

PURCHASE TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions

Agreement: the agreement between the Supplier and the Client for the sale and purchase of the Equipment which is made up of the Contract Details, these Purchase Terms and Conditions (the **Conditions**) and the annexes or any other documents referred to in the Contract Details.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: the date the Agreement commences, as set out in the Contract Details.

Confidential Information: all information of a confidential nature (in whatever form) which is received or acquired (whether directly or indirectly) by a party including:

(a) any know-how, trade secrets, plans, developments, financial, commercial, technical, tactical, strategic, marketing, operations, customer, product, or personnel information of any kind;

(b) all information agreed to be, or marked as, confidential; and

(c) any information a party knows, or could reasonably be expected to know, is confidential.

Contract Details: are the contract details contained in the Order.

Delivery Date: the estimated date for delivery provided by the Supplier in accordance with clause 5.

Delivery Location/Site: the address for delivery of the Equipment, as set out in the Contract Details.

Demobilisation Costs: all reasonable costs to be incurred by the Supplier in respect of the (a) removal and transportation of the Equipment; (b) re-instatement and decommissioning of the Site to restore the site condition before the installation of the Equipment on the Site; (c) repair and rebranding of the Equipment; and (d) any other demobilisation costs.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.

Equipment: the equipment or any part of them, as set out in the Contract Details.

Installation Costs: as set out in the Contract Details.

Installation Works: works to be carried out by either the Supplier on behalf of the Client or the Client as detailed in the Installation Works Specification.

Installation Works Specification: see Contract Details

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the purchase order form entered into by the Client and Supplier in relation the Equipment.

Price: the price for the Equipment, as set out in the Contract Details.

Sales Specification: the specification for the Equipment, including any related plans and drawings that are agreed in writing by the Client and the Supplier, as set out in the Contract Details.

VAT: value added tax chargeable in the UK.

Warranties: shall comprise the following manufacturer equipment warranties referred to in the Sales Specification.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any phrase introduced by the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to writing or written excludes fax and email.

2. Commencement and Term

This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms.

3. Application of Conditions

- 3.1 These Conditions apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 3.2 The Client waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Client that is inconsistent with these Conditions. If the Client issues any terms and conditions with respect to the Agreement, such terms and conditions shall not apply.

4. The Equipment

- 4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Agreement or have any contractual force.
- 4.2 The Supplier reserves the right to make any changes in the specification of the Equipment where the Equipment are to be supplied to the Supplier's specification, which does not materially affect the quality or performance, without notice.

5. Delivery

- 5.1 The Supplier shall endeavour to deliver Equipment to the Delivery Location (or to such other location as the parties may agree at any time after the Supplier notifies the Client that the Equipment are ready) on the relevant Delivery Date save that the Client shall be responsible for all costs, approvals and consents (including any customs, duties, levies or taxes) associated with or in connection with delivery of the Equipment outside England.
- 5.2 Delivery is completed on the completion of unloading of the Equipment at the Delivery Location.

6. Quality

- 6.1 The Supplier warrants that, for a period of stated in the Sales Specification (warranty period), the Equipment shall:
- (a) conform in all material respects with the Sales Specification;
 - (b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.2 If:

- (a) the Client gives notice in writing to the Supplier during the warranty period, promptly
- (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
- (c) the Client (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Client's cost,

the Supplier shall, at its option, repair or replace any part of the Equipment that are found to be defective (provided always that, the Supplier shall not be required to remove the whole of the Equipment from any Site, or refund the price of such defective Equipment in full).

7. Title and Risk

7.1 Risk in Equipment shall pass to the Client on completion of unloading the Equipment at the Delivery Location.

7.2 Until title to Equipment shall only pass to the Client once the Supplier receives payment in full (in cash or cleared funds) for them.

7.3 Until title to the Equipment has passed to the Client, the Client shall:

- (a) store the Equipment separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Equipment; and
 - (ii) the ongoing financial position of the Client.

7.4 The Supplier may recover Equipment in which title has not passed to the Client. The Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles), in order to satisfy itself that the Client is complying with the obligations in clause 7.3, and to recover any Equipment in which title has not passed to the Client.

7.5 The Supplier may at any time after delivery elect to transfer title in the Equipment to the Client, in which case the Client shall immediately pay the Price to the Seller.

- 7.6 The Supplier retains all rights, title, and interest in and to any and all data, information, or other materials generated, collected, or otherwise derived from the use of the Equipment (Data). The Client acknowledges and agrees that the Supplier shall have the exclusive right to access, collect, store, and retain such Data, and the Client waives any claim or right to ownership, use, or control over such Data. The Supplier may use, analyse, and modify the Data for any purpose, including but not limited to improving, optimizing, or enhancing the Equipment, and may share or disclose such Data to third parties as part of its regular business operations, subject to any applicable data protection laws and regulations.

8. Price and Payment

- 8.1 The Client shall pay for Equipment in accordance with this clause 8.
- 8.2 Unless expressly stated in the Contract Details, the Price excludes:
- (a) delivery costs (including packaging, insurance and transport) of the Equipment; and
 - (b) amounts in respect of VAT, which the Client shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.
- 8.3 The Supplier may invoice the Client for the price of Equipment plus VAT at the prevailing rate (if applicable).
- 8.4 The Client shall pay relevant invoice(s) in full in cleared funds as set out in the Contract Details. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.5 If the Client fails to make any payment due to the Supplier under the Agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 10:
- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) the Supplier may suspend all further deliveries of Equipment until payment has been made in full.
- 8.6 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Limitation of Liability

- 9.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess liability.
- 9.2 Nothing in this Agreement shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.3 Subject to clause 9.2:

(a) the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and

(b) the Supplier's total liability to the Client for all other losses arising under or in connection with the Agreement, whether in Agreement, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the Price as set out in the Agreement and paid by the Client to the Supplier.

10. Termination

10.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

10.2 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

10.3 On termination of the Agreement:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Equipment and services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Supplier materials, deliverables or the Equipment which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.

- 10.4 Without affecting any other right or remedy available to it, the Supplier may suspend the delivery of the Equipment or the supply of services under the Agreement or any other Agreement between the Client and the Supplier if the Client fails to pay any amount due under the Agreement on the due date for payment, the Client becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.
- 10.5 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
- 10.6 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. General

- 11.1 **Force Majeure.** Neither party shall be in breach of this Agreement nor liable for delay in Performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

11.2 Assignment and Other Dealings.

(a) The Client shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Supplier.

(b) The Supplier may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Agreement.

11.3 Confidentiality.

(a) Each party undertakes that it shall not at any time and for a period of five years after termination or expiry of the Agreement, disclose to any person any Confidential Information except as permitted by clause 11.3(b).

(b) Each party may disclose the other party's Confidential Information:

(i) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

11.4 Entire Agreement.

(a) This Agreement constitutes the entire agreement between the parties.

(b) Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

11.5 Client's Obligations.

a)The Client and Supplier will negotiate in good faith and agree a scope of works (including but not limited to the necessary civils, connections and enabling works) that the Supplier reasonably requires the Client to carry out and complete at least two weeks before the relevant Delivery Date of the Equipment at the Delivery Location to receive the Equipment. The agreed scope of works will form part of this Agreement.

b)The Client shall on or before the date of delivery of the Equipment enter into a maintenance Agreement with the Supplier in relation to the provision of maintenance services in respect of the Equipment.

11.6 Variation. No variation of this Agreement (including the Order and the Contract Details) shall be effective unless it is in writing and as variation has been properly signed by both the parties (or their authorised representatives).

11.7 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.8 Severance. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

11.9 Notices.

(a) Any notice given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered by hand, or sent by pre-paid first class post or other next working day delivery service, or email.

(b) A notice shall be deemed to have been received: if delivered by hand, when left at the address referred in clause 11.9(a); or if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.10 Intellectual Property

(a) The Client shall not use or exploit the Supplier's Intellectual Property Rights, and in no circumstance shall the Client reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer any of the Supplier's intellectual property rights or any software embedded in, or forming part of (directly or indirectly) the Supplier's Equipment and/or ancillary services related to delivery of the Equipment, or create derivative works based on the whole of or any part of the software or incorporate the software into any other software program not provided by the Supplier, and the Client undertakes to only use any such software in the operation of the Equipment and/or ancillary services related to delivery of the Equipment. The Client shall indemnify the Supplier and keep the Supplier indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any claim alleging that the Supplier has infringed the Intellectual Property Rights of a third party in supplying the Equipment and/or ancillary services related to delivery of the Equipment in accordance with the Client's instructions.

(b) Any and all Intellectual Property Rights in any services provided by the Supplier, the Equipment, any software (including but not limited to 3tiG software) provided, any tooling and any drawings or other documentation supplied or produced by the Supplier shall vest in and remain vested in the Supplier, the Client agrees to execute any documents the Supplier deems necessary to give effect to this clause. All drawings, plans, specifications and method statements and related documents are to be returned to the Supplier immediately on written request. The Client is not permitted to use (except for the purposes set out in the Agreement) or make copies of such documents without having first obtained the consent of the Supplier in writing. All technical information, specifications and drawings and any confidential information of any kind coming into the possession of the Client in connection with any of Supplier's goods remain the property of the Supplier and shall not be used by the Client other than for the performance of any Agreement between Supplier and the Client. All documents shall be returnable on request.

(c) Any software (including any Intellectual Property Rights in the software) forming or provided as part of the Equipment shall belong to the Supplier. The Client shall have a revocable licence to use the software that belongs to the Supplier in the operation of the Equipment and/or ancillary services related to delivery of the Equipment. The Client shall not have any rights to any third party software incorporated within the Equipment.

- 11.11 Third Party Rights.** No one other than a party to this Agreement and their permitted assignees shall have any right to enforce any of its terms.
- 11.12 Governing Law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.
- 11.13 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.