

1. Definitions

- 1.1 *"Background Technology"* means any and all products, services, processes, technologies, Materials, software, data and other innovations that are created by either party or a third party prior to the Effective Date or outside of this Order and that are to be used as part of the Contract and includes Materials, and all know-how, Confidential Information, documents and Technology relating to the Buyer Background Technology or Supplier Background Technology which the Buyer or Supplier owns and makes available for the purposes of the Contract;
- 1.2 *"Business Day"* means a day other than a Saturday, Sunday or public holiday in England;
- 1.3 *"Buyer"* means Eltrium Limited, Duncote, Towcester, Northamptonshire, NN12 8AL;
- 1.4 *"Charges"* means the charges to be paid by the Buyer for the supply of Goods and/or Services subject to section 3;
- 1.5 *"Conditions"* means these conditions of supply of Goods and Services;
- 1.6 *"Confidential Information"* means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including, without limitation, documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within ten (10) Business Days after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.
- 1.7 *"Contract"* means the contract between the Buyer and the Supplier consisting of the Supplier's quotation and/or proposal, the Order and these terms and conditions;
- 1.8 *"Deliverables"* means all tangible or intangible documents, products, materials and data to be supplied by the Supplier in accordance with the proposal, or the Order by its officers, employees, agents, or contractors in relation to the Goods or Services including without limitation drawings, plans, diagrams, designs, pictures, computer programs or software, data, specifications, studies and reports (including drafts);
- 1.9 *"Delivery Date"* means the date or dates specified in the proposal and/or Order for the delivery of the Goods or the Supply of Services to the Buyer;
- 1.10 *"Duration"* The Contract shall begin on the Effective Date, and shall remain in force until all the obligations under the Contract have been fulfilled by the Supplier, unless the Contract is terminated earlier in accordance with these Conditions;
- 1.11 *"Effective Date"* means the date when the Order is sent by the Buyer to the Supplier;
- 1.12 *"Goods"* means the goods and materials to be supplied to the Buyer by the Supplier under the Contract;
- 1.13 *"Foreground Technology"* means all Intellectual Property Rights and technical know-how that will be created by the Supplier, or in collaboration with the supplier and the Buyer or on behalf of the Buyer in pursuance of the Contract and/or comprised in whole or in part in the Deliverables;
- 1.14 *"Intellectual Property Rights"* means all patents, patent applications, patent disclosures and inventions, trademarks, service marks, trade dress, trade names, logos and corporate names and registrations and applications for registration thereof together with all of the goodwill associated therewith, copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof, mask works and registrations and applications for registration thereof, computer software, data, data bases and documentation thereof, trade secrets and other confidential information (including, without limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information), other intellectual property rights and copies and tangible embodiments thereof (in whatever form or medium), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
- 1.15 *"Materials"* means equipment, parts, tools, drawings, specifications, and data supplied by the Buyer to the Supplier, including computer programs, reports and specifications;
- 1.16 *"Order"* means the order placed by the Buyer for the supply of the Goods and/or Services as set out in the Buyer's purchase order;
- 1.17 *"Parties"* means the parties to this Contract;
- 1.18 *"Representatives"* means employees, officers, professional advisers, agents and contractors having a need to know or access the Confidential Information in connection with the Contract;
- 1.19 *"Services"* means the services to be provided to the Buyer by the Supplier under the Contract;
- 1.20 *"Specifications"* means the technical description, materials or dimensions, performance criteria (if any) of the Goods or Services contained or referred to within the Contract;
- 1.21 *"Supplier"* means the person or company to whom the Order is addressed;
- 1.22 *"Technology"* means any data technical information (whether patentable or not), designs and drawings (whether capable of registration or not), specifications, schematics, computer software programs (including source and object codes), manuals, databases, formulae, processes, applications, methods of production and other related

information and materials (whether tangible or intangible), together with any Intellectual Property Rights relating thereto.

2. Contract and Acceptance

- 2.1 The Contract shall come into force on the Effective Date.
- 2.2 The Supplier's price quotation constitutes an offer to supply, and the Order constitutes the Buyer's acceptance of such offer. The Contract is formed when the Order is sent to the Supplier.
- 2.3 The Contract shall be subject to these Conditions which shall override any other terms or conditions or contract submitted by the Supplier or which are implied by trade, custom, practice or course of dealing.
- 2.4 The Contract contains the entire agreement between the parties and supersedes all prior representations, proposals, agreements (written or oral) or terms the Supplier may wish to incorporate or impose.
- 2.5 No variation of this Order made orally shall be binding unless the Parties' Representatives have confirmed such variation in writing by a duly authorised Representative of the Buyer.

3. Charges and Payment Terms

- 3.1 In consideration of the Supplier's provision of Goods and or Services, the Buyer shall pay the Supplier's charges as stated in the Order which shall not be varied for any reason whatsoever unless expressly agreed in writing by a duly authorised Representative of the Buyer. The charges shall be, unless expressly agreed otherwise, inclusive of:
 - 3.1.1 all costs for packaging, packing, carriage and freight, insurance and deliveries of the Goods and any duties, or levies other than value added tax; and
 - 3.1.2 all royalties, licence fees and other expenses arising from the use of any Intellectual Property Rights in the Goods, Services and Deliverables.
- 3.2 The Supplier shall ensure that:-
 - 3.2.1 the invoice is correctly drawn and quotes the Buyer's Order number and includes all supporting information as required by the Buyer to verify the accuracy of the invoice;
 - 3.2.2 for the provision of subcontracted labour, timesheets, agreed by a duly authorised Representative of the Buyer accompany the invoice.
- 3.3 The Supplier shall invoice the Buyer on or after delivery of the Goods or completion of the Services, unless staged payments are agreed and set out in the Contract.
- 3.4 The Buyer shall pay each invoice 30 days from end of month, unless expressly agreed otherwise in writing by a duly authorised Representative of the Buyer;
- 3.5 The Charges payable by the Buyer under the Contract are exclusive of Value Added Tax (VAT) at the current rate, as chargeable and shall be shown separately on each invoice.
- 3.6 Time for payment shall in any case not be of the essence.

4. The Buyer's Obligations

- 4.1 The Buyer shall reasonably co-operate with the Supplier in all matters relating to the Goods and or Services and provide the Supplier with any information the Supplier may reasonably require in order to provide the Goods and or Services to the Buyer.

5. Inspection and Testing

- 5.1 The Supplier agrees to participate in the Buyer's supplier quality and development programme(s) and to comply with all quality requirements and procedures specified by the buyer, as the same may be revised from time to time. The Buyer shall have the right to enter the Supplier's facilities at reasonable times upon making appointment beforehand, to inspect or test all goods, materials and equipment covered by this Order. The Buyer's inspection of the Goods, whether during manufacture, prior to delivery or within reasonable time after delivery, shall not constitute acceptance of any work-in-progress or finished Goods and shall not diminish or otherwise affect the Supplier's obligations under this Order.

6. Passing of Risk and Title

- 6.1 Risk in the Goods shall only pass to the Buyer upon delivery to, and completion of offloading of the Goods at the Buyers premises (or any other location specified by the Buyer pursuant to section 8.2.2).
- 6.2 Title in the Goods and/or Services shall pass to the Buyer upon payment for the Goods and/or Services. The passing of title in the Goods and/or Services shall be without prejudice to any right of rejection which may accrue to the Buyer (whether under these Conditions or otherwise howsoever).

7. Packaging and Damage or Loss in Transit

- 7.1 The Supplier shall ensure that the Goods shall be packaged in a manner consistent with good trade practice and in compliance with all applicable UK and international laws and regulations relating to the packaging and carriage of goods including those relating to hazardous goods.
- 7.2 The Supplier shall repair or replace, free of charge, any Goods damaged or lost in transit provided that the Buyer gives the Supplier written notification of such damage or shortages within a reasonable time.
- 7.3 The Buyer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer.

8. Delivery of Goods and Supply of Services

- 8.1 The Supplier shall use all reasonable endeavours to meet all Delivery Dates as set out in the Contract or notified by the Buyer to the Supplier.
- 8.2 In providing the Goods and or Services, the Supplier shall;
 - 8.2.1 ensure that the Goods are properly packaged, packed and secured in such manner as to enable them to reach their destination in good condition. Each delivery of Goods shall be accompanied by a delivery note which shows the date of the Order, the Order number, the individual part numbers and the type and quantity of the Goods;
 - 8.2.2 deliver the Goods and/or provide the Services to the Buyer's premises or any other location specified by the Buyer as set out in the Contract or as instructed by the Buyer's Representative before the delivery;

- 8.2.3 not deliver more or less than the quantity of Goods ordered or deliver Goods in instalments without the Buyer's prior written consent, otherwise, the Supplier shall be required to remedy the Buyer in accordance with section 9;
- 8.2.4 not change or alter the design or any dimensions or technical specification of the Goods without prior written consent of the Buyer;
- 8.2.5 perform the Services with all reasonable skill and care in accordance with best practice in the Supplier's industry, trade and profession;
- 8.2.6 use personnel who are suitably trained, skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 8.2.7 ensure that Goods and Services conform with all descriptions and Specifications as set out in the Contract, and any samples of the Goods provided by the Supplier, as well as the Deliverables shall be fit for purpose as held out by the Supplier, expressly or by implication (the Buyer shall rely on the Supplier's skill and judgment), and meet with all applicable statutory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- 8.2.8 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables and all Goods and all materials used in performing the Services will be free from defects in materials and workmanship, installation and design;
- 8.2.9 in the event that the Services are to be performed at the Buyer's premises, use its reasonable endeavours to ensure that its employees, officers, agents and contractors observe all of the Buyer's Health and Safety rules and regulations and security requirements;
- 8.2.10 obtain and maintain at its own expense any necessary import or export licence, customs clearance, exchange control, consents or other authorisations and permits whatsoever which are required for the performance of the Contract; and
- 8.2.11 give the Buyer reasonable prior written notice if any of the Goods present a hazard to the Health and Safety of persons or property and shall mark the Goods with the relevant international danger symbols and ensure that all such Goods include a description of the material in English providing full details of all precautions to be taken by the Buyer on the delivery of the Goods and their subsequent use, storage or handling.
- 9. Remedies**
- 9.1 If the Supplier fails to comply with the Specifications, or any terms of this Order, the Buyer shall be entitled (whether or not goods or any part thereof shall have been accepted by the Buyer) to any one or more of the following remedies at its discretion:
- 9.1.1 to rescind this Order;
- 9.1.2 to return all goods or any part thereof delivered back to the Supplier. Any costs incurred will be borne by the Supplier. The Buyer shall be entitled to full reimbursement of any goods or works so returned;
- 9.1.3 to give the Supplier the opportunity to replace, repair or reinstate at the Supplier's expense the goods so that they comply with the terms of the Order;
- 9.1.4 to refuse to accept any further deliveries or instalments of the goods or any part thereof without any liability to the Supplier;
- 9.1.5 to carry out at the Supplier's expense such works as may be necessary to make the goods or any part thereof comply with the Order or Specifications; and
- 9.1.6 to claim such damages as the Buyer may have sustained in consequence of any breach of the Order.
- 9.2 The above remedies shall be in addition to and without prejudice to any other rights the Buyer may have.
- 10. Intellectual Property Rights**
- 10.1 Any Background Technology shall remain the property of the Party (or the Party's licensor) that makes it available to the other.
- 10.2 The Supplier hereby grants a world-wide, non-exclusive, royalty free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered hereunder. The Supplier assigns to the Buyer all rights, title and interest in and to all trademarks and copyrights and any material created for the Buyer under this Order (unless expressly provided to the contrary on the face of this Order).
- 10.3 The Supplier agrees that each Party shall continue to be the sole and exclusive owner of all rights in its own Background Technology, subject to any agreements in writing to the contrary. Save as expressly provided in this Order, each Party acknowledges that this Order shall not give it any right, interest, license and title in, under and to the other Party's Background Technology.
- 10.4 Neither Party will make any representation or in any way act in a manner which may be taken to indicate that it has any such right, title, license or interest.
- 11. Confidentiality/Publicity and Announcements**
- 11.1 No announcement, circular, advertisement or other publicity in connection with this Order or any ancillary matter shall be made or issued by either Party save as required by law or the regulations of the relevant stock exchange without the prior written consent of the other Party.
- 12. Indemnities**
- 12.1 The Supplier shall indemnify and hold the Buyer, its successors, employees, agents and customers harmless from all claims and all direct, indirect, consequential liabilities, loss of profits, loss of business, depletion of goodwill and similar losses, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by the Buyer, its successors, employees, agents and customers as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or
- 12.2 Any claim made against the Buyer, its successors, employees, agents and customers in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer, its successors, employees, agents and customers to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this Order by the Supplier.
- 13. Insurance**
- 13.1 Without prejudice to section 12, the Supplier shall:
- 13.1.1 procure and maintain insurance(s), in amounts and with coverage acceptable to the Buyer, with reputable and financially responsible insurance companies.
- 13.1.2 at the Buyer's request, the Supplier shall furnish to the Buyer the insurance certificate giving details of such cover and the receipt for the current year's premium.
- 13.2 The Supplier's purchase and maintenance of appropriate insurance, however, shall not relieve the Supplier of its obligations or liabilities under this Order.
- 14. Termination**
- 14.1 The Buyer reserves the right to terminate all or any part of the Contract and the Order without liability (save as set out in section 14.2) in respect of the supply of Goods and/or Services in whole or in part at any time with immediate effect, by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract.
- 14.2 In respect of section 14.1, and subject to sections 3 upon termination of the Contract, the Buyer shall pay the Supplier's unpaid costs without duplication:
- 14.2.1 the Order price for all goods or services which have been completed in accordance with this Order and not previously paid for; and
- 14.2.2 the actual costs of work-in progress and raw materials incurred by the Supplier in furnishing the goods or services under this Order to the extent such costs are reasonable in amount and are properly allocable or proportionate under generally accepted accounting principles to the terminated portion of this Order, less, however the reasonable value or cost (whichever is higher) of any goods or materials used or sold by the Supplier with the Buyer's written consent, and the cost of any damaged or destroyed goods or material.
- 14.3 The Supplier shall provide to the Buyer all reasonable documentation to support unpaid costs.
- 14.4 Following termination pursuant to section 14.1, the Supplier shall immediately return to the Buyer all Materials and any Deliverables whether or not they are complete. Until the Materials and Deliverables have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.5 The Buyer will make no payments for finished goods, work-in-progress or raw materials fabricated or procured by the Supplier in excess of those authorised for delivery releases nor for any undelivered goods which are in the Supplier's standard stock or which are readily marketable. Payments made as a result of the Buyer exercising its right to termination, shall not exceed the aggregate price payable by the Buyer for finished goods that would be produced by the Supplier under delivery or release schedules outstanding at the date of termination. Except as provided in this statement, the Buyer shall not be liable for and shall not be required to make payments to the Supplier, directly or on account of claims by the Supplier's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest, product development and engineering cost, facilities and equipment rearrangement costs, rental, unamortised depreciation costs, general and administrative burden charges from termination of this order.
- 14.6 The Buyer may immediately terminate this Order without liability to the Supplier by giving notice to the Supplier if:
- 14.6.1 the Supplier makes any voluntary arrangement with its creditors, becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 14.6.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- 14.6.3 the Supplier ceases, or threatens to cease, to carry on business; or
- 14.6.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.
- 15. Governing Law: Jurisdiction**
- 15.1 Any controversy or claim of whatever nature arising out of or relating in any manner whatsoever to the Order or any breach of its terms shall be governed by English Law and the parties shall submit to the exclusive jurisdiction of the English Courts.
- 16. Miscellaneous Provisions**
- 16.1 Except as provided in the Contract, a person who is not a party to the Contract shall not have any right under the Contracts Rights of Third Parties Act 1999 to enforce any terms of the Contract.
- 16.2 The Supplier shall not, assign, sub-contract or transfer any of its rights or obligations under the Contract to any other person unless the Supplier has gained the Buyer's prior written consent;
- 16.3 Neither party shall be in breach of the Contract, nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (Force Majeure Event);
- 16.3.1 the Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations; and
- 16.3.2 if a Force Majeure Event prevents, hinders, or delays the Supplier's performance of its obligations for a continuous period of more than 30 Business days, the Buyer may terminate the Contract immediately by giving written notice to the Supplier.
- 16.4 No variation of the Contract, including the introduction of any additional terms or conditions shall be effective unless agreed in writing by a duly authorised representative of the Buyer and Supplier;
- 16.5 Any notice or communication required to be given by either party to the other shall be; in writing and addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision; or
- 16.5.2 communicated by email, deemed receipt shall be one Business day after transmission.