

# Terms and Conditions Of Supply of Goods and Services

## 1. DEFINITIONS AND INTERPRETATION

- a. In these Terms and Conditions, the following words and phrases shall have the following meanings:
  - i. "Company" means Arcatech Limited, 210-212 Lisburn Enterprise Centre, Lisburn, BT28 2BP
  - ii. "Authority" means the Managing Director of the Company and where the context permits, reference to the "Authority" in these Terms and Conditions shall include reference to an employee of the Authority who the supplier has received written confirmation from the Managing Director that such delegated authority is indeed bestowed.
  - iii. "Condition" means any one or more of these Terms and Conditions.
  - iv. "Goods" means the goods described in the Purchase Order.
  - v. "Order Number" means the unique number that appears on the Purchase Order.
  - vi. "Parties" means the Authority and the Supplier.
  - vii. "Price" means the price for the Goods given in the Purchase Order.
  - viii. "Purchase Order" means an order for the purchase of goods served by the Authority on the Supplier which includes: - The Order Number - a description of the Goods; - the date and, if appropriate, time, for delivery of the Goods; - details of the delivery address; - details of the Authority's address for invoices; - the Supplier's address for notices; and - the Price; and - any terms applying to the purchase of the goods which are additional to these Terms and Conditions.
  - ix. "Supplier" means the person, firm or company whose name appears as the addressee in the Purchase Order.
  - x. "Terms and Conditions" means these terms and conditions for the supply of goods.
- b. The headings in these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.
- c. Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders. References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.

## 2. GENERAL

- a. These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Authority and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (the "Contract").
- b. In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.

- c. The Contract constitutes the entire agreement between the Parties relating to the supply of the Goods and replaces all previous negotiations, agreements, understandings and representations, whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

### 3. THE GOODS

- a. The Supplier shall supply the Goods in accordance with the terms set out in the Purchase Order.
- b. The Goods shall:
  - i. be to the reasonable satisfaction of the Authority;
  - ii. be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Supplier by the Authority;
  - iii. be of the same quality and description as any sample provided
  - iv. comply with any requirements or specifications given on the Purchase Order.

### 4. DELIVERY

- a. The Supplier shall deliver the Goods to the address for delivery given in the Purchase Order. Where the Supplier requires access to the Authority's premises in order to deliver the Goods:
  - i. the Supplier shall agree delivery times with the Authority in advance (unless the Authority agrees otherwise);
  - ii. the Supplier shall comply with any rules or security requirements applied by the Authority in relation to access to its premises.
  - iii. Except where otherwise agreed by the Authority, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Authority shall reasonably direct.
- b. The Supplier shall deliver the Goods on or (where the Authority agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Authority to give the Supplier notice terminating the Contract with immediate effect.

### 5. PROPERTY AND RISK

- a. Without prejudice to the Authority's other rights and remedies under this Contract, property and risk in the Goods shall pass to the Authority on acceptance of delivery.

### 6. DAMAGE TO GOODS IN TRANSIT

- a. Any consignment of Goods dispatched by the Supplier for delivery to the Authority shall be accompanied by a delivery note prepared by the Supplier marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number of packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Supplier.
- b. Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Authority after dispatch by the Supplier) the Supplier shall either repair or replace the Goods in question (at the choice of the Authority) provided always that:

- i. in the case of damage in transit the Authority has informed the Supplier of the damage within 30 days of receiving the Goods; and
- ii. in the case of non-delivery and where the Supplier has notified the Authority of the intended date of delivery, the Authority has informed the Supplier within 10 days of the notified delivery date that the Goods have not been received.

#### 7. INSPECTION, REJECTION AND GUARANTEE

- a. The Supplier shall permit the Authority to inspect the Goods and shall provide all reasonable assistance to the Authority in undertaking an inspection.
- b. The Authority shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry an inspection or if it approves the Goods following an inspection.
- c. The Authority may, by written notice to the Supplier, reject any of the Goods which fail to meet the requirements of this Contract, provided always that the Authority gives notice of such rejection within a reasonable time of receiving the Goods.
- d. If the Authority rejects any of the Goods pursuant to this clause, it shall be entitled to:
  - i. have the Goods concerned either repaired by the Supplier or (at the choice of the Authority) replaced by the Supplier with Goods which comply with this Contract; or
  - ii. obtain a refund of any payment it has made to the Supplier.
- e. Subject to any alternative guarantee arrangements made between the Authority and the Supplier, the guarantee period applicable to the Goods shall be 12 months from the Authority putting the Goods into service or 18 months from delivery (whichever is the shorter).
- f. If, within the guarantee period or within 30 days thereafter, the Authority gives the Supplier written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Supplier shall remedy such defect as quickly as possible (whether by repair or replacement, as the Authority shall choose) without cost to the Authority.
- g. Any Goods rejected or returned to the Supplier shall be returned at the Supplier's expense.

#### 8. LABELLING AND PACKAGING

- a. The Goods shall be appropriately packaged and clearly labelled. The labelling and packaging shall comply with any reasonable requirements of the Authority of which the Supplier is aware, and with any statutory requirements. In particular, if the packages contains any material which is hazardous, noxious or dangerous this shall be clearly indicated.
- b. All packaging shall be considered non-returnable and shall be destroyed unless the Supplier indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Authority shall only accept liability for packaging that does not arrive at the Supplier's premises following dispatch by the Authority if the Supplier informs the Authority of its non-arrival within 10 days of receiving notification from the Authority that the packaging has been despatched.

## 9. INSTALLATION

- a. Where the Purchase Order requires the Supplier to install the Goods at the Authority's premises:
  - i. the Supplier shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Authority;
  - ii. the Supplier shall carry out the installation work diligently and with reasonable skill and care;
  - iii. the Supplier shall comply with the Authority's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Authority; and
  - iv. the Supplier shall keep the Authority's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.
- b. The Authority shall have the power at any time during any installation works to give notice to the Supplier requiring:
  - i. the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
  - ii. the substitution of proper and suitable materials; and/or
  - iii. the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract.

## 10. PAYMENT

- a. In consideration of the supply and delivery of the Goods by the Supplier, the Authority shall pay the Supplier the Price.
- b. The Supplier shall submit an invoice for the Goods to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the Purchase Order, a full description of the Goods supplied and the Price.
- c. Save where the Goods have not been delivered or are not in accordance with the Contract, the Authority shall pay the Supplier's invoice within the agreed terms of payment of receiving it.
- d. In addition to the Price, the Authority shall (where applicable) pay the Supplier a sum equivalent to any Value Added Tax chargeable on the Goods supplied.
- e. The Supplier shall implement any legislative requirement to account for goods and services in Euros instead of, or as well as, Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

## 11. RECOVERY OF SUMS DUE SHORT FORM GOODS

- a. If any sum is recoverable from or payable by the Supplier under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under the Contract or under any other agreement with the Authority.

## 12. INTELLECTUAL PROPERTY

- a. Save where the Goods are made up in accordance with a design supplied by the Authority, the Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

- b. The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of Condition

### 13. HEALTH AND SAFETY

- a. The Supplier warrants and represents that:
  - i. it has satisfied itself that all necessary examinations have been made prior to delivery of the Goods, to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety; and
  - ii. that it has made available to the Authority adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.
  - iii. The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may incur as a result of or in connection with any breach of Condition 13.a.
- b. The Supplier shall notify the Authority of any health and safety hazards that may arise in connection with the performance of this Contract.
- c. The Authority shall notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

### 14. CONFIDENTIALITY

- a. The Supplier undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this Condition applies to information that is already in the public domain or the possession of the Supplier, other than by reason of breach of this Condition.

### 15. ENVIRONMENTAL MATTERS

- a. The Supplier confirms that:
  - i. the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
  - ii. that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods; c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

### 16. INDEMNITY AND INSURANCE

- a. Without prejudice to any rights or remedies of the Authority, the Supplier shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly

from any defect in the Goods, or any negligence or breach of this Contract by the Supplier.

- b. The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Authority, the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

#### 17. CHANGE CONTROL

- a. There shall be no change to the amount of or description of the Goods or the Price unless the Authority has issued a new purchase order in substitution for the Purchase. These Terms and Conditions shall apply to any new purchase order and the new purchase order shall become "the Purchase Order" for the purpose of this Contract from the moment it is received by the Supplier.
- b. This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by authorised representatives of both the Authority and the Supplier.

#### 18. ASSIGNMENT OR SUB-CONTRACTING

- a. The Supplier shall not assign nor sub-contract any part of this Contract without the prior written consent of the Authority.
- b. Sub-contracting of this Contract shall in no way relieve the Supplier of its obligations under the Contract.
- c. Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Supplier to pay that supplier or contractor within 30 days of receipt of a valid invoice.

#### 19. RIGHTS OF THIRD PARTIES

- a. This Contract shall not create any rights that are enforceable by anyone other than the Parties.

#### 20. TERMINATION

- a. Without prejudice to any other rights or remedies of the Authority under this Contract, the Authority shall have the right forthwith to terminate this Contract by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or shall go into liquidation or have an administrator appointed to manage its affairs.
- b. The Authority shall be entitled to terminate this Contract by notice to the Supplier with immediate effect if the Supplier has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Authority in writing to do so.

#### 21. NOTICES

- a. Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to the

address given for the buyer contact in the Purchase Order and not to the address for invoices.

- b. A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving Party proves otherwise.

## 22. FREEDOM OF INFORMATION

- a. The Supplier and the Authority shall to comply with the Freedom Of Information Act 2000 (the "FOI Act"), any subordinate legislation made under the FOI Act and any guidance issued by the Information Commissioner, in relation to the Contract.
- b. The Supplier agrees to assist and cooperate with the Authority to enable the Authority to comply with its obligations under the FOI Act whenever a request is made for information which relates to or arises out of this Contract and/or the supply of the Goods.

## 23. DISPUTES AND MEDIATION

- a. Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.
- b. If the Parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator").
- c. If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they may on mutual agreement, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.
- d. The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.
- e. If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

## 24. GOVERNING LAW

- a. Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of Northern Ireland and shall be subject to the exclusive jurisdiction of the courts of Northern Ireland.