

ERA TECHNOLOGY LIMITED - TERMS AND CONDITIONS OF SALE

1. Definitions

"Acknowledgement" means ERA's signed acknowledgement of the Customer's order confirming the Goods and/or Services to be provided subject to these terms and conditions.

"Contract" means the contract between ERA and the Customer for the supply of Goods and/or Services which incorporates these terms and conditions.

"Contract Price" means the aggregate price of all Goods and/or Services to be supplied by ERA under the Contract.

"Customer" means the party to whom the Acknowledgement is addressed.

"ERA" means ERA Technology Limited registered in England No.07419599.

"ERA Employees" means employees, consultants, contractors and sub-contractors of ERA.

"Ex-Works" means the definition ascribed to it in Incoterms 2010.

"Goods" means any goods to be supplied under the Contract.

"IPR" means all patents, trade marks, trade and business names, copyright (including copyright in computer software), rights in designs, database rights, trade secrets, rights in know-how and confidential information and all other intellectual property rights and similar rights (whether or not registered or capable of registration), together with all applications for registration of and rights to apply for any of the foregoing anywhere in the world.

"Material" means software, manuals, information, data, drawings, reports and any other documents or materials in whatever medium generated under the Contract.

"Proposal" means ERA's invitation to the Customer to place an order for the supply of Goods and/or Services.

"Services" means any services to be supplied under the Contract.

2. General

ERA's Proposal is an invitation to the Customer to make an offer to ERA and is subject to ERA's acceptance by means of an Acknowledgement [and availability of stocks]. Any Contract between the parties resulting from such acceptance shall be on the basis of these terms and conditions notwithstanding any conflicting terms and conditions sought to be applied by the Customer which ERA hereby rejects. These terms and conditions prevail over any terms implied by customer practice.

3. Price

3.1 The Contract Price shall unless otherwise expressly specified be deemed to be exclusive of all duties and taxes in respect of the Goods and/or the Services and exclusive of any export and/or import duties, all of which taxes and duties shall be for the Customers account and will be invoiced in addition.

3.2 ERA reserves the right to vary the Contract Price for any Goods and/or Services supplied under the Contract if following the date of its Proposal there is any change in the rates of exchange or any imposition or alteration of Government tax which increases the cost to ERA of supplying the Goods and/or Services.

4. Payment

4.1 ERA shall be entitled to invoice the Customer in accordance with the payment plan set out in its Proposal and/or Acknowledgement or as otherwise agreed in writing between the parties. Payment of all valid invoices shall be made by the Customer, in all cases in full without deduction or set off, within 30 days of the date of invoice. Time is of the essence for the purposes of payment.

4.2 Without prejudice to ERA's rights under clauses 4.3 and 13.1, ERA shall be entitled to charge interest at the rate of 2 per cent above Barclays Bank base rate per annum on the amount of any late payment calculated on a day to day basis until the actual date of payment and repossess Goods in accordance with clause 6 and any administrative charges.

4.3 In the event that the Customer fails to make any payment on the due date to ERA under the Contract or under any other contract between the Customer and ERA then without prejudice to any other remedy or right available to ERA, including the right of termination under clause 13.1, ERA shall be entitled to suspend any further deliveries of Goods and/or Services to the Customer and ERA shall have no liability to the Customer as a result of such suspension of deliveries.

4.4 If the Customer is resident outside the United Kingdom, payment will unless otherwise agreed, be made by an irrevocable letter of credit in all respects acceptable to ERA and confirmed by a major UK clearing bank in favour of ERA. The Contract shall not be effective until ERA is in receipt of such letter of credit.

5. Delivery

5.1 Whilst ERA will endeavour to achieve any delivery dates agreed for the Goods and/or Services, unless otherwise agreed in writing, all such dates are estimates only and ERA shall have no liability to the Customer in the event of failure to achieve such dates. Time shall not be of the essence in relation to delivery.

5.2 Delivery of Goods to the Customer will be Ex-Works ERA's premises in Leatherhead, England. At the request and expense of the Customer, ERA may make arrangements for carriage of the Goods to the Customer's premises or to a carrier nominated by the Customer. In such event delivery shall occur upon delivery to the Customer's premises or as the case may be to the carrier. Delivery shall be effected by ERA making the Goods available for collection at its Leatherhead premises.

5.3 If the Customer shall within 7 days after receipt of notice from ERA that the Goods are ready for delivery fail to collect the Goods or in the case of delivery to the Customer's premises or carrier not accept delivery of the Goods, the cost of storage and any insurance in respect of the Goods until actual delivery or their disposal shall be borne by the Customer. If such failure to collect or accept delivery, as the case may be, continues for more than another 14 days the Customer shall be deemed to have repudiated the Contract and ERA may terminate the Contract in accordance with clause 13.1.

5.4 Risk in the Goods shall pass to the Customer upon delivery in accordance with the Contract, or if the Customer or its carrier fails to take delivery or collect the Goods, as the case may be, at the time when ERA or any courier appointed by it has tendered delivery.

5.5 ERA may reduce, vary or cancel orders if ERA is unable, through shortage of stocks or other reasons, to execute them and may make such alterations to the Goods as circumstances may demand. [Unless the Customer notices ERA otherwise, the Customer shall be deemed to have accepted the Goods after the expiry of 7 days of receipt of the Goods.]

6. Title

6.1 Notwithstanding delivery Property in the Goods shall not pass to the Customer until payment (in cleared funds) has been received by ERA in full for the Goods and all other sums which are or become due from the Customer any account, including charges, accrued interest and legal costs notwithstanding that ERA may have allowed credit or agreed to deferred payment in variance of such agreed terms.

6.2 Until property in the Goods has passed ERA shall be entitled to repossess the Goods and the Customer shall do all in its powers to enable ERA so to do including irrevocably granting ERA such right, licence or waiver as may be required to enable ERA, its employees or agents to enter the premises where the Goods are situated for that purpose. Until property in the Goods has passed to the Customer the Customer shall:

- take proper care of the Goods and take all reasonable steps to prevent any damage or deterioration thereto and shall allow ERA to inspect them if ERA so requires; and
- keep the Goods free from a charge, lien or other encumbrance and store the Goods in such a way as to show clearly that they belong to ERA; and
- give ERA all such information relating to the Goods as ERA may require.

Notwithstanding any inconsistency with any other provisions herein, the Customer acknowledges and admits that until payment has been made in full it holds the Goods in a fiduciary relationship as bailee for ERA and that it shall be estopped from denying this admission.

7. Warranty

Goods

7.1 ERA warrants that for a period of 6 months from delivery, the Goods will be free from defects in design, workmanship and material and comply in all material respects with its published specification. In the event of a breach of this warranty then ERA shall at its cost and option, repair or replace the Goods (or part thereof) or refund that part of the Contract Price attributable to the defective Goods (in which case the defective Goods shall be returned to ERA). ERA's liability hereunder shall be conditional upon:

- the Customer submitting a written claim to ERA within seven days after the date upon which it discovers or ought reasonably to have discovered the defect; and
- the defect not being attributable to alteration or repair of the Goods without ERA's prior consent, or misuse or neglect of the Goods; and
- the Goods being returned, if ERA so requires, by the Customer to ERA carriage paid (such amount to be refundable by ERA if the Customer's claim is substantiated) within two weeks after ERA's request to that effect.

Services

7.2 Services will be provided by such ERA Employees as it considers suitably qualified to undertake the work. ERA also warrants that Services will be undertaken using reasonable skill and care and any Material generated as a result thereof will be free from material errors or omissions. ERA's liability is limited to the provision of Services of the same nature as those originally provided to correct such errors or omissions subject to ERA being notified accordingly within 3 months from completion of the Services.

8. Limitation of Liability

8.1 Save as set out in clause 7 above to the extent permissible at law, all warranties, conditions, guarantees or representations as to satisfactory quality or fitness for a particular purpose or other warranties, conditions, guarantees or representations, whether express or implied by statute or otherwise, oral or in writing except as expressly stated herein are hereby excluded. Except as expressly stated herein to the extent permissible at law ERA has no obligation, duty or liability in contract, tort (including negligence) or otherwise.

8.2 ERA shall in no circumstances be liable for any indirect, special or consequential loss or loss of profits or business howsoever arising in connection with or arising out of the supply of Goods and/or Services even if ERA shall have been advised of the possibility of such potential loss and shall not be liable for any loss except as provided herein.

8.3 ERA accepts unlimited liability for death or personal injury resulting from its negligence and clauses 8.2 and 8.4 do not apply to such liability.

8.4 Without prejudice to the above, ERA's liability to the Customer shall not exceed in the aggregate 115% of the Contract Price or £25,000, whichever is the greater.

9. Intellectual Property Rights and Licence

9.1 All IPR in any Material generated under the Contract or otherwise generated by or on behalf of ERA shall be the exclusive property of ERA. Any licence for the Customer to use such IPR shall be subject to the agreement of ERA and stated on the Acknowledgement.

9.2 Any software delivered to the Customer under the Contract shall, subject to the rights of third parties, remain the property of ERA and use thereof by the Customer shall be subject to the terms of ERA's applicable software licence as detailed in the Proposal or the third party software licence as the case may be.

9.3 Any IPR Licence granted to the Customer shall be personal to the Customer and not transferable or licensable by the Customer.

10. Customer Supplied Access, Information etc.

10.1 To enable ERA to carry out its obligations under the Contract, the Customer undertakes to provide ERA with access to its personnel, premises, accommodation, office facilities, documentation, data and any other material set out in its Proposal within the timescales set out therein or otherwise upon the reasonable request of ERA. Any failure in this respect shall render the Customer liable to ERA for any loss or cost arising therefrom or for any defect or otherwise which results in consequence.

10.2 ERA shall not be liable in respect of any damage to Customer provided material or any Customer provided material rendered unserviceable where either situation occurs as a result of the proper performance of the Contract by ERA.

10.3 Upon delivery of all Goods and/or Services under the Contract, all hardware and equipment provided by the Customer for the purposes of the Contract and in the possession of ERA shall be collected by the Customer from ERA within a period of two months. If not collected as aforesaid, ERA shall be entitled to give the Customer one month written notice whereupon if the hardware and equipment has still not been collected ERA shall have the right to dispose of it by sale or otherwise. The Customer shall be liable to ERA for all reasonable storage costs and costs incurred in effecting such disposal less the sum of the proceeds from sales made.

10.4 ERA Employees will observe the Customer's reasonable site regulations, as advised in writing to ERA.

10.5 The Customer undertakes to provide a suitable and safe working environment for ERA Employees and anyone acting on its behalf.

11. IPR Indemnity

11.1 Subject to clause 11.2, if the Customer is threatened with any action alleging that the Goods and/or Material infringe any IPR then provided that the Customer promptly informs and fully co-operates with ERA and in cases where ERA so requests allows ERA to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then ERA will indemnify the Customer up to £1million against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that ERA shall have the right at its option and its own expense either to:

- modify any Goods so that they do not infringe; or
- replace any Goods with non-infringing Goods; or
- procure for the Customer the right for the Customer to continue its use of any Goods.

11.2 ERA shall have no liability in respect of claims for infringement or alleged infringement of any third parties' IPR arising from the execution of the Contract in accordance with the Customer's designs plans or specifications and the Customer shall indemnify ERA against all losses, damages, expenses, costs or other liability arising from such claims.

12. Indemnities

12.1 The Customer agrees to indemnify and keep indemnified ERA from any and all claims by any third party which arise as a result of the wilful reckless or negligent act or omission of the Customer or its employees, agents or sub-contractors or as a result of a breach by the Customer or its employees, agents or sub-contractors of any of its obligations under the Contract.

12.2 The Customer hereby warrants that the terms of this Contract between the parties fully define all consideration, compensation and benefit, monetary and otherwise, to be paid, granted or delivered in connection with the transactions contemplated by the Contract and neither ERA nor any third party has previously paid nor entered into any other commitment to pay, the Customer directly or indirectly any consideration, compensation or benefit, monetary or otherwise in connection with the transaction contemplated by the Contract [for the purposes of the Bribery Act 2010 or any other similar applicable legislation] and agrees to indemnify and keep indemnified ERA against all and any claims which ERA may suffer as a result of breach by the Customer of the foregoing warranty.

13. Termination

- 13.1 Either party may terminate the Contract immediately on notice, if the other party:
- commits a material breach of the Contract, that is capable of remedy, and fails to remedy the breach within 10 working days from written notice to do so; or
 - commits a material breach of the Contract, which cannot be remedied;
 - is repeatedly in breach of the Contract; or
 - is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into either voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets or any similar events in any relevant jurisdiction.

14. Export and Import Consents

14.1 In the event that ERA is unable to obtain an export licence for the Goods to be exported from the UK and/or visas or consent for ERA Employees required to provide Services outside the UK, ERA shall not be held liable for any failure to perform the Contract.

14.2 The Customer shall obtain all consents necessary for the import of the Goods to the country of destination and where required any visas or consents required for the entry of ERA Employees into the country of destination.

15. Force Majeure

Notwithstanding any other provision of the Contract, ERA shall not be liable to the Customer for its failure to perform any of its obligations under the Contract to the extent that such failure is a result of circumstances beyond its reasonable control.

16. Entire Agreement

16.1 The Contract contains the whole agreement between the parties relating to its subject matter and supersedes all previous conditions, understandings, agreements or representations whatsoever, whether oral, by conduct or written. The Contract may only be amended, modified or waived by written agreement of each of the parties.

16.2 The Customer acknowledges and agrees that that save as expressly set out in these conditions ERA will not have any liability for any untrue statement or representation made by it or on its behalf (whether or not negligently) upon which the Customer relied upon in entering into the Contract unless such untrue statement or representation was made fraudulently.

- 17. Assignment**
The Customer shall not assign, pledge, charge or deal in or make over in any way or subcontract the benefit or burden of the Contract without the prior written consent of ERA.
- 18. Waiver**
No waiver by ERA of any breach of any provision of the Contract shall be held to be a waiver of any other or subsequent breach and the failure of ERA to enforce any provision shall not be a waiver of any right subsequently to enforce any other provision.
- 19. Governing Law and Jurisdiction**
The Contract shall be governed, construed and shall take effect in accordance with the laws of England, and all disputes arising in relation thereto shall be subject to the non exclusive jurisdiction of the English Courts to which the Customer and ERA by agreement irrevocably submit.
- 20. Severability**
If any of the words or provisions of these conditions shall be deemed invalid, illegal or unenforceable for any reason, then the Contract shall be read as if the invalid, illegal or unenforceable words or provisions had to that extent been deleted and the validity of the remaining provisions shall not be affected.
- 21. Contracts (Rights of Third Parties) Act 1999**
No person who is not a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 22. Data Protection**
ERA may use information provided by the Customer for all purposes reasonably necessary to regulate business dealings between us in relation to these terms and conditions including but not limited to recording this information or updating our records, credit references and supplying your details to a credit reference agency (which will retain information for their own use) for the purpose of credit ratings and for training purposes in the event of the Customer's default. The Customer may receive a copy of your personal data held by us on request and a payment of a fee. By placing an order with ERA, the Customer consents to ERA processing your personal data for the purposes stated above.