

## 1. DEFINITIONS

- 1.1. The definitions in this condition 1 apply in these conditions.
- 1.2. Bank: Royal Bank of Scotland Plc
- 1.3. Buyer: the person, firm or company who purchases the Goods from EAO.
- 1.4. Contract: any contract between EAO and the Buyer for the sale and purchase of the Goods, incorporating these conditions.
- 1.5. EAO: EAO Limited (company no 00745121) whose registered office is at Highland House, Albert Drive, Burgess Hill, West Sussex RH15 9TN.
- 1.6. Force Majeure Event an event, circumstance or cause beyond a party's reasonable control.
- 1.7. Goods: any goods agreed in the Contract to be supplied to the Buyer by EAO (including any part or parts of them).

## 2. APPLICATION OF TERMS, ORDERS AND QUOTATIONS

- 2.1. The Contract shall be on these conditions to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2. These conditions apply to all EAO's sales and any variation to these conditions and any representations about the Goods shall have no effect unless agreed in writing and signed by an EAO director or a duly authorised representative.
- 2.3. The Buyer acknowledges that it has not relied on any representation made or given by or on behalf of EAO which is not set out in the Contract. Nothing in this condition 2.3 shall exclude or limit EAO's liability for fraudulent misrepresentation.
- 2.4. Each order or acceptance of a quotation for Goods shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. The Buyer is responsible for ensuring that the terms of its order and any applicable specification are complete and accurate.
- 2.5. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these conditions.
- 2.6. No order placed by the Buyer shall be deemed to be accepted until a written acknowledgement of order is issued by EAO or (if earlier) EAO delivers the Goods to the Buyer.
- 2.7. The Buyer may order Goods by telephone, e-mail or post save that in the case of a telephone order the Buyer shall on the same day provide faxed or e-mailed confirmation of such order, clearly marking it "Confirmation Only".
- 2.8. Any quotation is given on the basis that no Contract shall come into existence until EAO despatches an acknowledgement of order. A quotation is valid for the period stated within such quotation, provided that EAO has not previously withdrawn it.

## 3. DESCRIPTION

- 3.1. The quantity and description of the Goods shall be as set out in EAO's quotation or acknowledgement of order. Any product information and marketing materials issued by

EAO are for illustration purposes only and shall not form part of the Contract nor have any contractual force. This is not a sale by sample.

## 4. DELIVERY

- 4.1. Unless otherwise agreed in writing by EAO, delivery of the Goods shall take place FCA (Burgess Hill) Incoterms® 2020 at EAO's place of business. The Buyer shall take delivery of the Goods within 7 days of EAO giving it notice that the Goods are ready for delivery. Any dates specified by EAO for delivery of the Goods are an estimate. Time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.2. Delivery is completed on the completion of loading of the Goods at EAO's place of business.
- 4.3. Subject to the other provisions of these conditions EAO shall not be liable for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by EAO's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4. EAO shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide EAO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5. If the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or EAO is unable to deliver the Goods due to an omission by the Buyer, the Buyer shall pay EAO, as liquidated damages, an amount equal to 1% of the price payable for the undelivered Goods for each week's delay up to a maximum of 10% of the price payable for the undelivered Goods. The Buyer shall pay these liquidated damages on demand. The liquidated damages payable under condition 4.5 shall accrue from the date the undelivered Goods were ready for delivery and shall continue until the earlier of: (a) completion of the Goods' delivery; (b) termination of the Contract by EAO; or (c) abandonment of the Contract by the parties.
- 4.6. If the quantity of delivered Goods varies by up to 10% from the quantity accepted by EAO, the Buyer shall not be entitled to reject the Goods by reason of the variance and shall pay for such goods at the pro rata Contract rate.
- 4.7. EAO may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. NON-DELIVERY

- 5.1. The quantity of any consignment of Goods as recorded by EAO on despatch from EAO's place of business shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence proving the contrary. EAO shall not be liable for any non-delivery of Goods unless the Buyer gives written notice to EAO of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

EAO's liability for non- delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. RISK/TITLE

- 6.1. The Goods are at the risk of the Buyer from the time of delivery.
- 6.2. Ownership of the Goods shall not pass to the Buyer until the earlier of: (a) EAO receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment; and (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 6.4.
- 6.3. Until the Buyer has ownership of the Goods, the Buyer shall: (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as EAO's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (d) notify EAO immediately if it becomes subject to any of the events listed in condition 11.1(b) to condition 11.1(d) inclusive; and (e) give EAO such information as EAO may reasonably require from time to time relating to: (i) the Goods; and (ii) the ongoing financial position of the Buyer.
- 6.4. Subject to condition 6.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before EAO receives payment for the Goods. However, if the Buyer resells the Goods before that time: (a) it does so as principal and not as EAO's agent; and (b) title to the Goods shall pass from EAO to the Buyer immediately before the time at which resale by the Buyer occurs.
- 6.5. At any time before title to the Goods passes to the Buyer, EAO may: (a) by notice in writing, terminate the Buyer's right under condition 6.4 to resell the Goods or use them in the ordinary course of its business; and (b) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## 7. PRICE

- 7.1. Unless otherwise agreed by EAO, the price for the Goods shall be the price as set out in EAO's price list. The Buyer, however, acknowledges that EAO's price list may be subject to currency exchange rate fluctuations and EAO reserves the right to vary its price list, accordingly. EAO shall advise the Buyer of any currency exchange rate fluctuation and its impact on the pricing when submitting a quotation to the Buyer.
- 7.2. EAO may, by giving notice to the Buyer at any time up to seven (7) days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to: (a) any factor beyond EAO's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or their specification; or (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give EAO adequate or accurate information or instructions.

- 7.3. The price for the Goods shall be exclusive of any value added tax and any additional costs. The Buyer shall pay such tax and costs when it is due to pay for the Goods
- 7.4. The price is based upon receiving from The Buyer a purchase order that is of a minimum value of GBP 300 (or equivalent if the purchase currency is not GBP). The Buyer accepts that any order placed that is below this minimum value is subject to a small order surcharge of GBP 75 (or equivalent if the purchase currency is not GBP).

## 8. PAYMENT

- 8.1. Subject to condition 8.3, payment of the price for the Goods is due (a) for a Buyer without agreed credit account facilities, on EAO's acceptance of an order; or (b) for a Buyer with previously agreed credit account facilities, within 30 days of the invoice date.
- 8.2. Time for payment shall be of the essence. No payment shall be deemed to have been received until EAO has received cleared funds.
- 8.3. All payments payable to EAO under the Contract shall become due immediately on its termination despite any other provision.
- 8.4. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by EAO to the Buyer.
- 8.5. If the Buyer fails to pay EAO any sum due under the Contract, the Buyer shall be liable to pay interest to EAO on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank, accruing on a daily basis until payment is made. EAO, may, at its election, exercise its rights to interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 in place of the foregoing contractual right to charge interest.

## 9. QUALITY

- 9.1. Where EAO is not the manufacturer of the Goods, EAO shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to EAO.
- 9.2. EAO warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of section 12 of the Sale of Goods Act 1979 for 12 months, such period commencing on the delivery date. EAO shall not be liable for a breach of the warranty in this condition 9.2 unless: (a) the Buyer gives written notice of the defect to EAO, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and (b) EAO is given a reasonable opportunity, after receiving the notice, of examining such Goods and the Buyer (if so requested) returns such Goods to EAO for examination. Further, EAO shall not be liable for a breach of the warranty in this condition 9.2 if: (a) the Buyer makes any further use of such Goods after giving such notice; or (b) the defect arises because the Buyer failed to follow EAO's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or (c) the Buyer alters or repairs such Goods without EAO's written consent of EAO.

9.3. If any of the Goods do not conform with the warranty in condition 9.2 EAO shall, at its option, repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if EAO so requests, the Buyer shall return the Goods or the part of such Goods which are defective to EAO. If EAO complies with this condition 9.3 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods. Any Goods returned for replacement shall belong to EAO and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 months period.

## 10. LIMITATION OF LIABILITY

- 10.1. Subject to conditions 4, 5 and 9, the following sets out the entire financial liability of EAO (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: (a) any breach of these conditions; (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and (c) any representation, statement or tortious act or omission arising under or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3. Nothing in these conditions excludes or limits the liability of EAO: (a) for death or personal injury caused by EAO's negligence; (b) defective products under the Consumer Protection Act 1987; (c) for fraud or fraudulent misrepresentation; (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or, (e) for any matter which it would be illegal for EAO to exclude or attempt to exclude its liability.
- 10.4. Subject to condition 10.2 and condition 10.3: (a) EAO's total liability in contract, tort (including negligence), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the greater of £100,000 or the aggregate Contract price; and, (b) EAO shall not be liable to the Buyer for: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) indirect or consequential loss.

## 11. TERMINATION

- 11.1. Without limiting its other rights or remedies, EAO may terminate the Contract with immediate effect by giving written notice to the Buyer if: (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of the Buyer being notified in writing to do so; (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (c) the Buyer

suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or (d) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 11.2. Without limiting its other rights or remedies, EAO may suspend provision of the Goods under the Contract or any other contract between the Buyer and EAO if the Buyer becomes subject to any of the events listed in condition 11.1(b) to condition 11.1(d) inclusive, or EAO reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.3. Without limiting its other rights or remedies, EAO may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4. On termination of the Contract for any reason the Buyer shall immediately pay to EAO all of EAO's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, EAO shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 11.5. Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 12. EXPORTS

- 12.1. The Buyer, at its own expense, shall be responsible for obtaining any export/import licence and/or complying with any applicable export /import regulations. EAO advises the Buyer that it may not export certain types of US technology without prior approval of the US Department of Commerce and UK Department of International Trade.

## 13. GENERAL

- 13.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 months, either party may terminate the Contract by giving 56 days' written notice to the **other** party.
- 13.2. EAO may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of EAO.
- 13.3. Each right or remedy of EAO under the Contract is without prejudice to any other right or remedy of EAO whether under the Contract or not.
- 13.4. If any court or competent authority finds that any provision of these conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and

the validity and enforceability of the other provisions of these conditions shall not be affected.

- 13.5. Failure or delay by EAO in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract. Any waiver by EAO shall not be deemed a waiver of any subsequent breach
- 13.6. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.7. All notices between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to the relevant party's registered office or such changed address it has previously notified to the other. Notices shall be deemed to have been received: (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); (b) if delivered by hand, on the day of delivery; or, (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 13.8. The Contract shall be governed by and construed in accordance with English law. The United Nations Convention on the International Sale of Goods shall not apply to the Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms®) shall apply but where they conflict with the Contract, the Contract shall prevail.
- 13.9. Each party irrevocably agrees, for the sole benefit of EAO that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. Nothing in this condition shall limit the right of EAO to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**EAO Limited April 2024**