

from TJR 31/3/14

Terms and Conditions of Purchase of Goods and Services - United Kingdom

1.0 Contract. These Terms and Conditions of Purchase of Goods and Services shall apply to any Contract for the sale of goods and/or provision of services between Buyer and Supplier insofar as they are not expressly varied by the written agreement of Buyer and Supplier. A Contract with Buyer shall be entered into when Supplier has received an order confirmation from Buyer which may be by electronic data transmission. These Terms and Conditions of Purchase of Goods and Services shall be provided to Supplier with the first order confirmation to Buyer from Supplier. No modification or addition to the Contract shall be effected by any forms of purchase order, acknowledgement, release or the like furnished to Buyer by Supplier unless the same shall be signed by authorised representatives of both Buyer and Supplier.

2.0 Definitions.

"Buyer" means Anthony Best Dynamics Ltd, Holt Road, Bradford on Avon , Wiltshire.

"Supplier" means the other party or parties to the Contract who will sell the Goods or provide the Services.

"Contract" means this Contract formed on Buyer's Purchase Order to Supplier for the sale of Goods or otherwise by agreement incorporating these Terms and Conditions of Sale and any amendments, revisions or addenda thereto agreed from time to time by authorized representatives of Buyer and Supplier.

"Event of Default" means any of the following: Supplier is 1) unable to pay its debts as they fall due, 2) is the subject of any administration, bankruptcy or winding up resolution, notice, application, petition, or appointment, 3) makes a proposal for, or enters into any compromise or arrangement with any of its creditors, 4) is subject to a person entitled to appoint or who appoints a receiver or administrative receiver, 5) is subject to any event, or proceeding, in any jurisdiction having an effect equivalent or similar to any of the events mentioned in paragraphs 1) to 5) above, inclusive, or 6) ceases or threatens to cease to carry its business or a substantial part thereof.

"Goods" means the specified goods identified by and sold under the Contract.

"Manufacturer" means a person other than the Supplier that has manufactured the goods who may be a sub-contractor.

"Services" means all or part of the Services performed by the Supplier in relation to the Contract description of Services to be provided.

"Specifications" means such specifications for the Goods as are set out directly in the Contract in writing or otherwise incorporated by reference with particularity to an identifiable Buyer, Supplier or Manufacturer document and no other materials, brochures or correspondence.

3.0 The Price

3.1 The Price for the Goods or the Services shall be the price as stipulated in the Contract.

3.2 Unless otherwise agreed in the Contract, the Price shall include the costs of packing, freight, carriage, unloading at the Buyer's delivery

address as specified in the Contract, all import taxes or duties and VAT, where applicable, at the rate ruling at time of supply.

4.0 Terms of Payment.

4.1 Unless otherwise agreed in the Contract, Supplier shall not invoice the Company until performance of the Contract has been completed. Supplier's invoices shall contain the Buyer's Purchase Order Number and other details specified in the Contract. Buyer shall not be responsible for late payment where details are not provided and will accept no liability for any costs incurred by Supplier where invoices have not been submitted correctly.

4.2 Supplier may set off against any liability that it has to the Buyer, such amounts as to which Supplier may be indebted to Buyer for any reason whether or not in connection with the Contract.

4.3 Unless otherwise agreed in the Contract, the terms of Payment of all correctly submitted invoices by the Supplier to the Buyer shall be "Nett thirty (30) days."

5.0 Performance and Delivery.

5.1 Supplier shall supply the Goods promptly on the delivery date to Buyer's delivery address specified in the Contract together with all documents required, if any, to vest title in the Goods in Buyer and/or shall perform the Services by such date. Where a delivery or performance date is specified time shall be of the essence of the Contract. Where a delivery or performance date is not specified, delivery or performance may be made within a reasonable time of the date of the formation of the Contract provided that at any time Buyer may give notice to Supplier requiring Supplier to perform the Contract by a specified date save always that the period between the date of the Contract and the date specified in the notice represents a reasonable period within which to expect performance.

5.2 Failure of Supplier to perform the Contract within any time limit that may be applicable under clause 5.1 (unless excused pursuant to the provisions of clause 13.0 regarding Force Majeure, below) shall entitle Buyer to terminate the Contract without compensation to Supplier and Supplier may exercise such right of termination without allowing Supplier further time to perform regardless of any past waiver of such right.

5.3 Goods shall be packed and secured in such manner to ensure that they arrive in good condition.

5.4 Buyer shall not be deemed to have accepted the Goods until it has had reasonable opportunity to examine the same. Buyer may reject the Goods after inspection if the Goods or any part thereof are found to be damaged or defective or otherwise not in conformity with the Contract.

5.5 The mere fact that the Buyer has accepted the Goods shall not prejudice its right to rescind the Contract according to its terms at any later stage.

5.6 Unless otherwise specifically agreed in the Contract, Goods when delivered shall be complete and shall require no assembly by Buyer.

5.7 Buyer shall at all reasonable times be entitled to access Supplier's premises to inspect and/or to collect the Goods.

5.8 When reasonable for Supplier, its employees or agents to enter the Buyer's premises to supply Goods or to perform Services, Supplier, its agents and employees shall comply with all site requirements relating to safety and security and shall observe the provisions of any applicable law or regulation in the United Kingdom when Goods are delivered or Services furnished.

5.9 Prior to any intended visit to Buyer's premises to perform Services, Supplier shall provide evidence of Supplier's insurance cover note or the like showing Public Liability Insurance of not less than One Million Pounds sterling (£1,000,000) for any one incident, Contractor's All-Risk Insurance for not less than the Price and Employer's Liability Insurance.

5.10 Supplier shall be responsible for any loss or damage to Buyer's material, equipment or property whilst in Supplier's possession for the purpose of the Contract.

6.0 Title and Risk of Loss.

6.1 Title in the Goods, or any components to be included in the Goods, shall pass to Buyer as soon as they are appropriated to the Contract by the Supplier. Any Goods that have been paid for and are held by Supplier pending delivery to Buyer shall be clearly marked Whilst in Supplier's possession as Buyer's property.

6.2 Risk in the Goods shall pass to Buyer upon completion of physical delivery at Buyers delivery address.

9.0 Warranty. The Supplier represents and warrants to the Buyer for a period of one (1) year from delivery of Goods or completion of Services:

9.1 That the Goods will in all respects conform to and comply with the Specifications, any express or implied representations or warranties made by Supplier and any terms and conditions implied into the Contract by law and all requirements of any statute, order or other instrument having the force of law, which applies in the United Kingdom when the Goods are delivered and any exclusion or limitation of this provision or of the Supplier's liability for breach thereof is hereby expressly rejected by Buyer;

9.2 That the Goods will be free from defects in design, materials and workmanship and liens and the claims of others;

9.3 That the Goods will be of satisfactory quality and fit for the purpose held out by Supplier or made known to Buyer by Supplier when the Contract is formed or otherwise fit for the purpose for the Goods made known to Supplier by Buyer; and

9.4 That the Goods will comply with all statutory requirements and regulations relating to the sale of Goods.

9.5 With respect to Services, that the Services shall be performed in accordance with the Contract and by appropriately qualified and trained personnel, with all due skill, care and diligence and to such a standard of quality as it is reasonable for the Buyer to expect and in accordance with all requirements of law applicable in the United Kingdom at the time of provision of such Services.

9.6 On Buyer's request Supplier shall promptly repair or replace all Goods which are or become defective during the period of Warranty or in accordance with the Sales of Goods Act, as amended.

10.0 Defective Goods and/or Services.

10.1 If on inspection or manufacture or use, it is found that any of the Goods do not comply with clause 9.0 above, the Buyer may at its sole discretion and within a reasonable period of time:

10.1.1 reject the whole or part of the Goods;

10.1.2 require the Supplier at its cost to replace the defective Goods; or

10.1.3 require the Supplier at its own cost to rectify the defective Goods.

10.2 If the performance of the Services is not carried out with due diligence and expedition or is defective, Buyer may, at its sole discretion and within a reasonable time:

10.2.1 remedy the defect;

10.2.2 require the Supplier at its cost to remedy the defect without delay;

10.2.3 cause the defect to be remedied by a third party; or

10.2.4 reject the Services in whole or in part and in all cases at the cost and risk of the Supplier.

10.3 If Buyer elects to exercise its rights under this clause 10 and the Price for the Goods and/or Services has already been paid, Supplier shall promptly repay to Buyer the amount of such Price, less a reasonable amount for the use of the Goods by Buyer, if any. Buyer may, without prejudice to any other right or remedy available to it, retain any Goods or work of Supplier until the full amount due Buyer has been paid.

11.0 Termination for Breach or Event of Default.

11.1 Without prejudice to the specific vested rights of Buyer or Supplier under any term of the Contract, the Buyer shall be entitled to terminate the Contract or any part thereof by reason of any breach of the Contract by Supplier or any Event of Default by Supplier, irrespective of whether that breach or Event of Default substantially affects the nature of the performance received or to be received by the Buyer or whether Buyer has accepted the Goods or used or had any benefit from the Services.

11.2 In addition to its remedies under clause 10 above relating to defective Goods, Buyer shall be indemnified by Supplier against all loss of whatsoever kind (including any claims by third parties, loss of profits and loss of business or good will) arising by reason of any breach of the Contract or failure of the Goods to comply with clause 9.0 above or otherwise caused by any negligence on the part of the Supplier or its servants, agents or subcontractors in performance of the Contract.

12.0 Cancellation for Convenience of Buyer.

12.1 Buyer may at any time be entitled to terminate the Contract or any part thereof by notice to Supplier provided, however, that the Buyer shall in such circumstances pay to the Supplier a fair and reasonable amount for work done and goods and material supplied and/or work in process under the Contract including liabilities to suppliers, subcontractors and Manufacturers, if any, but shall not be liable for any claims of third

parties, loss of profit, loss of business or good will, or use of trading revenue; and the sum payable shall not in any event exceed the Price.

12.2 Where on notice of cancellation Supplier has finished Goods appropriated to the Contract but not delivered to Buyer which may reasonably be considered goods of the sort customarily in Supplier's inventory for sale to third parties in the ordinary course, Buyer shall have no obligation to pay the Price for such Goods except to the extent that such Goods remain unsold in Supplier's inventory six (6) months after notice of cancellation, Supplier not having during such period acquired similar Goods in its inventory.

13.0 Force Majeure.

13.1 Neither Buyer nor Supplier shall be liable for its failure to perform hereunder, if such failure is due to any contingency beyond the reasonable control of Buyer or Supplier, provided that the party unable to perform exercised due diligence in notifying the other party of any known or anticipated delay and promptly takes steps to remove the obstruction and to recommence performance immediately after cessation of the failure or delay.

13.2 Where the Contract is temporarily suspended by events beyond the Supplier's reasonable control as in clause 13.1 above, Buyer may upon notice to Supplier obtain the Goods from any third party without incurring additional cost and expense and Supplier shall indemnify Buyer in respect of any additional costs reasonably incurred by Supplier.

14.0 Labeling, Warning and Instructions.

14.1 Supplier agrees that the labeling of the Goods when delivered will comply in all respects with any requirements of any statute, order or instrument having the force of law which applies in the United Kingdom when the Goods are delivered.

14.2 When required by Buyer, Supplier shall mark the Goods in accordance with the reasonable instructions of Buyer.

14.3 Hazardous Goods shall have prominent warnings in English declaring the hazard and the name of the material on all packing and shipping documents and Supplier shall provide safety data sheets relating to the Goods to enable the Company to comply in all respects with the Control of Substances Hazardous to Health Regulations 1988 as amended from time to time.

15.0 Intellectual Property.

15.1 Buyer's intellectual property and rights therein, including, but not limited to, patents, patent applications, copyrights (including all of Buyer's drawings, prints, manuals and specifications, whether or not engrossed with any restrictive legends or notices regarding Buyer's property rights therein), trade marks, trade names and service marks (registered or unregistered) and applications thereof, registered design, "trade dress," and technical, and all of its proprietary and confidential information furnished by Buyer to Supplier shall remain at all times the property of Buyer and shall be treated by Supplier as confidential and shall be used by Supplier only in performance of the Contract and shall not be published or disclosed by Supplier to any third party.

15.2 Excepting to the extent Goods are fashioned to Buyer's designs and specifications or made by use of or incorporating Buyer's intellectual property, Supplier represents and warrants that the sale of the Goods by it and the further sale or use of the Goods by the Buyer does not and will not infringe or misappropriate any patent, patent application, copyright, trade mark, trade name, service mark (registered or unregistered) and applications thereof, registered design and "trade dress," or the proprietary and confidential information of any third party whether granted or in existence at the date of the Contract or not. In the event of any breach of this warranty by Supplier in clause 15.2, Buyer may at its option and irrespective of whether the Goods have been accepted:

15.2.1 reject the Goods or any part thereof and/or cancel the Contract without making any payment whatsoever to Supplier;

15.2.1 require the Supplier at its cost to modify the Goods as may be necessary to end the infringement; or

15.2.3 require the Supplier at its own cost to replace the Goods with non-infringing comparable Goods and to indemnify Buyer against all loss of whatsoever nature suffered by Buyer by reason of such infringement including all claims by persons to whom such rights belong, any loss of profit or business or good will.

16.0 Non-Waiver. Supplier's or Buyer's waiver of any breach or failure to enforce any of the terms and conditions of the Contract shall not in any way affect, limit or waive Supplier's or Buyer's right thereafter to enforce strict compliance with every term and condition hereof.

17.0 Amendments. No amendment or revision of the Contract shall be effective unless in writing and signed by authorised representatives of Supplier and Buyer.

18.0 Assignment.

18.1 The Contract is personal to the Supplier and, absent the prior written consent of the Buyer which consent the Buyer may withhold in its sole discretion, the Supplier shall not use the services of any agent, subcontractor, or Manufacturer and shall not assign, transfer or charge any of its rights or obligations under the Contract.

18.2 If, with the prior written consent of the Buyer, the Supplier engages agents, subcontractors or Manufacturers, the Supplier shall nevertheless be at all times responsible for the acts and omissions of those parties.

19.0 No Third Parties. No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract, but this does not affect any right or remedy of a third party that exists or is available apart from under such Act.

20.0 Entire Agreement. The Contract and any documents referred to or incorporated in it constitute the entire agreement between Buyer and Supplier and supersede any previous arrangement, understanding or agreement between

them relating to the subject matter of the Contract. Each of Buyer and Supplier acknowledge that in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Nothing in this Clause 20.0, however, shall limit or exclude any liability for fraud.

21.0 Notices. All notices hereunder shall be in writing and delivered to the party receiving notice at the address set out in the Contract (or to such other address as may subsequently by such notice be given) and shall be effective upon receipt by such party.

22.0 Severance. Any provision of the Contract or these Terms and Conditions of Purchase of Goods and Services that is held to be unenforceable, illegal or otherwise invalid shall not affect any other provision.

23.0 Construction; Law; Dispute Resolution.

23.1 Where specifically agreed terms in the Contract shall be inconsistent with these Terms and Conditions of Purchase of Goods, such specifically agreed terms shall govern the Contract.

23.2 INCO terms shall have no reference to the Contract.

23.3 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or any term hereof and the transactions contemplated by it will be governed by English law. The English courts shall have exclusive jurisdiction to determine any dispute that may arise in connection with the Contract