

## Purchase Order Terms and Conditions

### 1. Definitions

1.1 In these Terms and Conditions:

"**ADL**" means ALEXANDER DENNIS LIMITED & PLAXTON LIMITED

"**Contract**" shall have the meaning set out in Condition 2.4;

"**Delivery Date**" means the date specified by ADL when the Goods or Services are to be delivered;

"**Goods**" means all (or any) of the goods, Services and Software agreed in the Contract to be bought by ADL from the Supplier (including without limitation raw materials, processed materials or fabricated products);

"**Price**" means the price for the Goods or Services stated on the Purchase Order;

"**Purchase Order**" means ADL's written instruction to buy the Goods and/or Services, incorporating these conditions;

"**Services**" means all services and/or performance of works or professional services that ADL agrees to buy from the Supplier, as set out in the Purchase Order; and

"**Software**" means software supplied by the Supplier to ADL under the Contract;

"**Supplier**" means the person or organisation who accepts ADL's Purchase Order; and

"**Terms and Conditions**" means these terms and conditions.

References to any law or statute are to such law or statute as amended, consolidated or re-enacted from time to time.

### 2. Terms and Conditions

2.1 Subject to any variation under condition 2.4, these Terms and Conditions and other matters appearing on the Purchase Order shall govern the Contract in respect of purchases of the Goods and/or Services stated in the Purchase Order by ADL from the Supplier to the exclusion of all other terms and conditions. In the event of any inconsistency between any expressly agreed variation (whether or not on a Purchase Order) and these terms and conditions, such expressly agreed variation shall prevail to the extent of such inconsistency.

2.2 No terms or conditions endorsed upon, delivered or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document, irrespective of their date of communication to ADL, shall form part of the Contract and the Supplier by its acceptance of the Purchase Order waives any right which it otherwise might have to rely on such terms and conditions.

2.3 Acceptance of the Purchase Order constitutes acceptance of the Contract but without prejudice to the foregoing the dispatch or delivery of the Goods or Services by the Supplier to ADL shall be deemed conclusive evidence of the Supplier's acceptance of these Terms and Conditions.

- 2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall have no effect unless expressly agreed in writing by ADL and the Supplier. The Purchase Order, these Terms and Conditions and any such agreed variation shall form the entire contract between ADL and the Supplier in relation to the purchase of the Goods and/or Services (the "Contract"). For the avoidance of doubt these Terms and Conditions shall be subject to any variation expressly agreed in writing between ADL and the Supplier.

### **3. Price and Payment**

- 3.1 Unless otherwise agreed, the Price is:
- (a) that stated in the Purchase Order;
  - (b) exclusive of UK VAT;
  - (c) inclusive of any other taxes payable and any customs or import/export duties;
  - (d) inclusive of cost of delivery to the delivery address specified by ADL and of standard packaging suitable for the means of delivery;
  - (e) fixed; and
  - (f) in the currency agreed between ADL and the Supplier, and if no currency has been agreed, in GB Pounds Sterling.
- 3.2 A valid VAT invoice in respect of the Price shall be produced to ADL by the Supplier and shall be a condition precedent to payment. Unless otherwise agreed in writing by ADL, the invoice may only be submitted and dated after completed delivery of the relevant Goods or completed performance of the relevant Services. The invoice shall not be valid unless it is addressed to ADL and it contains the ADL Purchase Order number, the ADL Part Number, the quantity and unit of measure, the Supplier's relevant VAT number, the net amount due, and the Supplier's full banking details (including account number, sort code, and, where applicable, SWIFT code). In the event that ADL reasonably considers that any invoice submitted by the Supplier is defective or relates to Goods supplied or Services performed otherwise than in accordance with the Supplier's obligations under this Contract, ADL shall be entitled to withhold payment of the disputed amount without prejudice to any other rights or remedies it may have.
- 3.3 ADL shall pay the Price 60 days from the end of the month of receipt of the invoice or if later, receipt of the Goods (undamaged and in accordance with the Contract).
- 3.4 The Supplier shall not be entitled to vary the Price except with the prior written consent of ADL.
- 3.5 ADL may deduct any monies due or becoming due to the Supplier from any monies due from the Supplier to ADL.

#### 4. Warranty

- 4.1 Unless otherwise agreed, the Supplier warrants to ADL, and it is a condition of the Contract that the Goods themselves shall and the sale/performance of the Goods and Services shall:
- (a) comply with any specification and any drawings, descriptions or samples supplied prior to the Purchase Order and any requirements made by ADL;
  - (b) be of the best quality, free from any defects in design, material and workmanship, safe and fit for their purpose (including any purpose specified by ADL) and conform to any standards and specifications specified in the Purchase Order and be capable of any standard of performance specified in the Purchase Order and any Services shall be supplied with due speed, care, skill and diligence;
  - (c) comply with all laws and industry standards applicable to the nature of Goods and Services supplied; and
  - (d) ADL's rights under these conditions are in addition to the statutory conditions implied in favour of ADL by the Sale of Goods Act 1979.
- 4.2 Without prejudice to condition 4.1 and any other rights of ADL under the Contract, the Supplier warrants that the Goods and Services shall continue to comply with conditions 4.1 (a) and (b) until (i) 36 months from the date of completed delivery of the Goods and Services or (ii) 36 months after the Goods have been entered into service on a vehicle by ADL's customer (whichever is the later) and if they do not so comply the Supplier shall at its cost (including freight and any cost of dismantling and reassembly), within 14 days of notice from ADL, remedy the defect in the Goods and/or Services or replace the Goods to the satisfaction of ADL. The foregoing provisions shall apply notwithstanding that the Goods may have been incorporated into, or the Services used in connection with or to manufacture, any other goods or products of ADL.
- 4.3 ADL may without prejudice to its other remedies, following completed delivery at the Supplier's cost (including freight) reject, in whole or in part, Goods and/or Services which do not comply with the Contract. ADL shall not be deemed to have accepted the Goods on receipt. The signature of an ADL representative on delivery is only evidence of the number of packages and/or Services received and not acceptance or that they comply with the Contract.
- 4.4 Where the Goods are repaired or replaced or Services re-performed in terms of condition 4.2, the Supplier warrants those repaired or replaced Goods for a further period of 2 years from the date of repair or replacement, or the balance of the initial warranty period, whichever is longer.
- 4.5 If any part of the Services is found to be inadequate or in any way differing from the Contract, other than as a result of default or negligence on the part of ADL, the Supplier shall at its own expense reschedule and perform the work correctly within such reasonable time as may be specified.
- 4.6 ADL shall have the right exercisable during the performance of any of the Services to suspend any payment obligation in respect of any Services if the performance does not conform in quality with any stipulations in the Contract or if the performance is delayed.

- 4.7 ADL shall have the right exercisable during the sale of the Goods to suspend any payment obligation in respect of any Goods if they do not conform in quality with any stipulations in the Contract.
- 4.8 Prior to delivery the Supplier shall inspect and test the Goods for compliance with the Order.
- 4.9 ADL shall be entitled to request the Supplier to supply certified copies of records of such inspection and tests free of charge and the Supplier shall promptly and fully comply with such request.
- 4.10 ADL reserves the right at reasonable times and on reasonable notice to inspect the premises of the Supplier and any subcontractor in order to satisfy itself as to the working practices of the Supplier in relation to the manufacture of the Goods.
- 4.11 If the Goods or any part thereof fail inspection and/or testing ADL (without prejudice to any of its other rights) reserves the right to charge the Supplier any cost in respect of travel and accommodation incurred by ADL for subsequent re-inspection and/or re-testing (if any).
- 4.12 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 4.13 Without prejudice to any other rights and remedies of ADL, the Supplier warrants that:
- 4.13.1 the design, manufacture, and construction, supply, use and quality of any Goods to be manufactured or supplied by it or any Services to be performed by it comply in all respects with any applicable statute, statutory rule, order, directive or statutory licence, consent or permit which may be in force at the time; and
- 4.13.2 the Goods and Services and all supporting literature and documentation comply with all trade descriptions requirement imposed by law.
- 4.14 Where applicable and unless agreed in writing by ADL the Supplier warrants that the Goods and Services have any necessary export or import licences and comply with all relevant government regulations.

## **5. Changes in Specification or Design**

- 5.1 The Supplier undertakes not to make any changes in specification, design or quality of the Goods or to make goods obsolete without giving to ADL a minimum of 12 months notice in writing of the change or such lesser period as ADL may agree to in writing in that particular instance.
- 5.2 In the event that any such changes cannot reasonably be incorporated in ADL's design or products or are unacceptable to a customer of ADL, ADL reserves the right to cancel the Contract at no cost to ADL.

## **6. Delivery of Goods and/or Performance of Services**

- 6.1 Delivery of the Goods and/or Services shall be made (at the Supplier's risk and expense) to ADL's address on the date specified in the Purchase Order (or if no such date is specified then delivery shall take place within 28 days of the Purchase Order

being received by the Supplier) during normal business hours, unless otherwise agreed in writing by the parties prior to the delivery of the Goods and/or Services. ADL shall be under no obligation to accept delivery of the Goods before the date(s) specified in the Purchase Order but reserves the right to do so. Time shall be of the essence in this respect and, without prejudice to any other rights which it may have, ADL reserves the right to cancel, without notice, the whole or any part of the Purchase Order if this condition is not complied with by the Supplier.

- 6.2.1 All Goods must be packed for the mode of delivery and type of goods involved at no cost to ADL so as to be delivered to ADL in perfect condition and each package must:
- (i) bear the Purchase Order number;
  - (ii) be accompanied by a readily accessible packing note detailing the contents;
  - (iii) conform to the supplier configuration documents; and
  - (iv) conform with any applicable export and/or import regulations.
- 6.2.2 The Supplier shall be held responsible for any damage incurred due to bad or insecure/inadequate packing.
- 6.3 Where ADL cancels the whole or part of the Purchase Order in accordance with condition 6.1:
- 6.3.1 all sums payable by ADL in relation to the whole or part of the Purchase Order which is cancelled shall cease to become payable;
  - 6.3.2 all sums paid by ADL in relation to the whole or part of the Purchase Order which is cancelled shall be repaid by the Supplier;
  - 6.3.3 ADL shall be entitled to claim damages for any additional costs, loss or expenses incurred by ADL which are in any way attributable to the Supplier's failure to deliver the Goods and/or Services on the Delivery Date; and
  - 6.3.4 ADL shall be entitled to refuse to accept any subsequent delivery of the Goods and/or Services which the Supplier attempts to make.
- 6.4 Without prejudice to its other rights, ADL may cancel a Purchase Order in whole or in part (i) immediately if there is a material breach of the Contract (these shall include any breach of condition 4) (and if the breach is remediable (save as to time of performance) if it is not remedied within 14 days of ADL sending notice to the Supplier) or if the Supplier becomes bankrupt and (ii) on 1 (one) months' notice at any time prior to complete delivery of the Goods and Services.
- 6.5 The Supplier shall not without ADL's written consent subcontract the supply of Goods and/or performance of the Services under this Contract. For the avoidance of doubt this condition shall not prevent the Supplier incorporating third party components from forming part of its Goods supplied in accordance with the Contract.

## 7. ADL's Remedies

- 7.1 ADL shall have the right to inspect the Goods or Services upon delivery in accordance with this condition 7. Notwithstanding ADL's right to inspect the Goods or Services upon delivery if ADL fail to exercise such right to inspect the Goods or Services upon delivery such failure will not prejudice their rights in accordance with this condition 7.
- 7.2 Where Goods and/or Services are damaged ADL shall notify the Supplier. ADL may reject the damaged Goods and/or Services and the following provisions shall apply:
- 7.2.1 at the Supplier's earliest opportunity the Supplier shall collect the damaged Goods from ADL at the Supplier's expense. If the Supplier has not collected the damaged Goods within 30 days of notification by ADL in accordance with condition 7.2, ADL shall have the right to store the damaged Goods at the Supplier's expense or to destroy the damaged Goods at the Supplier's expense;
- 7.2.2 during the period between delivery of the Goods and collection by the Supplier, ADL shall not be liable for any loss or further damage caused to the damaged Goods;
- 7.2.3 all sums payable by ADL in relation to the damaged Goods and/or Services shall cease to become payable;
- 7.2.4 all sums paid by ADL in relation to the damaged Goods and/or Services shall be repaid by the Supplier immediately and if not repaid within 15 working days can be deducted from ADL's outstanding balance with the Supplier; and
- 7.2.5 ADL shall be entitled to claim damages from the Supplier for any losses caused to ADL as a result of the Goods and/or Services being damaged.
- 7.3 Where there are shortages in delivery quantity in the Purchase Order ADL shall notify the Supplier and the following provisions shall apply:
- 7.3.1 all sums payable by ADL in relation to the missing Goods shall cease to become payable;
- 7.3.2 all sums paid by ADL in relation to the missing Goods shall be repaid by the Supplier immediately and if not repaid within 15 working days can be deducted from ADL's outstanding balance with the Supplier;
- 7.3.3 ADL shall be entitled to claim damages from the Supplier for any losses caused to ADL as a result of the shortages.
- 7.4 If ADL so requests, the Supplier shall immediately replace damaged Goods or Services which are missing at the Supplier's expense and/or ADL shall be entitled to cancel, without notice, the whole or any unexecuted part of the Purchase Order and the rights referred to in condition 7.2 shall apply.
- 7.5 Where there is an excess of Goods in relation to the Purchase Order ADL may reject the excess Goods by notice in writing to the Supplier and the following provisions shall apply:

- 7.5.1 at the Supplier's earliest opportunity the Supplier shall collect the excess Goods from ADL at the Supplier's expense. If the Supplier has not collected the excess Goods within 30 days of notification by ADL in accordance with condition 7.5, ADL shall have the right to store the excess Goods at the Supplier's expense or to destroy the excess Goods at the Supplier's expense;
  - 7.5.2 during the period between delivery of the Goods and collection by the Supplier, ADL shall not be liable for any loss or damage caused to the excess Goods; and
  - 7.5.3 no sum shall be due to the Supplier for the excess Goods and in the event that sums are paid to the Supplier for the excess Goods, the Supplier shall repay such sums to ADL immediately and if not repaid within 15 working days can be deducted from ADL's outstanding balance with the Supplier.
- 7.6 ADL may accept excess Goods by notifying the Supplier of such acceptance and the price of the excess Goods shall be payable by ADL in accordance with condition 3.
- 7.7 The Supplier shall repair or replace free of charge, Goods damaged or lost in transit or which are incomplete upon receiving notice to that effect from ADL.

## **8. Title and Risk**

- 8.1 The title and risk in the Goods and/or Services shall remain with the Supplier until they are actually delivered at the point specified by ADL in the Purchase Order or any other relevant document, and transferred to ADL's possession, at which time title and risk in the Goods and/or Services shall transfer to ADL.

## **9. Indemnity**

- 9.1 The Supplier shall fully indemnify ADL and keep ADL fully indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by ADL as a result of or in connection with:
- (a) defective workmanship, quality or materials and/or breach of the Contract by the Supplier;
  - (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or Services; and
  - (c) any claim made against ADL in respect of any liability, loss, damage, injury, cost or expense sustained by ADL'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 Goods and/or Services, or is a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

## **10. Intellectual Property Rights**

- 10.1 All patents, copyright, design rights and other intellectual property rights ("IPR") in any materials prepared or supplied by ADL to the Supplier shall remain the property of ADL.

- 10.2 All IPR in materials prepared or developed by the Supplier in connection with the provision of Services shall vest in ADL, unless specifically agreed otherwise in writing between ADL and Supplier.
- 10.3 The Supplier shall disclose to ADL all inventions which the Supplier or its staff may make in manufacturing the Goods or in performing the Services and which are wholly or substantially based on concepts or data developed or supplied by ADL. All IPR to such inventions shall vest in ADL.
- 10.4 The Supplier shall execute all documents and perform such acts as may be reasonably necessary to enable ADL to obtain and/or maintain its IPR, including that referred to in condition 10.3.
- 10.5 In respect of IPR vested in a third party, the Supplier shall obtain from such third party (at no cost to ADL) such permission, waiver or licence as may be necessary for the performance of the Services and/or manufacturing of the Goods and/or for the data to be used, copied or modified by ADL or by any third party authorised by the Supplier.
- 10.6 The Supplier waives, and shall procure from any third party the waiver of, the exercise against ADL of all moral rights in materials that are or become vested in the Supplier and/or any third party.
- 10.7 Any trademarks, trade names, service marks or other symbols whether of the Supplier or ADL, used or affixed to the Goods shall be in accordance with ADL's written instructions and/or agreement.
- 10.8 Without prejudice to ADL's other rights and remedies, the Supplier shall fully indemnify and hold harmless ADL against any and all actions, claims, demands, proceedings, costs, charges and expenses (including without limitation legal fees and costs and consequential loss and damage resulting directly or indirectly at any time from the purchase, exploitation, marketing, supply or other use of the Goods and/or Services) in respect of any alleged or actual infringement of any third party IPR.
- 10.9 If at any time allegation of infringement of any third party IPR is made in respect of any Goods and/or Services or in ADL's reasonable opinion is likely to be made, the Supplier, if ADL shall first have consented (which consent may be given or withheld at ADL's entire discretion), may (at the Supplier's expense) either:
- (a) procure for ADL the right to continue to use the Goods and/or Services without infringing any third party IPR in any or all ways and for any or all purposes for which it dealt with or was dealing or intended to deal with the Goods and/or Services prior to the allegation or its likelihood arising; or
  - (b) replace the Goods and/or Services which do not infringe any third party IPR, so long as such replacement goods shall be entirely compatible with and of no lesser functionality than the allegedly infringing Goods and/or Services and shall comply in all material respects with the Goods and/or Services specifications.

## **11. Software**

- 11.1 Unless otherwise agreed, where the Goods or Services include the supply of Software then:

- 11.2 if the Software is bespoke or has been specially commissioned by and/or developed for ADL, then the Supplier hereby assigns all intellectual property rights (and waives all moral rights) in such Software and related documentation to ADL and the Supplier shall on request without further payment sign or execute further documentation to formalise or perfect the assignment.
- 11.3 pending any necessary formalisation of the assignment and in any other case than under condition 11.2, the Supplier hereby grants to ADL and ADL affiliates a non-exclusive, irrevocable, perpetual, worldwide licence to use the Software for all reasonable purposes.
- 11.4 the Supplier shall supply ADL with all necessary manuals and with one copy in machine-readable object code of the software and each new release of the Software which modified or enhances the Software, and in the case of software under condition 11.2 it shall on ADL's request supply the source code.
- 11.5 without prejudice to condition 4, all hardware and software shall be capable of full use for their intended purpose and of maintenance and amendment by a software engineer external to the Supplier and reasonably qualified in the relevant sector without external costs to ADL and without recourse to any additional codes or materials other than those supplied as part of the Goods or Services.

## **12. Documentation and Information**

- 12.1 The Supplier will supply to ADL (where appropriate) in the English language not later than the date of delivery or installation of the Goods;
- 12.1.1 any operator's manual, instruction manuals, list of recommended spares and other supporting literature in relation to the Goods;
- 12.1.2 sufficient information about the use for which the Goods have been designed and tested; and
- 12.1.3 detailed information about any conditions or procedures required to ensure that when stored or put to use the Goods will be safe and without risk to health. In particular the Supplier shall supply to ADL a health and safety data sheet relating to the Goods.
- 12.2 If the Goods are perishable or have a life expectancy of a fixed duration or if there are any circumstances known to the Supplier which could adversely affect the life span of the Goods, the Supplier shall forthwith advise ADL in writing of all such necessary and appropriate information relating thereto which information shall upon receipt by ADL, but not before, form part of the description of the Goods.

## **13. Guarantee**

- 13.1 The Supplier shall for a minimum of 20 years from the Delivery Date maintain any tooling relating to the Goods in good order, and (at the reasonable cost of ADL) for the same period provide all necessary support including any spare parts for the Goods and such engineering data relating to the Goods as may be required by ADL, unless agreed by ADL in writing that this service is not required.

**14. Insurance**

- 14.1 The Supplier shall maintain adequate insurance with an insurance company of good repute to the full value of the Goods and any other goods, tools, materials, equipment or other property provided by, through or on behalf of ADL for use by the Supplier whilst these are in the Supplier's possession or whilst the risk lies with the Supplier including goods in transit in accordance with condition 6, such that ADL, or any other person having an insurable interest in the goods, shall be entitled to claim directly from the insurer and provide ADL with the insurance policy or other evidence of insurance cover.

**15. Severance**

- 15.1 If any term or provision of these Terms and Conditions is held to be wholly or partly invalid, illegal, void, voidable, unreasonable or unenforceable for any reason by any court, tribunal or administrative body of competent jurisdiction such provision shall be deemed severable and the remaining provisions hereof shall continue in full force and effect.

**16. Confidentiality**

- 16.1 The Supplier shall keep all work and services carried out hereunder for ADL entirely confidential, and not use, publish, or make known, without ADL's written approval, any information developed by the Supplier or furnished by ADL to any persons other than personnel of the parties to these Terms and Conditions. Any public representation regarding ADL shall be made by ADL and any requests for information made to the Supplier by the news media, or others, shall be referred to ADL. Additionally, the Supplier shall not reference ADL nor the work performed for ADL without prior written approval of ADL. Information provided by the Supplier to ADL which the Supplier considers as proprietary or confidential and has indicated/marked as proprietary or confidential will be treated by ADL in the same manner as ADL treats its own proprietary or confidential information. The Supplier further agrees to place under a confidentiality obligation, any subcontractors and/or consultants with whom the Supplier enters into Contracts with for the performance of work under these Terms and Conditions. Such confidentiality obligations shall be on terms no less stringent than the Supplier's confidentiality obligations under this condition 16.1.

**17. Health and Safety**

- 17.1 The Supplier undertakes and warrants that all action required to minimise and eliminate any risk to health and safety resulting from use of the Goods for the purpose for which they are designed (save in the event of an inadequate design provided by ADL), and the provision of the Services, has been carried out and that any information which is relevant, in any way whatsoever, to risks to health and safety will be brought to the attention of ADL in writing upon acceptance of the Purchase Order. ADL has the right to demand and receive proof that the above undertakings have been carried out.

**18. Waiver**

- 18.1 Failure by ADL to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

**19. Cancellation**

- 19.1 Without prejudice to its other rights ADL may cancel a Purchase Order in whole or in part, including any other Purchase Order ADL has with the Supplier, (i) immediately if there is a material breach of the Contract (this shall include any breach of clause 4) (and if the breach is remediable if it is not remedied within 14 days of ADL sending notice of it to the Supplier) or if the Supplier is in financial difficulties and (ii) at any time prior to the completed delivery of the Goods or performance of the Services in accordance with the Contract on 1 month's notice. Terminating the Purchase Order shall not affect those Terms and Conditions which are capable of subsisting.

**20. Assignment**

- 20.1 The Supplier shall not be entitled to assign or otherwise transfer its rights or obligations under the Contract without ADL's prior written consent.
- 20.2 ADL may assign the Contract or any part of it to any person, firm or company.

**21. Notices**

- 21.1 Unless otherwise agreed, notices to ADL shall be addressed to the address as given on each Purchase Order or other official document and to the Supplier at its address as given on invoices, the Purchase Order or other official document.

**22. Governing Law & Jurisdiction**

- 22.1 These Terms and Conditions shall be governed by and construed in accordance with the Law of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

**23. Force Majeure**

- 23.1 No party shall be liable to any other party in a manner whatsoever for any failure or delay in performing obligations under this agreement due to force majeure. Which expression for the purpose of this agreement means any cause beyond reasonable control, but limited to acts of god, governmental actions, war, riots, civil commotion, general strike, fire, flood, epidemic, hurricane and earthquakes, which make fulfillment of delivery date impossible.