reasonable profit thereon.

## **18. LIABILITY**

Notwithstanding any other terms of this contract between Supplier and Buyer, Supplier's liability to Buyer in respect of indemnity, breach of contract, tort (including but not limited to negligence) or breach of statutory duty shall be limited as set out in Clause 3 (c) above, in respect of any defects in the Goods, shall be limited to those remedies set out in Clause 7 above and in respect of patent infringement shall be limited as set out in Clause 9(d) above, and in no circumstances shall Supplier be liable to Buyer for any loss of profit, loss of use, loss of product, loss of contract or any financial or economic loss or for any indirect or consequential damages whatsoever.

## **19. LAW, JURISDICTION AND ARBITRATION**

These Conditions shall be governed by English Law. When Buyer's place of business is within the UK, the courts shall have exclusive jurisdiction over any matter arising out of the agreement. When Buyer's place of business is outside the UK, all disputes arising in connection with the agreement shall be finally settled in London, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The Uniform Law on the International Sale of Goods shall not apply.