

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES (UK)

1. INTERPRETATION

In these Conditions:

"Contract" means these Conditions, the Purchase Order and the Supplier's acceptance of the Purchase Order;

"Goods" means any goods, materials, articles, services or work (including any part or parts of them) to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to the Contract;

"Intellectual Property Rights" means all inventions, patents, registered designs, design rights, database rights, and copyrights, know-how and trademarks (whether registered or not) and the goodwill attaching to any of them and applications for any of them and any right or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"Purchase Order" means the Purchaser's written instruction to supply the Goods, incorporating these Conditions;

"Supplier" means the company, firm or individual named as such on the Purchase Order;

"Party" means either the Purchaser or the Supplier;

"Parties" means the Purchaser and the Supplier;

"Purchaser" means ASAP Calibration Services Limited.

2. APPLICATION OF CONDITIONS

2.1 These Conditions are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other conditions. The Supplier waives any right which it might otherwise have to rely on its terms and conditions.

2.2 Unless acceptance of these Conditions by the Supplier occurs at an earlier time, supply of the Goods from the Supplier to the Purchaser shall be deemed to be conclusive evidence of the Supplier's acceptance of these Conditions.

3. QUALITY

3.1 The Goods shall conform in all respects with the terms of the Purchase Order (including any variations thereto) and any specifications, samples and other requirements or descriptions supplied or advised by the Purchaser to the Supplier.

3.2 The Goods shall be safe, durable, free from defects, fit for the purpose for which they are supplied and for any particular purpose made known to the Supplier by the Purchaser. In addition, where the Goods include services or other work, they will be performed with professional skill and care and in accordance with best industry practice.

3.3 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 and the Supply of Goods and Services Act 1982 and by any other applicable legislation.

3.4 Unless otherwise stated in the Contract, the Goods shall conform to all relevant British, European and international standard specifications and with the requirements of any applicable statutes, orders, regulations or bylaws from time to time in force.

3.5 If any of the Goods fail to conform with any of the provisions in this Condition, the Purchaser shall be entitled to use any one or more of the remedies under the Contract and the Purchaser shall be entitled to such remedies notwithstanding the fact that the Goods have been in use provided that this period of use has been for a reasonable amount of time.

3.6 The Supplier shall at all times during the term of the Contract maintain a suitable quality management system such as one which complies with the principles of the BSEN ISO 9001: 2000. However, for the avoidance of doubt, this does not extend to a requirement on the Supplier to obtain certification under BSEN ISO 9001: 2000.

4. PRICE

The price of the Goods shall be as stated in the Purchase Order and shall, unless otherwise agreed in writing by the Purchaser, be exclusive of Value Added Tax but inclusive of all other charges. There shall be no change to the price stated in the Purchase Order unless agreed in writing by the Purchaser.

5. DURATION

Subject to these Conditions the duration of the Contract shall be as specified in the Purchase Order.

6. DELIVERY OF GOODS / PERFORMANCE OF SERVICES

6.1 Time for delivery of the Goods shall be of the essence.

7. TITLE AND RISK

The Goods shall remain at the risk of the Supplier until delivery to the Purchaser pursuant to Condition 6 is complete. Subject to the Goods not having been rejected pursuant to Condition 8, title to the Goods shall pass to the Purchaser at that time.

8. INSPECTION AND REJECTION

8.1 The Purchaser shall have the right to inspect and test the Goods prior to or within a reasonable time after their delivery at such times as the Purchaser may reasonably require.

8.2 If the Goods do not conform or, in the Purchaser's reasonable opinion, are unlikely to conform with the Purchase Order or with any specifications, requirements or descriptions supplied or advised by the Purchaser to the Supplier, the Purchaser shall inform the Supplier and the Supplier, at the Supplier's expense, shall immediately take such action as is necessary to ensure conformity to the reasonable satisfaction of the Purchaser.

8.3 Any omission by the Purchaser to undertake such inspection or testing or any failure by the Purchaser to make a complaint at the time of such inspection or testing and any approval given by the Purchaser during or after inspections or tests shall not constitute a waiver by the Purchaser of any of the Purchaser's rights or remedies in respect of the Goods. Any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

9. PAYMENT

9.1 Unless otherwise specified in the Purchase Order, the Supplier shall render an invoice within 6 months of completion of the work, unless a VAT invoice is required to be issued at an earlier time. If the Purchaser has to investigate its own records to deal with payment queries after 6 months, the costs of so doing may be deducted from the amount due.

9.2 Subject to Condition 9.1, the Purchaser shall pay the price of the Goods based on arrangements to be agreed between the Parties; these arrangements shall include submission of a valid invoice at the invoice address given on the Purchase Order; further the Goods shall have been delivered and the Goods shall not have been rejected under the Contract.

9.3 The Supplier shall not be entitled to claim any payment following the expiry of 6 months after the date of completion of the supply of the Goods to which they relate.

9.4 Without prejudice to any other rights or remedies, the Purchaser reserves the right to set off any amount owing at any time from the Supplier to the Purchaser against any amount due to the Supplier under the Contract or any other agreement or contract with the Purchaser.

10. WARRANTY

10.1 Unless otherwise specified in the Purchase Order, the warranty period applicable to the Goods shall be 12 months from putting into service.

10.2 If the Purchaser, within the warranty period or within 30 days thereafter, gives written notice to the Supplier of any defect in any of the Goods arising during the warranty period under proper and normal use, the Supplier, without prejudice to any other rights or remedies which the Purchaser may have, shall immediately take such action as is necessary to remedy the defects (whether by repair, replacement or re-performance as the Purchaser shall elect) at the Supplier's expense.

11. LABELLING AND PACKING

11.1 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages and, in the case of part delivery, the outstanding balance remaining to be delivered.

11.2 The Supplier shall ensure that the Goods shall be packed and marked in a proper manner. The details of the contents shall be clearly marked on each container and all containers of hazardous materials shall bear prominent and adequate warnings in English and must be accompanied by emergency information in English, in the form of written instructions, labels or similar markings. Unless otherwise agreed, no packaging materials will be returned.

11.3 If Goods are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess and any excess will be, and will remain at, the Supplier's risk and will be returnable at the Supplier's expense.

12. INTELLECTUAL PROPERTY

12.1 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser shall, subject to the rights of third parties, remain vested solely in the Purchaser.

12.2 The purchase price for the Goods includes all the irrevocable royalty free rights for the Purchaser to use all Intellectual Property Rights incorporated in the Goods for its own purpose and in its business.

12.3 The Supplier hereby assigns to the Purchaser all new Intellectual Property Rights generated in the course of providing Goods pursuant to the Contract.

13. INDEMNITY

13.1 The Supplier shall keep the Purchaser indemnified in full against all liability, actions, suits, claims, demands, losses, charges, costs and expenses (including legal and other professional fees and expenses) arising out of its acts or omissions and incurred by the Purchaser as a result of or in connection with:

13.1.1 any breach of any Condition of this Contract;

13.1.2 any loss, destruction of or damage to property caused by, relating to or arising from the Goods;

13.1.3 any infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Goods;

13.1.4 any defect in the Goods or any act or omission of the Supplier or any of the Supplier's sub-contractors occurring either in the course of delivery performance or installation of the Goods or otherwise in the course of performing the Contract.

14. TERMINATION

14.1 The Purchaser shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued. Upon termination under the terms of Condition 14.1 the Purchaser shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any indirect or consequential loss. Title in all Goods shall pass to the Purchaser on such payment. In the case of Supplier default, any compensation by the Purchaser shall be at the Purchaser's discretion.

14.2 The Purchaser shall have the right to terminate at any time by giving the Supplier written notice to terminate the Contract immediately if:

14.2.1 the Supplier commits a breach of any of the Conditions of the Contract which it fails to remedy to the satisfaction of the Purchaser within 15 working days of receipt of written notice of the same;

14.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier;

14.2.3 the Supplier enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for the Supplier's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or if a petition is presented to Court, or if a receiver/manager, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;

14.2.4 the Supplier ceases or threatens to cease to carry on its business; or

14.2.5 the financial position of the Supplier deteriorates to such an extent that in the reasonable opinion of the Purchaser the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

14.3 The termination of the Contract, however arising, will be without prejudice to the rights and obligations of the Parties which have accrued prior to termination. The provisions of Conditions 9, 10, 12, 13, 15, 16, and 18 to 27 inclusive shall survive termination of this Contract.

15. REMEDIES

15.1 Without prejudice to any other rights or remedies which the Purchaser may have under the Conditions of this Contract or otherwise, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the Conditions of this Contract, the Purchaser shall be entitled to avail itself of one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Purchaser:

15.1.1 to cancel the Contract in whole or in or in part and to recover any payments made by the Purchaser under the Contract;

15.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund

for the Goods so returned shall be paid forthwith by the Supplier;

- 15.1.3 at the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the Conditions of the Contract are fulfilled;
- 15.1.4 to refuse to accept or pay for any further deliveries of the Goods but without any liability to the Supplier;
- 15.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract, including obtaining the Goods in substitution from another Supplier; and
- 15.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

16. WAIVER

- 16.1 Failure or delay by the Purchaser in enforcing or partially enforcing any provision of the Conditions will not be construed as a waiver of any of the Purchaser's rights under the Contract.
- 16.2 Any waiver by the Purchaser of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other Conditions of the Contract.

17. HEALTH AND SAFETY

- 17.1 The Supplier shall ensure that the Goods are designed and/or constructed and/or supplied so as to be safe and without risk to the health and safety of persons using or affected by the same and shall be in accordance with relevant COSHH Regulations.
- 17.2 The Supplier represents and warrants that the Supplier has made available to the Purchaser adequate health and safety information about the Goods and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 17.3 Where any access to the Purchaser's premises is necessary in connection with delivery, performance or installation, the Supplier and its sub-contractors shall at all times comply with any security and health and safety regulations currently in force, which may include obtaining security clearance from the Purchaser.

18. CONFIDENTIALITY

Save for information which is in the public domain (otherwise than by a breach of this Condition), the Supplier shall keep confidential and not disclose or use other than for the purpose of this Contract any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser or its agents and any other confidential information concerning the Purchaser's business or its products which the Supplier may obtain or learn. The Supplier shall restrict disclosure of such confidential material to such of the Supplier's employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 The Supplier shall not be entitled to assign or subcontract the Contract or any part of it without the prior written consent of the Purchaser.
- 19.2 The Purchaser has the right to assign the Contract or any part of it.

20. VARIATION

No amendment or variation to this Contract shall be binding on the Purchaser unless it is issued as a written Purchase Order amendment by the Purchaser.

21. DISPUTE RESOLUTION

- 21.1 If any dispute arises out of or in connection with this Contract ("Dispute") the Parties undertake that they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.
- 21.2 If the Dispute has not been resolved to the satisfaction of either Party within 30 days of initiation of the procedure pursuant to Condition 21.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may refer the Dispute to the Courts.
- 21.3 Nothing in this Condition 21 shall restrict or prevent either Party from seeking injunctive relief at any time.

22. PUBLICITY

- 22.1 Neither the Supplier nor the Purchaser shall, for publicity purposes without the prior written consent and approval of the other Party:
 - 22.1.1 make use of the other Party's name;
 - 22.1.2 make use of the name of any of the other Party's personnel, customers or agents;
 - 22.1.3 refer to the other Party or the Contract in any advertisement.

23. NOTICES

- 23.1 A notice given under or in connection with the Contract must be in writing and delivered by hand or sent by first class post or by facsimile to the address of the Purchaser or (as the case may be) to the address of the Supplier shown on the Purchase Order or to such other address as either the Supplier or the Purchaser (as the case may be) may substitute by notice to the other Party.
- 23.2 Notice shall be deemed given:
 - 23.2.1 if sent by first class post: two business days after posting excluding the day of posting;
 - 23.2.2 if delivered by hand: on the day of delivery;
 - 23.2.3 if sent by facsimile at the time of transmission; during normal UK business hours.

24. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

25. GOVERNING LAW AND JURISDICTION

This Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

26. MISCELLANEOUS CONDITIONS INCLUDING KPI's

- 26.1 The performance of the Supplier shall be subject to Key Performance Indicators ("KPI's") agreed, between the Parties.
- 26.2 The Supplier shall, as required by the Purchaser, produce an electronic original Certificate.
- 26.3 No work involving the Goods shall be undertaken outside of the United Kingdom without prior written permission of the Purchaser.