

Issued Jan 2020 OPEN DATE EQUIPMENT LTD - TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

1.1 In these Terms the following words shall have the following meanings:

"BUYER" means Open Date Equipment Ltd, (registered in England under number 01158619).

"CONTRACT" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;

"DELIVERY ADDRESS" means the address stated on the Order;

"GOODS" means the goods (including any instalment of the goods or any part of them)

described in the Order;

"INCOTERMS" means the international rules for the interpretation of trade terms of the International Chamber of

Commerce as in force at the date when the Contract is made;

"ORDER" means the Buyer's purchase order to which these Terms are annexed;

"PRICE" means the price of the Goods and/or the charge for the Services;

"SELLER" means the person so described in the Order;

"SERVICES" means the services (if any) described in the Order;

"SPECIFICATION" includes any plans, drawings, data or other information relating to the Goods or Services;

"TERMS" means the standard terms of purchase set out in this document and (unless the context otherwise requires) Includes any special terms agreed in Writing between the Buyer and the Seller;

"WRITING", and any similar expression, includes facsimile transmission and electronic mail.

1.2 Any reference in these Terms to a statute or a 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 Terms are for convenience only and shall not affect their interpretation.

2. Basis of purchase

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

2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 Acknowledgement of the Order must be made by signing the duplicate Order attached with it, and the duplicate must be received within 7 days of the date of the Order. Should you despatch goods to us or perform work for us in accordance with this Order without such an acknowledgement, this should itself be deemed an acknowledgement falling within this paragraph.

2.4 No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorized representatives 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 Terms, be as specified in the Order and/or in any applicable Specification and/or in samples previously supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2 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.

3.3 The Seller shall not unreasonably refuse any request by the Buyer and/or their customer representatives 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 and/or their customer representatives with all facilities reasonably required for inspection and testing.

3.4 If as a result of inspection or testing the Buyer and/or their customer representative is not satisfied that the Goods will comply in all respects with the Contract, so as to conform with the Order and or Specification and/or samples previously supplied, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall immediately take such steps as are necessary to ensure compliance and in addition the Buyer and/or their customer representatives shall have the right to require and witness further testing and inspection.

3.5 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.

3.6 If the Buyer so requests, the Seller shall provide a copy of the insurance policies held by the Seller covering all liabilities which the Buyer is indemnified against by the Seller.

4. Price of the goods and services

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated in Writing, 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, imposts 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, whether or not shown on its own terms of sale.

5. Terms of payment

5.1 The Seller may 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 Order.

5.2 Unless otherwise agreed in the Order or agreed in Writing between the Buyer and the Seller, the Buyer shall pay the Price of the Goods and the Services within 60 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 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

5.4 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at the National Westminster Bank Plc base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods or provision of the Services as a result of any sums being outstanding.

6. Delivery

6.1 The Goods shall be delivered carriage paid to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, or as is agreed by the Buyer in Writing prior to the delivery of the goods or performance of the Services, in either case during the Buyer's usual business hours unless otherwise stipulated by the Buyer in the Order or in Writing. The Seller shall off-load the Goods at its own risk as directed by the Buyer.

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 Order, the Seller shall give the Buyer reasonable notice of the specified date, or if no such date is specified, then delivery shall take place within 28 days of the Order.

6.3 The Seller shall invoice the Buyer upon, but separately from, despatch of the Goods.

6.4 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.5 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

6.5.1 cancel the Contract in whole or in part;

6.5.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

6.5.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier; and

6.5.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

6.6 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and any information requested in Writing by the Buyer.

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

6.8 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. Nevertheless, failure by the Seller to deliver any one instalment or perform a Service shall entitle the Buyer at its option to treat the whole Contract as repudiated.

6.9 The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and accordingly the Buyer may reject any Goods delivered which are not in accordance with the Contract however slight the breach may be, and shall not be deemed to have accepted any Goods until the Buyer has had 5 working days to inspect them following delivery. The Buyer will also have the right to reject the Goods as though they had not been accepted for 5 working days after any latent defect in the Goods has become apparent.

6.10 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 in Writing.

6.11 If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material will only be returned to the Seller at the cost of the Seller.

6.12 If the Goods or services are not delivered or are not performed on the due date then, without limiting 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 without limit, or at such alternative rate as may be agreed between the Buyer and the Seller in Writing.

6.13 Any delivery of hazardous Goods must have prominent and suitable warnings on all containers, packaging and documents, and such markings shall comply with any current statutory requirements.

6.14 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

7. Risk and Property

7.1 The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete (including off-loading and stacking and all documentation required under the Order or in Writing has been supplied to the Buyer) when ownership of the Goods shall pass to the Buyer.

7.2 In the event that payment for Goods is made prior to delivery, ownership but not risk shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. Guarantee

8.1 The Seller shall offer a guarantee of 12 months from the date of delivery, or such period as may be agreed between the Buyer and Seller in Writing, such guarantee shall cover design, materials and workmanship. Replacement parts supplied as part of the guarantee will be guaranteed for a further period of 12 months, or the agreed guarantee period. Where requested by the Buyer, the Seller shall provide a performance guarantee in accordance with the details in the Buyer's Order or as otherwise requested in Writing.

9. Warranties and liability

9.1 The Seller warrants to the Buyer that the Goods:

9.1.1 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 Order is placed;

9.1.2 will be free from defects in design, material and workmanship;

9.1.3 will correspond with any relevant Specification or sample; and

9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

9.2 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.

9.3 Without limiting any other remedy which the Buyer may have, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

9.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days at the Seller's expense; or

9.3.2 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 and claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

9.4 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:

9.4.1 breach of any warranty given by the Seller in relation to the Goods or the Services;

9.4.2 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;

9.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

9.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

9.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

10. Termination

10.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller 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 consequential loss.

10.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

10.2.1 the Seller commits a material breach of any of the Terms of the Contract;

10.2.2 any distress, execution or other process is levied upon any of the assets of the Seller;

10.2.3 the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller;

10.2.4 the Seller ceases or threatens to cease to carry on its business; or

10.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

10.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Buyer accrued prior to termination. The Terms which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

11 The Buyer's Property

11.1 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price.

11.2 In addition, any materials (including "free issue"), equipment, tools, dies, moulds, or any other forms of property supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in Writing. The cost of any loss, damage, wastage or misuse of property supplied shall be recovered from the Seller.

12. Confidentiality

The Seller shall keep in strict confidence the Specification and all technical or commercial know-how, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Seller.

13. Assignment

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior consent of the Buyer in Writing.

13.2 The Buyer may assign the Contract or any part of it to any person, firm or company.

14. Force Majeure

The Buyer reserves the right to defer the date of delivery of the Goods or the provision of the Services or payment or to cancel the Contract or reduce the volume of the Goods ordered or amount of Services to be provided if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15. General

15.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

15.2 A notice required or permitted to be given by the authorised representative of either party to the other under these Terms 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 under this provision to the party giving the notice.

15.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.4 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.5 A waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other Terms of the Contract.

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

15.7 Subject as may be provided elsewhere in these Terms, all disputes, differences or questions arising in relation to these Terms shall be referred to in the first instance to an appropriate representative of the Buyer and Seller who shall attempt to settle the dispute themselves (acting in good faith) within one calendar month. If the appropriate representatives of the Buyer and Seller fail to resolve the matter within one calendar month, then either party may refer the dispute to court or tribunal or may (in its discretion) opt for mediation (in which case such an election shall bind the other party until a conclusion is made or the mediation rejects the case).

15.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.