

VALTRIS ENTERPRISES LIMITED CONDITIONS OF PURCHASE

1. DEFINITIONS

- (a) "Buyer" shall mean the VALTRIS entity as named in the Contract. "Purchaser", "VALTRIS" and "Employer" will be deemed to have the same meaning.
- (b) "Seller" shall mean the person, firm or company named in the Contract is awarded. "Contractor" and "Supplier" will be deemed to have the same meaning.
- (c) "Goods" shall mean each and every item to be supplied and / or all work to be done by Seller under the Contract. "Materials" and "Products" will be deemed to have the same meaning.
- (d) "Contract" shall mean the agreement between Buyer and Seller, and shall constitute a signed agreement or purchase order that references either these conditions directly or a framework agreement which in turn references these conditions. For the avoidance of doubt any explicit terms and conditions detailed in the Contract and / or framework agreement supersede the terms and conditions detailed herein.

NOTE: These definitions are not intended to be limiting in that alternative wording used in the appropriate context within the Contract will be deemed to have the same meaning as that ascribed to the defined terms above

2. SCOPE OF CONTRACT

- 2.1 The Seller shall as applicable and unless stated elsewhere in the Contract, supply the Goods, inclusive of all design (process, thermal and mechanical), manufacture, testing, inspection, certification, packaging, delivery, installation and commissioning
- 2.2 The Buyer reserves the right by notice in writing to request to alter the scope of Contract if so required. If said alteration results in a reduction in the Sellers costs or leadtime then the Seller shall pass all such reductions onto the Buyer as instructed by the Buyer with such instructions being an amendment to the Contract.

3. PRICE

- 3.1 The Contract price(s) will be as stated in the Contract.
- 3.2 The price(s) are fixed and firm and shall be varied only if the Buyer varies the specification and / or scope of Contract. Such variations will only be valid if confirmed in writing by the Buyer and furthermore it is incumbent on the Seller to seek written confirmation of any such changes.
- 3.3 Should the Buyer make any alterations to the specification and / or scope of Contract or otherwise carry out any actions / omissions which may affect the Contract price and / or delivery date(s) the Seller, if he so wishes to make a claim for such alterations, must notify the Buyer within 7 calendar days of the Buyers alterations providing details of the claimed changes to Contract price(s) and / or delivery date(s). The Buyer shall review any such claims and respond to the Seller within 7 calendar days of receipt of claim. Any such claimed changes shall only become part of the Contract once agreed with the Buyer and confirmed by the Buyer in writing.
- 3.4 For the avoidance of doubt the Seller is time-barred from any entitlement to changes in price and / or delivery date(s) if he has not (a) notified the Buyer of said effects of changes within 7 calendar days of becoming of them and (b) had such changes agreed and confirmed in writing with the Buyer as set out in clause 3.3 above.
- 3.5 Unless otherwise stated in the Contract the price(s) detailed in the Contract are fully inclusive of all applicable taxes except for VAT.

4. INVOICING

- 4.1 Invoices are to be submitted by the Seller to the Buyer, referencing the appropriate purchase order number/ Contract as applicable and in full accordance with requirements of the Contract.
- 4.2 The Buyer will pay each properly completed invoice in accordance with clause 4.3, subject to the Buyers satisfaction of the Sellers fulfilment of its obligations under the Contract. For the avoidance of doubt the Buyer is not obligated to pay any invoices received if it deems that the Contract has not been fulfilled.
- 4.3 Subject to the Sellers compliance with 4.1 and the Buyers satisfaction in accordance with 4.2 invoices shall be paid by the end of the 2nd month following the month of receipt and acceptance of the Goods (or part thereof as may be agreed). E.g. Goods received and accepted in May will be paid for by the end of July.
- 4.4 The making of payments by the Buyer shall not prejudice any of the Buyer's rights under this Contract.
- 4.5 Should the Buyer fail to pay an approved invoice in accordance with the Contract then the Seller shall be entitled to charge the Buyer interest for any such invoice amount at a pro-rata rate of AER 2%.

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5. DELIVERY LOCATION

- 5.1 The Goods shall be delivered in the manner and to the location specified in the Contract on a DDP basis (INCO terms 2010). If no specific delivery location is identified in the Contract the delivery location shall be the Buyers address.

6. DELIVERY DATE

- 6.1 The Goods shall be delivered by the Seller at the latest by the time and date specified in the Contract, or as may otherwise be instructed / agreed by way of call-off under the Contract.
- 6.2 The Seller shall give notice of any likely delay in delivery as soon as practicable and in the event of delay the Buyer shall have the right to deduct from the total Contract price liquidated damages at the rate of 2% of the total Contract price for each week or part thereof that the Goods are delayed to a maximum of 10% of the total Contract value. Such action shall not relieve the Seller of its continuing obligations under the Contract or limit the Buyers rights to seek damages under the Contract or law.
- 6.3 In the event of prolonged delay in delivery (deemed to be once the maximum liquidated damages limit is reached) the Buyer may its sole option choose to cancel the Contract. In the event that the Buyer chooses to cancel the Contract under this clause the Buyer shall be under no liability to the Seller, and the Seller shall reimburse to the Buyer any and all loss and damages which the Buyer may incur as a consequence in addition to reimbursing the Buyer any monies already paid to the Seller.

7. SCOPE, SPECIFICATION, SHE, QUALITY AND FITNESS FOR PURPOSE

- 7.1 The Goods shall be of satisfactory quality and free from defects in manufacture, material and / or workmanship. If the purpose for which the Goods are required is made known to the Supplier expressly or by implication, the Goods shall be fit for that purpose.
- 7.2 The Goods shall conform with the scope of work, specifications, quality standards, tolerances, drawings, descriptions and / or samples detailed in or referred to in the Contract. In the absence of the foregoing, all Goods supplied shall be within the normal limits of industrial quality.
- 7.3 All hazardous Goods must be clearly marked by the Seller in full accordance with the requirements under law, and furthermore be accompanied by all required documentation. The Seller shall provide the Buyer with all its information the Buyer may require both legislatively and for general safe handling, and shall indemnify and hold the Buyer harmless for its failure to do so.
- 7.4 The Seller warrants that the Goods shall be fully compliant with all professional standards and comply fully with all health, safety & environmental legislation and guidelines as may be applicable.
- 7.5 If so applicable the Goods shall be fully compliant and supplied in a manner compliant with the 'SEVESO', 'REACH' and / or 'COSHH' regulations & guidance and any other specific applicable legislation that may be in force from time-to-time.
- 7.6 The Seller shall be entirely responsible for its obligations under the Contract, in this respect the Seller shall make best endeavours to verify all information provided by the Buyer and shall be solely responsible and liable for its failure to do so.
- 7.7 In the event of any quality, fitness for purpose, defect, performance or warranty issues the Seller shall make best endeavours to rectify any such issues within a period that is satisfactory to the Buyer.
- 7.8 If the Seller does not rectify said issues to the Buyers satisfaction in a period satisfactory to the Buyer the Buyer may at its sole option elect to reject the Goods in part or entirety. In such circumstances the Buyer may at its sole option (i) request the Seller to re-perform its obligations under the Contract or (ii) the Buyer will be entitled to carry out repair, modification or replacement of the Goods in part or full itself and shall be entitled to reimbursement by the Seller for all reasonable costs necessarily incurred in connection therewith. Such action shall not relieve the Seller of its continuing obligations under the Contract.
- 7.9 If so required the measurement of the quantity of Goods delivered shall be carried out at the delivery point as specified in the Contract using equipment certified for commercial transactions and will be based on properly calibrated weight or mass / volume / flow meters and / or weighbridge(s) / load cells / scales, as may be applicable. Costs for such measurement including the provision, upkeep and calibration of any required measurement devices and/or services shall be for the account of the Seller unless explicitly otherwise agreed. The Seller shall make available to the Buyer calibration certificates upon the Buyers request
- 7.10 Where appropriate the Seller will issue a certificate(s) of delivery, the quantities declared on which being binding on the parties (except in cases of error, fraud and / or non-compliance with clause 7.9 above and / or the Sellers other obligations under the Contract), but shall be without prejudice to the rights of either party to make any claim pursuant to the Contract

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8. SELLERS RESPONSIBILITY

8.1 In so far as the Seller has responsibility for performance of the Contract without in any way limiting its liabilities responsibilities and obligations under any other provision herein or otherwise under law, the Seller indemnifies the Buyer and shall be liable to the Buyer for said performance to a sum of the greater of:

- (i) £5,000,000 (Five Million pounds GB sterling) or;
- (ii) The sum as may be stated in the Contract or;
- (iii) the total aggregate value of the sum of the Contract price(s), based on expected volumes multiplied by expected price(s) for duration of the term of a term Contract.

8.2 The Seller shall indemnify the Buyer against all losses, liabilities, claims, costs and expenses that may result from loss of or damage to any property (which shall be deemed to include that of the Buyer) or injury to or death of any person that may arise out of or in connection with the performance of its obligations under the Contract - other than loss, damage, injury or death resulting directly from the act or omission of the Buyer.

8.3 Except in respect of personal injury or death or loss of or damage to property the liability of the Seller under the indemnity provided under Clause 8.2 for any one act or omission shall be for the amount determined in clause 8.1 above.

8.4 The Seller shall at its own expense maintain at all times insurance to cover its obligations, liabilities and indemnities under the Contract and otherwise required under law and if so requested by the Buyer shall provide evidence of such insurance.

8.5 The Seller warrants that they have not committed any act that would place the Buyer in breach of the Bribery Act 2010 or any other applicable legislation, and shall indemnify, defend at the Sellers expense and hold the Buyer harmless for any such act the Seller may have committed.

9. WARRANTY PERIOD

9.1 Without prejudice to any rights that the Buyer may have by statute, common law or otherwise, the Seller shall make good, free of charge and within a period satisfactory to the Buyer, any defect of the Goods which may occur within 24 months of use or 30 months after delivery, whichever expires first. Repairs or replacements shall themselves be subject to the foregoing obligations for a period to expire at the same time as the above obligations.

9.2 In the event that the Seller cannot or does not respond within a period satisfactory to the Buyer to rectify any such defects, the Buyer may carry out the repair, substitution or replacement itself and shall be entitled to reimbursement by the Seller for all reasonable costs necessarily incurred in connection therewith (including but not limited to any 3rd party or direct costs the Buyer may incur in taking such actions to repair, substitute or replace the Goods). Such action shall not relieve the Seller of its continuing obligations under the Contract.

10. PERFORMANCE BOND – IF EXPLICITLY STATED IN THE CONTRACT:

10.1 The Seller shall obtain and provide at its cost a payable on first demand performance bond for proper performance of the Contract in an amount equivalent to ten percent of the total Contract price or other value as may be stated in the Contract.

10.2 The Seller shall deliver said performance bond to the Buyer prior to the Buyer placing the Contract and if required under the Contract shall be a condition precedent to the forming of a binding Contract. The performance bond shall be issued by a financial institution and from within a country (or jurisdiction) approved by the Buyer.

10.3 The Seller shall ensure that the performance bond is valid and enforceable until the end of the period of Sellers obligations (including any applicable warranty period) under the Contract.

10.4 The Buyer shall not make a claim under the performance bond except in such circumstances where the Seller has failed to perform any of his obligations under the contract or otherwise compensate the Buyer for the Seller liabilities under the Contract.

11. PASSING OF PROPERTY TO BUYER

11.1 The Goods (other than as provided for under Clause 11.2) shall become the property of Buyer immediately on delivery at the point specified in the Contract.

11.2 Where the Buyer makes partial payments before taking delivery of Goods or any part thereof then such payments shall be regarded as part payments and not deposits of the said agreed Contract price.

11.3 The property in any materials procured for or manufactured by Seller and / or the Seller subcontractors for the purposes of the Contract, or otherwise appropriated to the Contract, shall pass to and be vested in the Buyer from the date of any such payments made under clause 11.2. The Seller shall provide a vesting certificate if so required by the Buyer.

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11.4 The Buyer shall have the right, at any time and for any reason, to enter the premises of the Seller and / or the premises of its subcontractors and inspect said property to which it has title and if so required for any reason take possession of said property to which it has title and further more to remove this property to an alternative location of the Buyers choosing.

11.5 The provisions of this clause survive termination.

12. RISK IN GOODS

12.1 The risk in Goods, including any free-issue materials provided by the Buyer and any materials referred to in Clause 11.2 (the property in which has passed to the Buyer), shall remain with Seller until such are delivered at the point specified in the Contract.

13. TERMINATION

13.1 If the Seller commits any breach, material or otherwise, of the Contract and fails within ten (10) days of notice by the Buyer to take such steps as are reasonable to rectify such breach, the Buyer may, without prejudice to any other of its rights, terminate the Contract forthwith by notice in writing to the Seller, and further more the Seller shall be liable for damages as detailed in the Contract and / or under statute. All terms, conditions and provisions of the Contract including but not limited to these conditions shall survive such termination to the extent the Buyer must rely on them to seek reparation for the breach(es) of the Seller. In such circumstances the Buyer shall have no liability to the Seller.

13.2 The Buyer may at its sole option terminate the Contract for convenience by giving the Seller immediate notice in writing. The Buyer shall in such circumstances compensate the Seller for any direct and verifiable costs the Seller may have incurred up to the point of said termination, subject to the Seller making best endeavours to minimise said costs. For the avoidance of doubt nothing in this clause shall make the Buyer liable for consequential losses of the Seller including but not limited to loss of earnings, loss of profits, indirect and / or costs that would not have been incurred by any reasonable and prudent Seller operating under the structure of the Contract. Any payments made by the Buyer to the Seller under this clause shall be in consideration of the passing of title of materials / Goods as may be applicable to the Buyer.

14. PATENT RIGHTS

14.1 The Seller will indemnify the Buyer against any claim for infringement of letters patent, registered design, trade mark or copyright by the use or sale of any article or material supplied by the Seller to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to the Seller, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by the Seller. Provided also that this indemnity is conditional on the Buyer giving to the Seller the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at the Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Buyer on its part warrants that any design or instruction furnished or given by it shall not be such as will cause the Seller to infringe any letters patent, registered design, trade mark or copyright in the execution of the Contract.

15. FORCE MAJEURE

15.1 If either party is prevented or hindered from carrying out its obligations under the Contract by circumstances beyond its reasonable control limited to any form of Government intervention, war, terrorism or civil disorder (such circumstances being herein referred to as force majeure) then the performance of such obligations shall be suspended for such time as the circumstances aforesaid last and the party affected shall not be liable for any delay occasioned thereby. Provided that if such delay shall extend for a period of time that is unreasonable for the party not affected by the force majeure circumstances then this party may at its sole option elect to terminate the Contract and in such an event neither party shall have any liability to the other (each bears its own costs).

15.2 Shortage of labour, materials, or utilities or delays by subcontractors or strike, lockouts, fire, storms, adverse weather, flooding and labour disputes shall not by themselves constitute force majeure events.

15.3 Costs arising from force majeure circumstances shall be borne by the party incurring such costs (unless the Contract is terminated as per clause 15.1).

16. PROGRESS AND INSPECTION

16.1 The Buyer shall have the right to inspect all Goods and work in progress relating to the Goods at the Seller's premises and at the premises of the Sellers subcontractors at all reasonable times and to reject the Goods or any part thereof that do not comply with the Contract.

16.2 The Seller shall ensure, when placing subcontract(s), that it facilitates the Buyer's rights under this Clause.

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16.3 Any inspection, checking, approval or acceptance given on behalf of the Buyer shall not relieve the Seller or its subcontractors from any obligation under the Contract.

17. BUYER'S RIGHTS IN SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS, ETC.

17.1 Any specifications, plans, drawings, patterns or designs supplied by the Buyer to the Seller in connection with the Contract shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated to the Seller in a connection with the Contract shall be kept secret and confidential by the Seller and shall not, without the consent in writing of the Buyer, be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Contract.

17.2 The obligations with respect to secrecy and confidentiality contained in this Clause shall not apply to information which:-

- (a) was already in the Seller's possession or in the public domain prior to its disclosure by the Buyer, or
- (b) is purchased or otherwise legally acquired by the Seller at any time from third parties having good title thereto, or
- (c) comes into the public domain, otherwise than through the fault of the Seller.

18. RESPONSIBILITY FOR INFORMATION

18.1 The Seller shall be responsible for any errors or omissions in any information supplied by it (including but not limited to: standards, specifications, drawings, calculations, design and/or packing details) whether such information has been approved and or commented on by the Buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the Buyer.

18.2 The Seller shall be responsible for checking all information provided to it by the Buyer prior to incorporation into any element of the Contract or the Goods such as to satisfy itself that the information provided by the Buyer is correct in the context of the Contract. The Seller shall immediately notify the Buyer of any issues with regard to Buyer provided information and furthermore shall explicitly highlight to the Buyer where it is entirely reliant upon information provided by the Buyer.

19. ASSIGNMENT AND SUBLETTING

19.1 The Contract shall not be assigned by the Seller nor shall the Contract be sublet as in whole or part, nor permit any Buyer approved subcontractor to sublet in whole or part, any part of the Contract without the Buyer's written consent, which shall not be unreasonably withheld. The Buyer may assign the Contract to members of the Buyers group by giving notice in writing, for which the Sellers consent is not required. Any other assignment by the Buyer will be at the Sellers consent, which shall not be unreasonably withheld.

20. COPIES OF SUB-ORDERS

20.1 A copy of any / all suborders placed specifically for use in connection with the Contract shall be provided by the Seller to the Buyer if reasonably requested by the Buyer.

21. FREE ISSUE MATERIALS

21.1 Where the Buyer for the purposes of the Contract provides free issue materials to the Seller for incorporation into the Goods such materials shall be and remain the wholly the property of the Buyer but entirely at the risk and liability of the Seller. The Seller shall maintain all such materials in good order and condition (until they are incorporated into the Goods). The Seller shall use such materials economically and solely in connection with the Contract. Surplus free issue materials shall be returned to the Buyer or disposed of at the Buyer's sole option. Waste or loss of such materials arising from bad workmanship or failure of the Seller to maintain such materials in good order and condition shall be made good at the Seller's expense.

22. SELLER'S DEFAULT OR INSOLVENCY

22.1 If the Seller becomes insolvent or (being a Company) makes an arrangement with its creditors or has a liquidator, a receiver, or an administrative receiver appointed, or commences to be wound up (other than for the purposes of amalgamation or reconstruction) or if the Buyer has justifiable concerns regarding the ongoing credit worthiness of the Seller, the Buyer may, without prejudice to any other of its rights, terminate the Contract forthwith by notice to the Seller or any person in whom the Contract may have become vested. In such event it shall be lawful for the Buyer to enter the premises where the Goods are situated and take possession of the Goods and any materials the property in which has passed to or is vested in the Buyer and furthermore the Buyer shall have the right to take possession for a reasonable sum of any work or materials related to this Contract to which the Buyer does not have title.

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23.0 LAW, JURISDICTION AND SEVERANCE

23.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

23.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including (without limitation) in relation to any non-contractual obligations).

23.3 If any term of this Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Contract and this will not affect the remainder of this Contract which will continue in full force and effect. In this event the parties will agree in writing a valid and enforceable term to replace the severed term which, to the maximum extent possible, achieves the parties' original commercial intention and has the same economic effect as the severed term.

23.4 The language of the Contract shall be English.

24.0 LIMITATION OF LIABILITY

24.1 Nothing in the Contract will operate to exclude or restrict one party's liability (if any) to the other:

24.1.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;

24.1.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or

24.1.3 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.