

Services Terms and Conditions

These Supplementary Terms and Conditions shall apply to the supply of services and they are supplementary to [Seller's Standard Terms and Conditions of Sale](#) - ("Standard Conditions of Sale"); in the event of any conflict between these Supplementary Terms and Conditions and the Standard Conditions of Sale, the former shall prevail.

S1. DEFINITIONS:

S1.1 In these Supplementary Terms and Conditions the following words shall have the following meanings. All other definitions stated in the Standard Conditions of Sale shall apply as stated therein.

Acceptance Tests - the inspection and tests performed on the Goods, whether at Seller's facilities or at the Site(s), in accordance with the agreed Test Acceptance Criteria.

Client - means the entity named in the order as the Buyer's customer in the event the Buyer is a different entity than the end user and not the ultimate beneficiary and user of the Services.

Commissioning- the checking, adjusting, testing and proving of the Goods following Installation and/or the setting to work of the Goods, all as specified in the Contract.

Configuration - the application of the Equipment and/or Software to the specific requirements of the Contract, as detailed in the Base and/or Detailed Design Specifications (as applicable).

Data - information, instructions, specifications, drawings, designs, technical details, literature, Software, marketing and advertising literature, catalogues, computer printouts and any other type of documentation.

Detailed Design Specification - if expressly required by the Contract, the specification which details the Configuration, including the functionality of the Goods.

Equipment - all machinery, apparatus, articles, materials and things (not including Software) provided by Seller.

Functional Design Specification - the specification which details the extent of supply of Equipment and Software and includes, where applicable, an outline description of Buyer's/Client's process to be controlled by the Goods and the control functions to be incorporated into the Goods.

Installation - the fixing into position of the Goods, etc. as specified in the Contract.

Seller's Personnel - employees of Seller, Seller Affiliates and/or Seller's subcontractors.

SERVICES: As used herein, the term 'Services' shall mean all or any of the services to be provided by Seller at Seller's, its subcontractor's and/or Buyer's/Client's premises, all as detailed in Seller's quotation. Services will be performed by the grades and numbers (if any) of personnel (Personnel) specified in Seller's written quotation. Personnel shall not be required to perform any work other than the Services unless otherwise expressly agreed in writing by Seller. Nothing in the agreement shall establish the relationship of employment as between Buyer and/or Client and Personnel. If the details of the Services described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.

Site - the place(s) identified in the Contract where the Goods are to be installed.

Site Work - Services (if any) to be provided by Seller on Site in accordance Seller's quotation or as subsequently agreed by the parties in writing. If the details of the Site Work described in Seller's quotation, differ from those set out in the Acknowledgement of Order Form the latter shall apply.

Software Licence - the software licence agreement(s) applicable to the Software (if any).

Specification - the specification of the Goods incorporated into the Contract, as supplemented, amended and/or qualified by the Functional Design Specification and (if applicable) the Detailed Design Specification.

Test Acceptance Criteria - the specification which details the Acceptance Tests.

S2. START AND DURATION OF SERVICES: Seller shall perform the Services, subject to the fulfillment by Buyer of all conditions precedent stipulated by Seller. In the case of Services to be performed on Site, traveling time between Personnel's home bases and Site shall, unless otherwise expressly agreed in writing by Seller, be deemed to be part of the Services and shall be chargeable. Performance of the Services by Seller shall be subject to the timely provision by Buyer of adequate and accurate information and/or instructions. Seller shall not be liable for any delay or increase in the work caused by Buyer's failure to provide such information and/or instructions, nor for any other acts or omissions of Buyer, and Buyer shall reimburse Seller for any additional costs incurred by Seller as the direct result of any such failure, act or omission. Any times for completion shall be treated as estimates only, unless expressly otherwise agreed, not rendering Seller liable in any way for failure to complete the Services by such times. In all cases the time for completion shall be extended in cases such as, but not limited to, the event that Seller is prevented from fulfilling its obligations due to industrial disputes or any other circumstances beyond its reasonable control.

S3. PRICES: The applicable prices for Services are set forth in Seller's written quotation or Acknowledgement of Order Form, as the case may be.

S4. PERMITS, FEES AND TAXES: Buyer shall obtain and pay for all permits, licenses, visas, and other approvals (if any) required for Seller to

perform Services. Buyer shall also be responsible for all sales, value added, use, excise or similar taxes arising from the sale and/or performance of Services.

S5. BUYER SUPPLIED INFORMATION:

S5.1 Should Seller become aware of any errors, inaccuracies, inconsistencies or ambiguities in the information provided by Buyer, it shall advise Buyer of same; it being recognised by Buyer that Seller shall have no obligation to verify or otherwise assess the correctness of information provided to it. Buyer shall promptly advise Seller if Buyer becomes aware of any inaccuracy or error in Seller's interpretation of Buyer's information.

S5.2 Buyer shall indemnify and hold Seller fully harmless against all claims, liabilities, costs, losses and/or expenses of any kind whatsoever arising directly or indirectly as the result of Seller having acted upon or carried out the Services in accordance with Buyer's or its representative's, agent's or servant's instructions, or Buyer supplied information.

S6. SUPPLY OF DATA BY SELLER:

S6.1 If, Seller is required to submit to Buyer for Buyer's approval copies of specifications and/or drawings, unless otherwise agreed, two copies only shall be submitted. Such specifications and drawings submitted shall be approved within the periods agreed, or when no periods are agreed, within fourteen (14) days from the date of submission. They shall be deemed to have been approved upon expiry of such period if Buyer shall not have given his approval or otherwise in writing before expiry thereof. However, on a case by case basis Seller shall be entitled to stop working, if Buyer does not approve within the period agreed above. Any agreed timeline shall be reasonably extended subsequent to such stop of work.

S6.2 Buyer shall promptly advise Seller if Buyer becomes aware of any inaccuracy or error in Seller's Data.

S7. CONFIDENTIALITY:

In accordance with a fully executed Non-Disclosure Agreement applicable to the Services provided, or in the absence of an applicable NDA:

S7.1 Seller undertakes for a period of five (5) years from the date of formation of the Contract to keep confidential and not to disclose to any third party without Buyer's written consent any Data supplied by Buyer relating to the Site or Buyer's/Client's processes which have been designated in writing by Buyer as confidential, except as may be necessary for the proper performance of the Contract or where required by law to do so.

S7.2 Buyer shall for a period of five (5) years from the date of the Contract keep confidential and not disclose to others without Seller's prior permission in writing any Data whether of a commercial or technical nature, acquired from Seller and shall use the same only for the purpose of(a) carrying out the Contract, and (b) the installation, operation and maintenance of the Goods.

S7.3 Both parties agree to keep Data received from the other party and which is the subject of Sub-Clauses S7.1 and/or S7.2 in the manner in which they keep information of the Nothing contained in Sub-Clauses S7.1, S7.2 and S7.3 shall apply to prevent either party from disclosing Data:

- in its possession (with no restriction on disclosure) prior to receiving it from the other, or
- which is or later becomes public knowledge other than by breach of this clause, or
- which it may independently receive from a third party with no restriction on disclosure, or
- which is independently developed by an employee who has not benefited from the Data referred to in Sub-Clause S7.1 or, as the case may be, S7.2.

S8. INSPECTION AND WORKS TEST:

S8.1 The Goods may be subject to Acceptance Tests, as detailed in Seller's quotation and as further agreed in writing by the Parties. If Buyer wishes to inspect the Equipment or to witness any tests, such viewing shall be mutually agreed.

S8.2 In the event that Buyer or his representative fail to attend the Acceptance Tests on the due date, Seller shall be entitled to proceed in their absence and the results of such tests shall be deemed to be in accordance with the Acceptance Test certificate issued by Seller, based on the Test Acceptance Criteria. Such certificate may record that the Acceptance Tests had been carried out in the absence of Buyer or its representative and/or that the Goods had passed the Acceptance Tests subject to reservations relating to minor defects, which are to be remedied by Seller at a time to be agreed.

S8.3 If during the Acceptance Tests any of the Goods is found not to be in accordance with the Specification, Seller shall within reasonable time remedy the defect. The Acceptance Tests shall be repeated only in case of major deficiencies and not in the case of minor defects not affecting the functionality of the Goods.

S8.4 If the Acceptance Tests show that the Goods meets the Specification and if Buyer or his representative has attended the Acceptance Test, then Buyer or his representative shall sign an acceptance certificate accordingly. Buyer shall not be entitled to refuse acceptance in case of minor deficiencies, such as any deviation from the agreed specification which does not prevent the Buyer from operating the Goods / not affecting the functionality of the Goods. The acceptance certificate may record that the Goods have passed the Acceptance Tests but subject to reservations relating to minor defects which will be remedied by Seller at a time to be agreed.

S8.5 Buyer shall be deemed to have accepted the Goods upon issue of the test certificate referred to in Sub-Clause **S8.2** or, as the case may be, upon signature of the Acceptance Certificate referred to in Sub-Clause **S8.4**.

S8.6 Acceptance of Services shall be deemed to have occurred on the later to occur of: (i) acceptance of the Goods to which the Services relate, as described above; or (ii) upon completion of all Services (without prejudice to the provisions of]== S16.2).[]

S9. WARRANTY

S9.1 Seller's warranty given in Clause 6 of the Standard Conditions of Sale shall be supplemented as follows insofar as the provision of Services is concerned.

S9.2 Services are warranted for a period of one year from the date of acceptance as set out in Sub-Clause **S8.6** above.

S9.3 Except as specifically provided for above, Seller extends no warranties of any kind to Services, Equipment or materials and hereby disclaims all other warranties, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose. These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, lightning or other environmental conditions, negligence, unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as set out herein or may be agreed upon in writing in advance by an authorized Seller representative.

S9.4 If within five (5) days after Buyer's discovery of any warranty defects within the warranty period set out in Sub-Clause **S9.2** above, Buyer notifies Seller thereof in writing, Seller shall, at its option, repair or correct the defective part of the Services, or should this finally fail within a reasonable time period the Buyer may demand a reduction of the purchase price or if the defect is not merely insignificant rescind the Contract. Failure by Buyer to give such written notice of a defect in Services within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects, except in the case of Seller's intent. The warranty as stated in this **S9** is the only warranty made by Seller and can be amended only in a writing signed by an authorized representative of Seller.

S10 NON-SOLICITATION:

S10.1 Unless otherwise agreed in writing by Seller (such consent not to be unreasonably withheld or delayed) Buyer agrees that it shall not, at any time during the term of this Contract and for a period of 6 months following completion of the Services, either on its own behalf or in association with any other person, directly or indirectly, approach, canvass, solicit, hire, engage or employ any employees or independent contractors of Seller or any Seller Affiliate who have been engaged in a technical or managerial capacity in the performance of the Services during the 6 months immediately prior to the completion of the Services.

S10.2 To the extent that Buyer is unable to ensure compliance by any Buyer Affiliate with the terms of this Clause then Buyer shall indemnify Seller in respect of any loss, costs, claims or expenses incurred as a result of such non-compliance.

S11. SITEWORK:

When as part of the Services, Seller is responsible for the provision of Site Work, the following terms and conditions will apply to the Site Work.

S12. SCOPE OF SITE WORK: The Site Work to be provided by Seller shall be as detailed in the Services' scope.

S13. SITE FACILITIES:

S13.1 To enable Seller's obligations in respect of Site Work to be expeditiously and properly carried out, Buyer will provide the facilities set out in the Service's scope at no cost to Seller, as and when required; if no such facilities are stated in the Service's scope, Buyer shall at no cost to Seller provide all facilities and assistance required by Seller which may include but shall not be limited to the following:

- a) suitable access to the Site, satisfactory foundations and environmental conditions for the Equipment, adequate lifting facilities and scaffolding, all unskilled labour, any masons', joiners' or builders' work necessary, suitable security and protection for the Site and for the Goods from time of delivery, storage facilities for tools/equipment, any electrical power, lighting and heating needed, suitable sanitation facilities and drinking water (reasonably close to the point(s) of installation of the Goods) and all other necessary facilities and assistance.
- b) permanent and suitable electrical and/or air supplies for the Equipment, terminated in accordance with Seller's requirements.
- c) convenient continuous and unrestricted access to the Site and to the Goods.
- d) qualified operators and attendants for the Site.
- e) a safe working environment for Seller's Personnel (including where appropriate, safety induction procedures and special protective clothing).
- f) adequate first-aid and medical facilities at or adequately close to the Site.

S13.2 Buyer will be responsible for ensuring that the Site is correctly installed and fit for its purpose and that any necessary minor adjustments, as the particular situation may require, to be made to the Site are carried out expeditiously. Any authorisations, permits, approvals, licences etc. that may be required in respect of performing the specific Site Work shall be within the Buyer's obligation and shall be made available to Seller prior to the commencement of Site Work.

S13.3 Unless otherwise agreed Seller will not be responsible for unloading the Goods and moving it to the place of Installation. If, in Seller's sole opinion, the Site environmental conditions are not suitable for the Installation of the Goods, a safe working environment does not exist on Site or if Buyer fails to have provided any facility or assistance as requested by Seller and in accordance to the Services' scope, Seller's obligations to provide Site Work shall be suspended (without liability to Seller) until the conditions have been rectified to Seller's satisfaction and any time limits for completion of the Site Work shall be appropriately extended. If the Goods have suffered loss, damage or deterioration after delivery and before Site Work commences, the Goods shall be put in a satisfactory condition at Buyer's cost before Seller shall be obliged to proceed.

S13.4 [Reserved]

S14. SUPERVISION OF INSTALLATION:

S14.1 Where Seller is responsible for supervision of Installation or part thereof, Seller shall provide the services of one or more competent personnel to give instruction to the personnel provided by Buyer to secure:

- a) the reception and unpacking of the Equipment;
- b) the moving to the place or places of Installation of the various items of Equipment and their Installation.

If called for by the Contract, Seller shall load the Software and (if provided by Seller) the Configuration software onto the Equipment.

S14.2 The personnel provided by Buyer shall remain under the direction of and under the control of Buyer. Seller shall not be liable for any act or omission of such personnel, but if in giving or omitting to give orders or instructions to such personnel, Seller's supervisory personnel fail to use proper skill and care, Seller shall be liable for the consequences of such failure in accordance with the Contract.

S15. COMMISSIONING: If specified in the Services' scope, Seller shall assist Buyer with Commissioning. Buyer shall be responsible for the operation of the Goods and of the Site during Commissioning and shall provide suitably qualified personnel to perform such work.

S16. PAYMENT FOR SERVICES:

S16.1 Unless otherwise agreed, the Seller shall invoice at the end of each calendar month for the Services completed in that specific month. Any sums payable in respect of Services shall be paid within 30 (thirty) days of Seller's invoices. Invoices for any Services which is completed in less than one calendar month shall be issued upon completion and shall be payable not later than 30 (thirty) days from the completion of Services.

S16.2 If under the Contract, Buyer or Buyer's agent or representative is required to countersign Seller's timesheets or other related documentation, such countersignature shall be conclusive proof that the Services concerned has been performed and that Seller is entitled to claim payment therefore.