

# WOOD & DOUGLAS LTD

## STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means any contract between the Supplier and the Customer for the sale and purchase of the Goods and Services, incorporating these terms and conditions and the terms of any applicable Specification Document;
- 1.2 "Customer" means the organisation or person who purchases Goods and Services from the Supplier;
- 1.3 "Goods" means any goods (including any part or parts of them) agreed in the Agreement to be supplied to the Buyer by the Supplier including any software required for use with the goods and set out in the Specification Document;
- 1.4 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.5 "Services" means any services (including any part or parts of them) agreed in the Agreement to be supplied to the Customer by the Supplier and set out in the Specification Document;
- 1.6 "Specification Document" means a statement of work, quotation or other similar document describing the Goods and Services to be provided by the Supplier;
- 1.7 "Supplier" means Wood & Douglas Ltd of Lattice House, Baughurst. Tadley, Hants RG26 5LP UK;
- 1.8 "Third Party Goods" means any goods or component parts to be supplied by the Supplier under any Agreement and which are manufactured by a third party.

### **2 GENERAL**

- 2.1 These terms and conditions shall apply to the Agreement to the exclusion of all other terms and conditions.
- 2.2 No order placed by the Customer shall be deemed to be accepted until the Supplier has submitted to the Customer a Specification Document which shall specify the Goods and Services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these terms and conditions.
- 2.3 No variation in these terms and conditions shall be accepted by the Supplier unless submitted by the Customer and agreed in writing by the Supplier.
- 2.4 The terms and conditions in this document shall take precedence over any other terms and conditions submitted by the Customer regardless of circumstances or conflict. The placing of a purchase order or acceptance by a Customer of a Specification Document shall be deemed as unequivocal acceptance of these terms and conditions.

- 2.5 The Supplier shall use all reasonable endeavours to complete the Services within estimated time frames but time shall not be of the essence in the performance of any Services.

### **3 PRICE AND PAYMENT**

- 3.1 The prices for the supply of Goods and Services are as set out in the Specification Document, although the Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier.
- 3.2 Invoicing shall be in Pounds Sterling (GBP) unless detailed otherwise in the Specification Document.
- 3.3 Prices in the Specification Document shall exclude value added tax, and all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Customer shall pay in addition when it is due to pay for the Goods and/or Services unless stated otherwise in the Specification Document.
- 3.4 Subject to Customer credit worthiness as assessed by a third party appointed by the Supplier, payment for the Goods and/or Services is due 30 days from the date of the Supplier's invoice. .
- 3.5 When a third party credit rating of the Customer is unacceptable to the Supplier the Supplier shall have the right to request payment prior to shipment of Goods or the provision of Services or at any other time notified to the Customer in writing.**
- 3.6 Third party credit reviews of all Customers takes place on a regular basis. Credit facilities offered to Customers are therefore subject to a pro-rata review process. Credit facilities shall consequentially increase or decrease without notice and credit facilities can also be withdrawn at any time. Prior history of the Customer having a credit facility with the Supplier does not imply an ongoing facility.
- 3.7 If the Customer is in default of the credit period as specified in 3.4 or as varied in the Specification Document, the Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order prior to payment, the Customer shall be responsible for issuing such purchase order before the Goods and Services are supplied.
- 3.8 If the Customer is in default of the credit period as specified in 3.4 or as varied in the Specification Document, the Supplier shall have the right to suspend all further delivery of goods or services until payment of all outstanding amounts has taken place. This shall not affect the Supplier's rights or imply repudiation of the Customer order for the Goods or Services.
- 3.9 The Supplier shall have the right to invoice the Customer for its reasonable out-of-pocket expenses incurred as a result of the Customer's default of the 30 day credit period specified in 3.4 or as varied in the Specification Document.

#### **4 SPECIFICATION OF THE GOODS**

All Goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the Agreement.

#### **5 DELIVERY**

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods. If no dates for delivery are specified, delivery shall be within a reasonable time and any delay shall not entitle the Customer to terminate or rescind the Agreement unless such delay exceeds 180 days.
- 5.2 All risk in the Goods shall pass to the Customer upon delivery.

#### **6 TITLE**

- 6.1 Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for:-
- 6.1.1 all Goods supplied to the Customer; and
  - 6.1.2 all other sums which are or which become due to the Supplier from the Customer on any account.
- 6.2 The Customer shall keep all Goods:
- 6.2.1 separate from all other goods of the Customer and readily identifiable (i) as the Supplier's property and (ii) in relation to the relevant Specification Document or invoice;and
  - 6.2.2 in good condition and insured on the Supplier's behalf for the full price to the reasonable satisfaction of the Supplier until such time as title passes to the Customer.
- 6.3 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

#### **7 CUSTOMER`S OBLIGATIONS**

- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 7.1.1 co-operate with the Supplier;
  - 7.1.2 provide the Supplier with any information reasonably required by the Supplier;
  - 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of provision of the Goods and/or Services by the Supplier; and
  - 7.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.

- 7.2 The Customer shall be liable to compensate the Supplier for any costs or expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.
- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or rejects the Goods and Services agreed to in the Specification Document:-
- 7.3.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence)
  - 7.3.2 the Goods and/or Services shall be deemed to have been delivered;
  - 7.3.3 the Supplier may store the Goods until delivery; and
  - 7.3.4 the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed (including, without limitation, storage and insurance) and in respect of cancellations on less than five working days' written notice the full amount of the Goods and Services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case.

For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the Goods and Services and subject to the payment of the damages set out in this Clause 7.3.

- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of the Agreement;
  - 7.4.2 if applicable, the timetable for completion of the Agreement will be modified accordingly;
  - 7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.
- 7.5 The Customer undertakes that if the Goods are offered for resale to a thirdparty any Supplier trademarks, labelling or other Supplier identification marks are not removed altered or defaced unless by prior agreement in the Specification Document.

## **8 ALTERATIONS TO THE SPECIFICATION DOCUMENT**

- 8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of Goods and/or Services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed Goods and/or Services and price and any other terms agreed between the parties.
- 8.2 The Customer may at any time up to five working days before the date for delivery request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform Services or the provision of Goods on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

## **9 WARRANTY**

- 9.1 The Supplier's liability in respect of any defects in material and workmanship in Third Party Goods, shall be limited to passing the Customer the benefit of any guarantee or warranty given by the manufacturer of such Third Party Goods for such period as is given by such manufacturer to the Supplier and subject to the terms of warranty given by such third party manufacturer (details of which can be supplied to the Customer on request provided that:
- 9.1.1 the manufacturer's warranty does not apply to any Third Party Goods, products or components in them which have been serviced or repaired by any party other than the manufacturer's authorised representative; and
  - 9.1.2 it is the sole responsibility of the Customer to ensure that compliance with the manufacturer's recommended service intervals and other instructions is achieved.
  - 9.1.3 the Customer shall not remove or deface the manufacturer's seals, barcodes and/or serial numbers.
- 9.2 The Supplier warrants that as from the date of delivery for a period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials.
- 9.3 The Supplier warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.4 The warranties in 9.1, 9.2 and 9.3 do not apply in the following circumstances:
- 9.4.1 where the defect arises from fair wear and tear, wilful damage, negligence or mis-use of the Goods, abnormal usage conditions, failure to follow the Seller's instructions (whether oral or in writing), failure to maintain or service the Goods in accordance with any manufacturer's recommendations, misuse or alteration or repair of the Goods without the Seller's approval;
  - 9.4.2 if the total price for the Goods has not been paid by the due date for payment;
  - 9.4.3 if the Supplier's seals, barcodes and/or serial numbers have been removed; and
  - 9.4.4 to any Goods once sold on by the Customer to a third party.
- 9.5 A warranty given under 9.2 or 9.3 above shall relate to the relevant Agreement and may not be transferred by the Customer to a third party.

- 9.6 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods and Services to be provided by the Supplier.
- 9.7 All warranty liability of the Supplier shall be cancelled if it is deemed that the Goods in question have been tampered with, modified or changed in any way subsequent to leaving the Supplier's premises. This shall include modification to the serial identification mark or other identification labelling on the product.
- 9.8 Where Goods supplied by the Supplier have been incorporated by the Customer into secondary assemblies ("Third Party Assemblies") and the complete Third Party Assembly is returned under a warranty claim, the Supplier shall have the right to charge as appropriate for the time and resources spent in inspecting, extracting or otherwise checking the Goods incorporated into the Third Party Assembly. No liability for consequential damage to any part of the Third Party Assemblies whether physical or electrical will be accepted by the Supplier in these circumstances. There shall be no obligation to produce a working Third Party Assembly or return it to its condition at the time of receipt for inspection on completion of such warranty activity.
- 9.9 Where Goods are returned in a warranty period there shall be no extension of the original warranty period unless an extension to this period is agreed in writing by both the Customer and the Supplier prior to return to the Supplier.
- 9.10 The cost of returning the Goods to the Supplier shall be for the Customer's account.
- 9.11 The cost of returning the Goods to the Customer shall be for the Supplier's account.
- 9.12 Where any valid claim in respect of any of the Goods which is based on any breach of a warranty as set out in Clause 9.1 or 9.2 is notified to the Supplier in accordance with these conditions, the Supplier shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer, the price of the Goods (or a proportionate part of the price), but this shall be the Customer's sole remedy and the Supplier shall have no further liability to the Customer in this regard. Prior authorisation of the Supplier must be obtained before returning any Goods. The Supplier shall also have the right to specify the method of packing and mode of delivery of such Goods. Where Goods are found to have been supplied in compliance with these Conditions and have been unreasonably returned, the Supplier shall reserve the right to charge an administration fee of up to 20% of the price of the Goods ordered.
- 9.13 The Supplier reserves the right to decline to repair any Goods returned for repair that are outside the original or any extended warranty period and, where the Goods have been incorporated into a Third Party Assembly, where the Customer has not checked for faults in components of the Third Party Assembly other than the Goods.
- 9.14 If Goods are accepted for repair by the Supplier which are outside a valid warranty period, the Supplier will endeavour to return the units to original specification and if a new warranty period is requested by the Customer, the Supplier shall be permitted to make a reasonable charge for such a new warranty period. The Supplier reserves the right to request payment prior to such activity taking place and in any case such charge must be paid in full prior to the Goods being returned from the Supplier to the Customer for the warranty to become valid.

## **10 INDEMNIFICATION**

- 10.1 The Customer shall indemnify the Supplier against the consequences of all claims made against the Supplier by any third party in respect of defective Goods supplied by the Supplier to the Customer insofar as any such claim exceeds that which the Customer could have successfully claimed against the Supplier.

- 10.2 If Goods are manufactured to the Customer's design or specification, the Customer warrants that it has all necessary rights to instruct the Supplier to do so, and the Customer will indemnify the Supplier for all claims, damages, losses, costs and liabilities in respect of any claim made against the Supplier that the design or specification infringes, or that the Goods themselves (as a result of such design or specification) infringe or that the use or resale of the Goods infringes any Intellectual Property Rights or other third party rights of whatever nature.
- 10.3 The Customer shall further indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement.

## **11 LIMITATION OF LIABILITY**

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever for breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer for the Agreement to which the claim relates.**
- 11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.**
- 11.3 Nothing in these terms and conditions shall exclude or limit the Supplier's liability:-
- 11.3.1 for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors; or
  - 11.3.2 under the conditions implied by section 12 of the Sale of Goods Act 1979; or
  - 11.3.3 under section 2(3) Consumer Protection Act 1987; or
  - 11.3.4 for any matter for which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
  - 11.3.5 for fraud or fraudulent misrepresentation.

## **12 TERMINATION**

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- 12.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 12.4 the other party ceases to carry on its business or substantially the whole of its business; or

- 12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

### **13 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier (or its licensors), and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier (or its licensors) by the execution of appropriate instruments or the making of agreements with third parties.

### **14. SOFTWARE**

- 14.1 If the Supplier provides the Customer with software for use in connection with any Goods or Services, then (in the absence of any specific licence terms to the contrary which apply) the Customer will have a non-exclusive, non-transferable, revocable licence to use such software solely for its own internal use to the extent necessary to use the Service. Such licence shall not entitle the Customer to claim title to, or any ownership interest in, the software (or any derivations or improvements thereto) and the Customer will execute any documentation reasonably required by the Supplier to document the Customer's existing and continued ownership of, or right to, the software.

- 14.2 The Customer agrees that it will not and will not permit others to:

- (a) copy the software except as permitted by the Supplier, except as reasonably required for backup purposes;
- (b) reverse engineer, decompile or disassemble the software save to the extent that it cannot be prohibited from so doing under applicable law;
- (c) sell, lease, licence or sub-licence the software;
- (d) create, write or develop any derivative software or any other software programme based on the licensed software or any confidential information of the Supplier;
- (e) take any action prohibited by the owner of the software.

### **15 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

### **16 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

## **17 ASSIGNMENT**

- 17.1 The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.
- 17.2 The Supplier may assign the benefit of the Agreement or any part of it to any person, firm or company.

## **18 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

## **19 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## **20 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Specification Document or such other address as either party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered 48 hours from the date of posting.

## **21 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

## **22 NO THIRD PARTY RIGHTS**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **23 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.