

STANDARD TERMS AND CONDITION FOR PURCHASE

1. Definitions

"In these Conditions the following expressions have the following meanings:

- "the Purchaser" means the Evogoa company named overleaf which places the Purchase Order and means the terms and conditions for the purchase of Products and/or Services comprising:
- "Contract" means the part of the purchase order between the Seller and the Purchaser for the supply of the Products and/or Services comprising Conditions, the Purchase Order and any documents incorporated by express reference on the face of the Purchase Order and any documents attached by the Purchaser to these Conditions.
- "Issued Material" means any property issued to the Seller by or on behalf of the Purchaser to the used in fulfillment of the Seller's obligations.
- "Products" means the products, goods or items, which are the subject of the Contract which may (without limitation) comprise or include Software.
- "Purchase Order" means the purchase order (in the Purchaser's standard form) together with the conditions.
- "Seller" means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made by the Purchaser and references to Seller shall include any permitted sub-contractor. Seller shall procure that any permitted sub-contractor supplies with all relevant provisions of the Contract.
- "Services" means work and/or services which are subject of the Contract and which are described in the Purchase Order which may (without limitation) comprise, include or relate to Software.
- "Software" means any software which is comprised or included in or related to the Products and/or Services.

1.1 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.2 In these Conditions references to the masculine include the feminine and the neuter and the singular include the plural and vice versa as the context admits or requires.

1.3 In these Conditions the headings will not affect the construction of these Conditions.

2. Application

2.1 Subject to any variation under Condition 14, these Conditions are the only Conditions upon which the Purchaser is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms and conditions.

2.2 Each Purchase Order for Products and/or Services by the Purchaser from the Seller shall be deemed to be an offer by the Purchaser to buy the Products and/or Services subject to these Conditions and no Purchase Order shall be accepted by the Seller either expressly by giving notice of acceptance or impliedly by fulfilling the Purchase Order in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered or contained within the Seller's quotation, acknowledgement or acceptance of the Purchase Order, specification or any similar document shall from part of the Contract and the Seller waives any right which it might otherwise have to rely on such terms and conditions.

2.4 These Conditions shall apply to all the Purchaser's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Purchaser.

3. Quality and Description

3.1 All Products and Services supplied shall:

- 3.1.1 conform to all respects with the Purchase Order and specification and/or patents supplied or advised by the Purchaser to the Seller, be without fault, be of the best available design and be of the best quality materials and workmanship; 3.1.2 conform with the quantity, quality, description and any other particulars contained in the Contract;
- 3.1.3 conform with any sample, drawing, description and specification furnished;
- 3.1.4 the Purchaser's rights under these Conditions are in addition to the statutory conditions implied in favour of the Purchaser by the Sale of Goods Act 1979 (sa) as amended and fit for any intended use expressly or impliedly made known to the Seller by the Purchaser;
- 3.1.5 comply with all performance specifications in the Contract;
- 3.1.6 comply with applicable British and European best industry standard;
- 3.1.7 comply with all applicable regulations or other local requirements concerning the manufacture, packaging, packing and delivery of the Products and/or the performance of the Services.

3.2 All Services supplied shall be in full accordance with the terms of the Contract and shall be executed in a proper and skilful manner by appropriately qualified and experienced personnel and conform to the relevant best industry standards.

3.3 Notwithstanding any inspection or testing by the Purchaser, the Seller shall remain fully responsible for any Products and/or Services and any inspection or testing by the Purchaser shall not diminish or otherwise affect the Seller's liability for any Products and/or Services.

3.4 If any of the Products and/or Services fail to comply with the provisions set out in the Contract, the Purchaser shall be entitled to reject in whole or in part at any time at the Purchaser's sole discretion any Products and/or Services supplied under this Contract and in addition claim such damages as many have been sustained in consequence of the Seller's breach of or breaches of Contract.

4. Statutory Obligations

4.1 The Seller shall comply with all relevant statutes, rules and regulations, bye-laws and EU directives affecting its obligations and the performance of the Contract, including but not limited to, the appropriate CE Marking and Declaration of Conformity for each classification or type of product. Restriction of Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2005 and Packaging Waste Regulations 2005.

4.2 While on Purchaser's premises, the Seller shall abide by any written or verbal instructions in relation to safety and security issued by the Purchaser.

5. Inspection and Rejection

5.1 The Seller warrants that it has inspected and tested the Products for compliance with the Contract prior to delivery and shall, if requested supply the Purchaser with certificates of origin and/or testing. Such certificates must state the relevant Purchase Order numbers together with any item numbers.

5.2 If the Products and/or Services do not comply with the Contract the Purchaser shall within a reasonable time give notice of rejection to the Seller and without prejudice to any of its other rights the Purchaser may at its discretion require the Seller to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Product and repairing or replacing any rejected Services. The rejected Products shall be returned to the Seller at its own risk and expense.

5.3 Where the Seller repairs or replaces Products or Services, the Contract shall apply to the repaired or replaced Products or Services.

5.4 The Purchaser reserves the right at reasonable times to inspect or test the Products or the Services at any stage before delivery and the Seller shall give rights of access to premises and such facilities as the Purchaser may reasonably require for such inspection.

6.1 Delivery and Services shall be delivered on the dates and at the rates and at the places specified in the Contract. If no place or delivery date is specified Products and/or Services shall be delivered to the registered business address of the Purchaser and delivery shall take place within fourteen (14) days of the date of the Purchase Order. Delivery may be direct to the Purchaser's end user if so specified on the Purchase Order. The Purchaser may delay or alter such dates and places on giving the Seller reasonable notice in writing of such alterations.

6.2 Time of delivery is of the essence of the Contract.

6.3 The Products are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single Contract and not separable and failure by the Seller to deliver or perform any one instalment shall entitle the Purchaser at its option to exercise any of its rights and remedies in respect of the whole Contract.

6.4 The Seller shall ensure that all Products are marked in accordance with the provisions of the Contract and instructions of the Purchaser. Products shall be packed so as to reach the places of delivery undamaged and in good condition. The Seller shall provide in respect of each consignment of Products a packaging note detailing the Purchaser's stock number, description, code number (if any) and the quantity of Products consigned.

6.5 The Seller shall be liable to the Purchaser in accordance with the Contract, then the Purchaser may cancel the Contract or any part of it and reserves all right in damages and otherwise arising including but not limited to right to replace or substitute Products or Services elsewhere and to hold the Seller liable for any loss, expense or additional cost incurred.

6.6 The Products shall remain at the risk of the Seller until delivery to the Purchaser is complete and title in the Products has passed to the Purchaser.

6.7 Any Seller's property brought onto Purchaser's premises will be at and will remain at the risk of the Seller.

6.8 Any Issued Material will be at the Seller's whilst in his possession.

6.9 If the Seller requires the Purchaser to return any packaging material to the Seller, that fact must be stated on any delivery note to the Purchaser and any such packaging material will only be returned to the Seller at the cost of the seller.

6.10 If the Products are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be liable to pay for the excess and any excess shall be and shall remain the Seller's risk and shall be returnable at the Seller's expense.

6.11 The Purchaser shall have the right to reject the Products for 14 days after any latent defect in the Products has become apparent to the Purchaser.

7. Marked Products

7.1 Products marked with any mark used or owned by the Purchaser or its customers shall not be disposed of by any third party without the prior written consent of the Purchaser.

8. Title

8.1 The Seller warrants that it has good title to the Products it is selling to the Purchaser. Title to Products shall pass to the Purchaser on delivery without prejudice to any right of rejection to which the Purchaser may be entitled under Clauses 5 and 6. The Seller acknowledges that the Products or Services may be sold on to an end user by the Purchaser will be able to supply the end user with good title.

8.2 Clause 8.1 is without prejudice to Clause 11 in respect of any Software.

9. Prices

9.1 All prices shall be as stated in the Contract. The prices are fixed and include delivery and all other charges which shall not be adjusted save as provided for in these Conditions.

9.2 Prices do not include VAT which shall be added by the Seller at the rate and in the manner from time to time prescribed by law.

9.3 No variation in the price nor extra charges shall be accepted by the Purchaser.

10. Payment

10.1 The Seller shall send to the Purchaser a detailed invoice stating the Purchase Order and Products or Services reference number. Terms of payment are 60 days from the date of invoice or from the date of delivery of the Products or Services, whichever is the later. Time for payment shall not be of the essence for the Contract.

10.2 Should the Euro be introduced as legal tender in addition to or in lieu of the Pound Sterling in the United Kingdom, then the Purchaser may require invoicing (for each item to be invoiced) either in Pound Sterling or in Euros, and in each case the official conversion rate shall be applied. The general validity of the Contract shall not be affected by the introduction of the Euro as legal tender.

10.3 Without prejudice to any other right or remedy the Purchaser reserves the right to set off any amount owing at any time from the Seller to the Purchaser against any amount payable by the Purchaser to the Seller under the Contract.

10.4 If the Purchaser fails to pay the Seller any sum due pursuant to the Contract the Purchaser will be liable to pay interest to the Seller on such sum from the due date for the payment at the annual rate of 1% above base lending rate from time to time of National Westminster plc occurring on a daily basis until payment is made whether before or after any judgement.

11. Software

11.1 If Products and/or Services include Software the Seller acknowledges that the Purchaser may be selling the same on to end users and warrants that it has good title to licence the Software.

11.2 The Seller permits the Purchaser to market and resell the Software and any accompanying hardware either alone or as part of a package.

11.3 The Seller undertakes to supply the Purchaser will all updates of the Software and to allow it to copy them to those of its customers who hold an original copy version.

11.4 The Seller shall provide the Purchaser with such technical advice, assistance, data and documentation, including source code where necessary, to enable the Purchaser to maintain the Software if it so wishes.

12. Confidentiality

12.1 The Contract and any other information supplied by the Purchaser is confidential. Issued Material is also confidential. Use of Information and issued Material is permitted solely for the purpose of carrying out the Contract. The Seller shall not without the prior written consent of the Purchaser copy or disclose them to anyone other than those employees or agents of the Seller who need to know.

12.2 The Seller shall not without the Purchaser's written consent advertise or otherwise make known that the Seller supplies or has supplied Products or Services to the Purchaser.

13. Equipment and other Facilities

13.1 Issued Material shall be retained the property of the Purchaser even if charged for. The Seller hereby undertakes to maintain Issued Material in good order and condition, to keep it separate from the Seller's property and to identify it as the property of the Purchaser. The Seller shall not use it except in respect of the Contract with the Purchaser. Risk in Issued Material shall be with the Seller who shall effect comprehensive insurance against all risks of loss or damage of an amount equal to its replacement cost and with the Purchaser's interest noted on the policy and with the Purchaser as loss payee.

13.2 Upon written request or termination or cancellation of the Contract, the Seller shall dispose of or return the Issued Material (as requested by the Purchaser) to the Purchaser forthwith.

14. Variation of Services/Goods

14.1 If at any time during the course of the Contract, the Purchaser wishes to vary the Services and/or Products ordered, it shall notify the Seller and the Seller shall within seven (7) days provide a written statement of the amount by which such variation would increase:

a) the dates, timescales or milestones and

b) the charge(s) which have been agreed in the Contract, and such other information as the Purchaser may reasonably require.

14.2 The implementation of any variation to the Services and/or Products shall be subject to the agreement of the parties. The Seller shall not undertake any such variations unless specifically instructed to do so by the Purchaser.

14.3 All variations must be confirmed in writing by an authorised representative of the Purchaser.

15. Warranty

15.1 Without prejudice to the Purchaser's rights under the Contract or at law the Seller's warrants the Products and Services will be free from defects (other than those arising from a design furnished by the Purchaser) for a period of twelve (12) months (or such longer period as may be otherwise stated in the Contract) from the date of delivery of any Products or the completion of any of the Services or from the date of delivery of any defective Products repaired or replaced under the provision of Clause 5.

15.2 Breach of the warranty in Clause 15.1 shall, without prejudice to its other rights, allow the Purchaser to terminate this Contract and claim damages, costs and expenses from the Seller.

16. Indemnity

16.1 The Seller shall fully indemnify the Purchaser against any claims, liabilities, actions, damages, costs or expenses:

16.1.1 in respect of any alleged or actual infringement by any of the Products or Services of any intellectual property right including but not limited to patents, copyright, trademarks, service marks, registered design, design rights or other third party rights and the Seller shall at its own cost defend or settle all such claims or actions and proceedings brought or threatened to be brought against the Purchaser;

16.1.2 in respect of the Purchaser's losses for which the Seller may be liable as a result of the Seller's failure to perform its obligations under the Contract;

16.1.3 resulting from death, injury, loss or damage to persons or property caused or contributed to by negligence on the part of the Seller, its employees, sub-suppliers (if permitted) or agents;

16.2 The Seller accepts liability for all other loss or damage incurred by the Purchaser and which is attributable to negligence on the part of the Seller, its employees, sub-suppliers (if permitted) or agents or otherwise results from a breach of the contract.

16.3 If Software is held to be infringing third party intellectual property rights then the Seller undertakes at its own expense to replace or amend the Software expeditiously so that it is no longer infringing.

17. Force Majeure

17.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events beyond its reasonable control including but not limited to acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, explosion or any other event of a like nature.

17.2 If the Seller or the Purchaser is prevented from performing its obligations under this Agreement by a Force Majeure event which continues for more than thirty (30) days, the Purchaser may at its option terminate any affected Contract, defer the date of delivery or payment, reduce the volume of Products and Services ordered without liability to the Seller forthwith by giving written notice.

18. Licences

18.1 If the Products or Services supplied under the Contract require the Purchaser to have any permit or licence from any governmental or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time. The Seller warrants that it has all necessary permits and licences to allow it to sell the Products and Services to the Purchaser.

19. Termination

19.1 The Purchaser may end this Contract with immediate effect by notice in writing to the Seller in the following circumstances:

19.1.1 if the Seller is in breach of it and, in the case of breach capable of remedy, fails to remedy the breach within fourteen (14) days of being asked to do so in writing. If the breach cannot be remedied, the Purchaser can end the Contract immediately;

19.1.2 if the Seller ceases or threatens to cease business, or commits an act of bankruptcy, or it or a third party takes action for it to go into liquidation unless this is to reconstruct or merge the company, or if an administrator, administrative receiver, receiver or manager is appointed of any part of its business;

19.1.3 if in the reasonable opinion of the Purchaser there occurs a material change in the financial position of the Seller which is likely to affect its ability to perform its obligations under the Contract, or

19.1.4 if there is a change in control of the Seller which, in the reasonable opinion of the Purchaser adversely affects the position, rights or interests of the Purchaser.

19.2 For the purposes of Clause 19.1.4 "control" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares or otherwise howsoever.

19.3 Termination of this Contract shall not discharge either party from any existing obligation accrued due on or prior to the date of termination.

19.4 The Purchaser may end this Contract at any time by notice in writing. The Purchaser will pay for and accept delivery of the finished Products manufactured by the Seller at the date of cancellation and shall pay the Seller a fair and reasonable sum in respect of all work in progress at the date of cancellation subject to such finished Products and work in progress being transferred to the Purchaser. This shall be the Seller's sole and exclusive remedy in the event of cancellation of the Contract pursuant to this Clause.

19.5 For the avoidance of doubt, any termination or cancellation of this Contract shall not affect the continuance in force of Software licences granted to the Purchaser or its customers.

20. Code of Conduct for Evogoa Suppliers

20.1 The Seller shall comply with the laws of all applicable legal system(s) relevant to the subject matter of the Contract. In particular, the Seller will not engage, actively or passively, nor directly or indirectly i) any form of bribery, in any violation of basic human rights of employees or any child labour. Moreover, the Seller will take responsibility for the health and safety of its employees, the Seller will act in accordance with the applicable environmental laws and will use best efforts to promote Evogoa Code of Conduct for its suppliers.

20.2 In addition to the other rights and remedies the Purchaser may have, the Purchaser may terminate the Contract and/or cancel the Order issued in the event of breach of this clause by the Seller. However, provided that Seller's breach of contract is capable of remedy Purchaser's right to terminate is subject to the provision that such breach has not been remedied by the Seller within a reasonable grace period notified by the Purchaser to the Seller.

21. Export Control and Foreign Trade Data Regulations

21.1 The Seller shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Seller shall advise the Purchaser in writing within two weeks of receipt of any Purchase Order - and in case of any changes without undue delay - any information and data required by the Purchaser to comply with all Foreign Trade Regulations in case of export and import as well as re-export including without limitation:

- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and

- the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and

- the country of origin (preferential or non-preferential origin); and upon request of Purchaser - Seller's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

21.2 Seller shall be liable for any expenses and/or damage incurred by Purchaser due to any breach of this Clause.

22. Reservation Clause

22.1 The Purchaser's obligations under the Contract are subject to the proviso that the fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements of any embargos or other sanctions.

23. Miscellaneous

23.1 All intellectual Property in the work carried out under the Contract is hereby assigned to and shall vest in the Purchaser absolutely. This includes any copyright or design rights which will vest in and become the Property of the Purchaser as and when such rights come into existence.

23.2 Without prior written consent from the Purchaser, the Seller must not sub-contract or assign the whole or any part of the Contract to a third party. The Seller may not assign the Contract or any part of it to any person, firm or company. The Purchaser may perform any of its obligations or exercise any of its rights by itself or through any member of its group.

23.3 If the Purchaser delays, forgets or chooses not to enforce its rights under the Contract it shall not affect its rights to do so at a later date.

23.4 The Contract is the entire agreement between the parties and may not be changed unless agreed in writing by both parties.

23.5 All notices must be in writing and sent to the address or fax number set out in the Contract. They may be delivered by hand, or by first class post or by facsimile and shall be deemed to have been served:

- if by hand, at time of delivery;

- if by first class post, two working days after posting;

- if by facsimile, on the date printed on the facsimile advice note produced by the sender's machine.

23.6 The Parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

23.7 The Contract shall be governed and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.