



Westley Engineering

Terms and conditions (purchase of goods and services agreement) Page 1 of 3

1 Definitions and Interpretation

- 1.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:
- Authorised Representative – the authorised representative of either party as specified in the Schedule.
- Business Day – any day other than a Saturday or Sunday or a public or bank holiday in England.
- Company – Westley Engineering Limited.
- Confidential Information – all information in respect of the business of the Company including, but not limited to, know-how or other matters connected with the Goods or Services, and information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company.
- Contract – any contract between the Company and the Seller for the purchase of the Goods and Services formed in accordance with Condition 2.
- Delivery Address – the place where delivery of the Goods is to take place as specified in the Schedule.
- Goods – any goods which the Seller supplies to the Company (including any of them or any part of them) under a Contract as detailed in the Schedule to these Terms and Conditions.
- Intellectual Property Rights – all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.
- Order – any purchase order of the Company for the Goods or Services incorporating these Terms and Conditions.
- Schedule – means the Schedule attached to these Terms and Conditions.
- Seller – the person(s), firm or company from whom the Company orders the Goods or Services.
- Services – any services which the Company receives from the Seller (including any part of them) under the Contract as detailed on the Schedule of these Terms and Conditions.
- Service Point – the place at which the Services are to be provided.
- Specification – in relation to any Goods or Services, the technical specifications of those Goods or documents detailing the requirements of the Services; all preparatory, design and development materials which relate to the Goods or Services; all information of any description which explains the structure, design, operation, functionality of the Goods or how the Services will be performed; all information of any description which relates to the maintenance and/or support of the Product.
- 1.2 Terms and Conditions – the standard terms and conditions of purchase set out in this document together with any special terms agreed in writing between the Seller and the Company as specified on the Schedule.
- The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.
- 2 Formation**
- 2.1 Subject to any variation under Condition 2.5, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, Specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract.
- 2.2 Each quotation for the Goods or Services from the Seller will be deemed to be an offer by the Seller to sell the Goods or Services upon these Terms and Conditions. All quotations provided by the Seller, including the price provision, will remain open for 90 days from its date.
- 2.3 The Contract is only formed when a written acceptance of the quotation is served by the Company on the Seller. No contract will exist prior to service of such notice of acceptance.
- 2.4 Delivery of the Goods or commencement of performance of the Services will be deemed conclusive evidence of the Seller's acceptance of these Terms and Conditions.
- 2.5 The Seller may not cancel the Contract. The Company is entitled to cancel the Contract in whole or in part by giving written notice to the Seller at any time prior to delivery of the Goods or performance of the Services in which event the Company's sole liability will be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 2.6 Save as set out in the Contract, these Terms and Conditions (including any special terms and conditions agreed between the parties) may only be varied or amended in writing and signed by the Authorised Representative of the Company.
- Should there be any conflict between the terms of the Schedule and the Terms and Conditions then the terms of the schedule will prevail.

3 The Goods and Services

- 3.1 The quantity and description of the Goods or Services will be as set out in the and in any applicable Specification supplied or advised by the Company to the Seller with or before the Order.
- 3.2 The Seller will comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and provision of the Services.
- 3.3 The Company will have the right to inspect and test the Goods at any time prior to delivery. The Seller will not unreasonably refuse any request by the Company to carry out such inspection and testing and will provide the Company with all facilities reasonably required.
- 3.4 If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract and the Company so informs the Seller within 30 days of inspection or testing, the Seller will take all steps necessary to ensure compliance. Without prejudice to any other rights of the Company under the Contract, any failure of this obligation by the Seller will be deemed a material breach which is not capable of remedy entitling the Company to terminate the Contract under Condition 12.1.1.
- 3.5 Notwithstanding any such inspection or testing, the Seller will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.6 The Seller acknowledges that precise conformity of the Goods or Services with the Contract and with the Specification is of the essence of the Contract and the Company will be entitled to reject the Goods or terminate the contract under Condition 12.1.1 if the Goods or Services are not in conformance with the Contract or Specification, however slight the breach may be. Any breach of this condition is deemed a material breach which is not capable of remedy under Condition 12.1.1.
- 3.7 The Company may at any time make changes in writing relating to the Order, including changes in the drawings or Specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Contract an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by the Company in writing before the Seller proceeds with such changes.
- 3.8 In respect of the Goods and Services the Seller will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Company, relevant British Standards and statutory and regulatory bodies.
- 3.9 The Seller will maintain detailed quality control and manufacturing records for the length of time the Goods (or Goods which interrelate with each other) are in production plus one calendar year or a minimum of 5 years (whichever is longer).
- 3.10 It is the responsibility of the Seller to make itself aware of the purposes for which the Goods supplied are to be used.

4 Price

- 4.1 The price for the Goods and Services will be the price stated at the Schedule and, unless otherwise stated in that Order, will be:
- 4.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Goods to the Delivery Point and any duties, imposts, levies or taxes including value added tax unless otherwise agreed between the parties; and
- 4.1.2 fixed for the duration of the Contract.
- 4.2 No variation in the price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.

5 Payment

- 5.1 The Seller may invoice the Company for the Goods or Services on or after the date of delivery or performance. Each invoice must be a proper VAT invoice and quote the number of the Order.
- 5.2 Without prejudice to any other right or remedy, the Company will be entitled but not obliged at any time or times without notice to the Seller to set off any liability of the Seller to the Company against any liability of the Company to the Seller (in either case however arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency).

6 Instalments

- The Seller may not deliver the Goods by separate instalments or perform the Services in stages unless agreed in writing by the Company. If the Company does agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Company will have the right, but not the obligation, to:
- 6.1 treat all the Contracts for the total Order as repudiated if the Seller fails to deliver or perform any instalment or stage; and
- 6.2 reject any or all of the instalments for the total Order if the Company is entitled to reject any one instalment.

7 Delivery

- 7.1 The Goods or Services will be delivered or provided carriage paid to the Delivery Address or any other location as agreed in writing between the parties.
- 7.2 The Goods or the Services will be delivered or performed on the date or within the period specified in the Order, or if no such period is specified then within 28 days of the date of the Contract. Time for delivery and performance will be of the essence.
- 7.3 The Seller will ensure that:
- 7.3.1 the Goods are marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition;
- 7.3.2 each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered;
- 7.3.3 before delivery or performance the Company is provided in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise or which will be used in performance of the Services and thereafter information concerning any changes in such properties or ingredients. The Company will rely on the supply of such information from the Seller in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation; and
- 7.3.4 the Company is supplied on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the Company to accept delivery of the Goods.
- 7.4 No Goods or Services supplied under the Contract earlier than the date for delivery or performance, will be accepted or paid for unless the Company notifies the Seller in writing of its intention to accept and pay for the same.
- 7.5 Without prejudice to the Company's other rights under the Contract, if the Goods are delivered to the Company in excess of the quantities ordered, the Company will be entitled to retain but will not be bound to pay for the excess and such excess will be and remain at the Seller's risk and be returnable at the Seller's expense.
- 7.6 The Company will not be deemed to have accepted the Goods until it has had 20 days to inspect them following delivery. The Company will also have the right to reject the Goods as though they had not been accepted, for 90 days after any latent defect in the Goods has become apparent.

8 Risk/ownership

Risk in and ownership of the Goods will pass to the Company on delivery in accordance with Condition 7.

9 The company's property

All materials, equipment, tools, dies and moulds supplied by the Company to the Seller will at all times:

- 9.1 be and remain the exclusive property of the Company;
- 9.2 be held by the Seller in safe custody at its own risk;
- 9.3 be maintained and kept in good condition by the Seller until returned to the Company;
- 9.4 not be disposed of other than in accordance with the Company's written instructions; and
- 9.5 not be used otherwise than as authorised by the Company in writing.

10 Intellectual property

- 10.1 The Seller will have no other rights whatsoever in respect of the Intellectual Property Rights of the Company.
- 10.2 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any third party except to the extent that any infringements arise from any Specifications, drawings, samples or descriptions provided by the Company.

11 Warranty indemnity and cancellation

- 11.1 The Seller warrants to the Company that the Goods or Services:
- 11.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1994, and fit for any purpose held out by the Seller or made known to the Seller either in writing or orally at or prior to the Contract being formed;
- 11.1.2 will be free from defects in design, material and workmanship;
- 11.1.3 will correspond in every respect with any Specifications, drawings, samples or descriptions provided by the Company;
- 11.1.4 will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods or Services and their sale and supply [and performance in particular the Sale of Goods Act 1979 and the Sale and Supply of Goods and Services Act 1994];
- 11.1.5 will be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;
- 11.1.6 will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the Contract; and

11.1.7 will be performed to such standards of quality generally observed in the industry for similar services.

- 11.2 Without prejudice to any other rights or remedies of the Company (whether express or implied), if the Seller breaches any terms of the Contract (including, without limitation, a failure or delay in delivery) or the Company terminates the Contract in accordance with Condition 12.1 then the Company may (but will not be obliged), whether or not the Goods have been accepted:
- 11.2.1 cancel any or all remaining instalments if the Contract has not already been terminated;
- 11.2.2 refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;
- 11.2.3 recover from the Seller any additional expenditure reasonably incurred by the Company in obtaining the Goods or Services in substitution from another supplier;
- 11.2.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods or perform the Services on the due date or at all; and/or
- 11.2.5 for a period of 12 months from the date of delivery, in respect of Goods which do not conform with the provisions of Condition 11.1, oblige the Seller, at the Company's option, forthwith to replace or repair such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of this condition for the unexpired portion of the 12 month period.
- The Seller will indemnify, keep indemnified and hold harmless the Company from and against
- 11.3 all costs (including the cost of enforcement), expenses, liabilities (including any tax liability) injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which the Company incurs or suffers as a consequence of a direct or indirect breach or negligent performance by the Seller or failure or delay in performance of the terms of the Contract.

12 Termination

- 12.1 The Company may by written notice served on the Seller terminate the Contract immediately if the Seller:
- 12.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Seller fails to remedy such breach within 30 days service of a written notice from the Company, specifying the breach and requiring it to be remedied. Failure to deliver Goods or perform any Services on the due date in accordance with Condition 7.2 is a material breach of the terms of the Contract which is not capable of remedy;
- 12.1.2 has any distraint, execution or other process levied or enforced on any of its property;
- 12.1.3 ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease to trade;
- 12.1.4 has a change in its management and/or control as defined by section 416 Income and Corporation Taxes Act 1988; or
- 12.1.5 the equivalent of any of the above occurs to the Seller in another jurisdiction to which the Seller is subject; or the Company reasonably anticipates that one of the above set of circumstances is about to occur.
- 12.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Seller or the Company accrued prior to termination and Condition 14 will continue to be enforceable notwithstanding termination.

13 Confidentiality

- 13.1 The Seller will keep confidential any and all Confidential Information that it may acquire.
- 13.2 The Seller will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Seller will ensure that its officers and employees comply with the provisions of this Condition 3.
- 13.3 The obligations on the Seller set out in Conditions 13.1 and 13.2 will not apply to any information which:
- 13.3.1 is publicly available or becomes publicly available through no act or omission of the Seller; or
- 13.3.2 the Seller is required to disclose by order of a court or regulatory body of competent jurisdiction.

14 General

- 14.1 Time for performance of all obligations of the Seller under the Contract is of the essence.
- 14.2 Time for performance of all obligations of the Company under the Contract is not and may not be made by notice of the essence.
- 14.3 Each right or remedy of the Company under any Contract is without prejudice to any other right or remedy of the Company under this or any other Contract.
- 14.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from that Contract and will be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

14.5 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

14.6 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

14.7 The Contract is personal to the Seller who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

14.8 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

14.9 The Contract, which for the avoidance of doubt includes the Schedule, and the Specification] contains all the terms which the Company and the Seller have agreed in relation to the Goods and Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and Services. The Seller acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Company which is not set out in the Contract [or Specification].

15 **Communication**

15.1 Subject to the conditions relating to orders in Condition 2, any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, first class post, facsimile or by e-mail (save that any notice, demand or communication to be given in accordance with Condition 12.1 will be delivered by hand, first class post or facsimile, but not by e-mail)), addressed to the recipient at its registered office or its address or facsimile number as the case may be stated in

Condition 15.4 below and will be marked for the attention of the Authorised Representative (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this Condition 15, to be received by the sender not less than seven Business Days before the notice is despatched).

15.2 The notice, demand or communication will be deemed to have been duly served:

15.2.1 if delivered by hand, at the time of delivery;

15.2.2 if delivered by first class post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than Business Days);

15.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

15.3 The addresses and facsimile numbers for the parties are as set out in the Schedule.

15.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

16 **Jurisdiction**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law.

The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.