

**STANDARD TERMS AND CONDITIONS
OF PURCHASE FOR
DIGITIMER LIMITED**

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1. DEFINITIONS AND EXPLANATION

1.1. In these Conditions:

‘Buyer’ means **Digitimer Limited** (whose registered office is at Suite 501 (PO Box 501), The Nexus Building Broadway Letchworth Garden City SG6 9BL or any of its subsidiaries or subsidiary undertakings as defined in Companies Act 1985);

‘Contract’ means the contract for the sale and purchase of the Goods and/or the supply of the Services;

‘Delivery Address’ means the address stated on the Purchase Order;

‘Goods’ means the goods (including any instalment of the goods or any part of them) described in the Purchase Order;

‘Purchase Order’ means the Buyers purchase order to which these Conditions are annexed;

‘Price’ means the price of the Goods and/or the charge for the Services;

‘Seller’ means the person so described in the Purchase Order;

‘Services’ means the services (if any) described in the Purchase Order;

‘Specification’ includes any plans, drawings, data or other information relating to the Goods or Services;

‘Writing’ includes facsimile, e-mail and electronic transmission and comparable means of communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1. The Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.

- 2.2. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Purchase Order is accepted or purported to be accepted by the Seller.
- 2.3. The Purchase Order will lapse unless unconditionally accepted by the Seller in Writing within 7 days of its date.
- 2.4. No variation to the Purchase Order or to these Conditions shall be binding unless agreed in Writing by an authorised representative of the Buyer and the Seller.

3. SPECIFICATIONS

- 3.1. The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2. Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with this contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3. The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.4. The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing.
- 3.5. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 14 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

- 3.6. The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. PRICE OF THE GOODS AND SERVICES

- 4.1. The Price of the Goods and the Services shall be stated in the Purchase Order and, unless otherwise so stated, shall be:
- 4.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
 - 4.1.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties imposed, or levies other than Value Added Tax.
- 4.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

5. TERMS OF PAYMENT

- 5.1. The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Purchase Order.
- 5.2. Unless otherwise stated in the Purchase Order, the Buyer shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3. The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.
- 5.4. The provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to these Conditions.

6. DELIVERY

- 6.1. The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Purchase Order, in either case during the Buyer's usual business hours.
- 6.2. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Purchase Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4. A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.5. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.6. The Buyer shall be entitled to reject any Goods delivered which are not in accordance with this Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.8. The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.9. If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay 10% per cent of the Price for every week's delay, up to a maximum of 50% per cent.

7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 7.2. Title in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. WARRANTIES AND LIABILITY

- 8.1. The Seller warrants to the Buyer that the Goods:
 - 8.1.1. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Purchase Order is placed;
 - 8.1.2. will be free from defects in design, material and workmanship;
 - 8.1.3. will correspond with any relevant Specification or sample; and
 - 8.1.4. will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3. Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
 - 8.3.1. to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
 - 8.3.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

- 8.4. The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 8.4.1. breach of any warranty given by the Seller in relation to the Goods or the Services;
 - 8.4.2. any claim that the Goods infringe, or their importation, use or resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
 - 8.4.3. any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 8.4.4. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
 - 8.4.5. any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 8.5. Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
- 8.5.1. act of God, explosion, flood, tempest, fire or accident;
 - 8.5.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.5.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.5.4. import or export regulations or embargoes;
 - 8.5.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party);
 - 8.5.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.5.7. power failure or breakdown in machinery; and

- 8.5.8. accident to or sickness of agents or employees.
- 8.6. In the event of either party being so prevented from carrying out its obligations under this Contract, in accordance with Clause 8.5 above, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and the extent of the suspension and its cause and failure to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than one month either party may terminate this Contract by giving the other party 30 days' written notice.

9. TERMINATION

- 9.1. The Buyer shall be entitled to cancel the Purchase Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.
- 9.2. The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 9.2.1. the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 9.2.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
 - 9.2.3. the Seller ceases, or threatens to cease, to carry on business; or
 - 9.2.4. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

10. GENERAL

- 10.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice is deemed to have been served as follows:
 - 10.1.1. if personally delivered or by fax or e-mail at the time of delivery;
 - 10.1.2. if posted, at the expiration of 48 hours (or in the case of airmail) 7 days after the envelope containing it is posted.
- 10.2. No failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right (except where expressly stated to the contrary in these conditions) and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.4. Any party who receives faulty goods which are supplied by the Buyer and where the Buyer originally obtained those goods from the Seller may enforce the terms of Clause 8 of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 10.5. Except as provided in 10.4, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This shall not affect any right or remedy of a third party that exists or is available apart from under that Act.
- 10.6. These Conditions and all contracts for the purchase of Goods and/or Services shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts.

- 10.7. These Conditions, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement. Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this Contract. The only remedy available to it for breach of any warranty shall be for breach of contract under the terms of this agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.
- 10.8. The Purchase Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to, or declare a trust in favour of any other person any of its rights or sub-contract any of its obligations under the Contract.

END OF DOCUMENT