



**MicroSystem Support**

## **STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES.**

### **1. APPLICATION**

The Company orders and the Seller agrees to supply the Goods and/or Services specified on the Purchase Order on these Conditions which shall govern the Contract save as expressly varied by the Purchase Order.

Any reference on the Purchase Order to the Seller's quotation, specification, price list or like document shall be solely for the purpose of describing the Goods and/or Services to be supplied and no terms and conditions endorsed upon, delivered with or referred to in such document or on any form of order acknowledgement shall apply to the Contract.

Microsystem Support Ltd (MSS) General Terms and Conditions Version 2.1 dated 26th January 2023 (save as expressly varied by the Purchase Order) shall be deemed to be incorporated into the Contract.

### **2. DEFINITIONS**

**Company** means the Microsystem System Support Ltd Company (herein known as "MSS") which places the Purchase Order;

**Conditions** means the standard terms and conditions of purchase set out in this document and includes the MSS General Terms and Conditions referred to above;

**Contract** means the agreement formed as set out in clause 3.2 below;

**Delivery Address** means the address stated on the Purchase Order for delivery of the Goods and/or Services;

**Goods** means the goods (including any instalment of the goods or any part of them as applicable) described in the Purchase Order and includes any ancillary services to be provided with the goods;

**Goods and/or Services** means the Goods and/or Services as the case may be;

**Party** means either the Company or the Seller;

**Price** means the price of the Goods and/or Services;

**Purchase Order** means the Company's Purchase Order;

**Seller** means the person so described in the Purchase Order;

**Services** means the services (including any instalment of the services or any part of them) described in the Purchase Order and includes

any ancillary goods to be provided with the services;

**Specification** includes any description, plans, drawings, data or other information relating to the Goods and/or Services.

### **3. BASIS OF PURCHASE**

3.1 The Purchase Order constitutes an offer by the Company to purchase the Goods and/or Services at the Price subject to these Conditions.

3.2 A binding contract for the supply of the Goods and/or Services shall exist on whichever is the earlier of:-

3.2.1 the Seller's acceptance of the Purchase Order, in writing; or

3.2.2 delivery of the Goods and/or Services in accordance with the Purchase Order.

3.3 Any typographical clerical or other accidental error or omission in the Purchase Order, or in any specification, instructions or other material supplied by the Company, shall be subject to correction without any liability on the part of the Company.

### **4. SPECIFICATION**

4.1 The quantity, quality and description of the Goods and/or Services shall be as specified in the Purchase Order and /or any applicable Specification supplied to the Company by the Seller (and in the event of conflict the former shall prevail) or as agreed in writing by the Company.

4.2 Any Specification specifically produced by the Seller for the Company for the Contract, together with the copyright, design rights or any other intellectual property rights in that Specification, shall be the exclusive property and confidential information of the Company.

4.3 The Seller shall take any steps necessary to comply with any reasonable request by the Company to inspect or test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch.

4.4 If as a result of inspection or testing the Company is not satisfied that the Goods will comply with any applicable Specification and in all respects with the Contract, and the Company so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

### **5. PRICE**

5.1 The Price of the Goods and/or Services shall be as stated in the Purchase Order and, unless otherwise stated, shall be:-

5.1.1 exclusive of any applicable value added tax which shall be payable by the Company subject to receipt of a valid VAT invoice; and

5.1.2 inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods and/or Services to or at the Delivery Address and any taxes, duties, imposts or levies other than value added tax.

5.2 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 Company.

## **6. PAYMENT**

6.1 The Seller shall be entitled to invoice the Company on or at any time after delivery of the Goods and/or Services, and each invoice shall quote the number of the Purchase Order.

6.2 The Company shall pay the Price of the Goods and/or Services 30 days (or in accordance with the PO) of receipt by the Company of a valid invoice or, if later, after acceptance of the Goods and/or Services in question by the Company, but time for payment shall not be of the essence of the Contract.

## **7. DELIVERY**

7.1 The Goods and/or Services shall be delivered to the Delivery Address on the date or within the period stated in the Purchase Order, the Seller having provided in advance any instructions or other information necessary to enable the Company to accept delivery of the Goods and/or Services.

7.2 Where the date of delivery of the Goods and/or Services is to be specified by the Seller after the placing of the Purchase Order, the Seller shall give the Company reasonable notice in writing of the proposed date of delivery.

7.3 The date of delivery of the Goods and/or Services is of the essence of the Contract.

7.4 Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach the Delivery Address in an undamaged condition.

7.5 A packing note clearly quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods.

7.6 If the Goods and/or Services are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

7.7 The Company shall be entitled to reject any Goods and/or Services delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery.

7.8 The Company shall give written notice of any obvious damage in transit to the carrier and to the Seller, within ten (10) days of delivery.

7.9 The Company shall not be obliged to return to the Seller any packaging materials for the Goods, whether or not any Goods are accepted by the Company.

7.10 Services shall be delivered in accordance with the Contract.

7.11 Where specified in the Purchase Order goods must be delivered with a signed Certificate of Conformity stating description and serial number of goods supplied.

## **8. QUALITY**

8.1 Where the Seller is not the manufacturer of the Goods and/or Services, the Seller shall endeavour to transfer to the Company the benefit of any manufacturer's warranty or guarantee given to the Seller, but this does not reduce the liability of the Seller under the Contract.

8.2 The Seller warrants that on delivery, and for a period of 12 months, or for such longer period as may have been specified in the Purchase Order, from the date of delivery, the Goods and/or Services shall:-

8.2.1 be of satisfactory design, quality, material and workmanship and free from defects and conform in all respects with the Purchase Order and any Specification and will match any sample or catalogue description provided by the Seller;

8.2.2 comply with all applicable regulations or other legal requirements concerning the sale, manufacture, packaging, and delivery of the Goods and/or Services;

8.3 be generally fit for purpose, and also be fit for any particular purpose for which the Goods and/or Services are being bought, if the Company had made known that purpose to the Seller.

8.4 Where specified in the Purchase Order goods must be delivered with a signed Certificate of Conformity stating description and serial number of goods supplied.

## **9. RISK AND TITLE**

9.1 Risk of damage to or loss of and title to and ownership of the Goods and/or Services shall pass to the Company on delivery.

## **10. INDEMNITY**

10.1 The Seller shall indemnify the Company against all liability or loss awarded against or incurred or paid by the Company as a result of or in connection with:-

10.1.1 any material failure by the Seller or its employees, agents or sub-contractors to supply any Goods and/or Services in accordance with, or to comply with any of the terms of, the Contract or any breach of any warranty given by the Seller in relation to the Goods and/or Services;

10.1.2 any claim that the Goods and/or Services infringe, or that their importation, use or resale, infringes the patent, copyright, 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 or requirement of the Company;

10.1.3 all claims by the customers of the Company arising out of any breach whatever by the Seller of the Contract.

## **11. REMEDIES**

11.1 Without prejudice to the indemnity above or to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, without thereby incurring any liability to the Seller:-

11.1.1 to reject the Goods and/or Services (in whole or in part) and return them to the Seller at the risk and cost of the Seller, on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Seller;

11.1.2 at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

11.1.3 to refuse to accept any further deliveries of the Goods and/or Services; and/or  
11.1.4 to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract.

## **12. INSURANCE**

12.1 The Seller shall maintain in force, for the duration of performance of its obligations under the Contract and for a period of 6 years thereafter:

12.1.1 a policy of public liability insurance providing cover in respect of personal injury, death and damage to property with a minimum limit of indemnity of £5,000,000 for any one claim or series of claims arising out of any one event;

12.1.2 a policy of employer's liability insurance providing at least the minimum cover required by law; and

12.1.3 a policy of product liability insurance (in respect of Goods) and/or a policy of professional indemnity insurance (in respect of Services), each providing a minimum limit of indemnity of £5,000,000 for any one claim or series of claims arising out of any one event.

12.2 The Seller shall, on the Buyer's request, produce in respect of each policy of insurance the insurance certificate

## **13. SELLERS INDEMNITY**

13.1 The Seller shall indemnify and hold harmless the Buyer in full against and from all costs, expenses, damages, losses, claims and liabilities (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation, all interest and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with :

13.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply, receipt or use of the Goods and /or the Services and/or the Deliverables;

13.1.2 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods and /or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller and /or its employees, agents or subcontractors;

13.1.3 the Seller's failure to perform its obligations under the Contract;

13.1.4 any death or personal injury to any employees, agents or subcontractors or other persons of the Buyer or the Seller, or to any third party, arising out of, or in the course of, or caused by the carrying out of the Seller's obligations under the Contract;

13.1.5 any loss, injury or damage whatsoever to any property real or personal arising out of, or in the course of, or caused by the carrying out of the Seller's obligations under the Contract.

13.2 The indemnity under clause 13.1.1 shall extend to any country where the Buyer intends to use, transfer or market the Goods or utilise the Services and /or the Deliverables. Unless otherwise instructed by the Buyer, the Seller at its own expense shall immediately take over the conduct of any claim referred to in clause 13.1.1 and shall be responsible for entering into all negotiations for settlement of the same (any settlement being subject to the Buyer's reasonable prior approval).

#### **14. LIABILITY**

14.1 The Seller acknowledges that where there is a default on the part of the Seller, such default may put the Buyer in breach of obligations it may owe pursuant to other contracts the Buyer may have entered into with third parties, thereby causing the Buyer to incur liability to such third parties for costs, damages or expenses. The Seller acknowledges that any such costs, damages or expenses are within the contemplation of the Seller.

14.2 The Buyer shall have no liability to the Seller for any loss of profit or indirect or consequential losses arising out of, under or in relation to the Contract.

#### **15. TERMINATION**

15.1 The Company shall be entitled to cancel the Contract in respect of all or part only of the Goods and/or Services by giving notice to the Seller at any time prior to full delivery or performance of the Contract, in which event the Company's sole liability shall be to pay to the Seller an amount equal to the proportion of the Price that the Goods and/or Services actually delivered bears to the total Goods and/or Services to be supplied under the Contract, plus an amount equal to the Seller's than irrecoverable work in progress.

15.2 Where delivery dates as agreed on written acceptance of order are not met, the company shall be entitled to cancel the order. In most cases an agreed new delivery date will be agreed and confirmed in writing between both parties.

#### **16. ASSIGNMENT**

16.1 The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

16.2 The Seller may not assign, transfer, charge, subcontract or deal in any other manner

with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.

## **17. THIRD PARTY RIGHTS**

17.1 A person who is not a party to the Contract shall not have any rights under or in connection with it without prior agreement.

## **18. ENTIRE AGREEMENT**

18.1 The Contract constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes all previous agreements (whether written or oral) between the parties relating thereto.

18.2 The Seller acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether express or implied) other than as expressly set out in the Contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

18.3 All goods or services provided must be provided via legitimate and legal means and any vendor supply chain distribution rights must be adhered to and is the responsibility of the seller. By agreeing to supply MSS, the seller agrees to provide rights of access to validate product history.

## **19. NO WAIVER**

19.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **20. SEVERABILITY**

20.1 If a court finds that any provision of the Contract (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 or modified to the extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of the Contract shall not be affected .



## **21. GOVERNING LAW AND JURISDICTION**

21.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims), shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales, except that nothing in this clause 21.1 shall limit the right of the Buyer to take proceedings (including enforcement proceedings) against the Seller in any other court of competent jurisdiction.