

## N-and Group Ltd - CONDITIONS OF PURCHASE (English Law Version)

**These Conditions shall govern and be incorporated into each contract for the purchase of Goods and/or Services by the Purchaser and may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of this contract.**

### 1. DEFINITIONS

In these Conditions "the Purchaser" means the N-and Group Ltd and/or any of its subsidiaries as detailed in the Order, "the Supplier" means any person, firm or company to whom an Order is addressed, "Order" means an order on the Purchaser's official purchase order form for the Goods and Services issued by the Purchaser to the Supplier, "Services" means the services described in an Order, "the Goods" means the goods described in an Order and "Loss" means actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur.

In these Conditions (unless the context otherwise requires) the words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them, words importing the singular shall include the plural and vice versa and any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

### 2. ACCEPTANCE OF ORDER

2.1 The Supplier's execution and return of the acknowledgement copy of the Order, or the commencement of delivery of Goods or performance of Services, constitutes the Supplier's acceptance of the Order subject to these Conditions.

2.2 The Purchaser is not liable for any Order unless it has been placed on behalf of the Purchaser by its duly authorized representative and the Supplier confirms its acceptance of such Order and these Conditions as set out in Condition 2.1 above.

### 3. GOODS AND SERVICES

The Supplier shall ensure that:

3.1 the Goods and Services shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars referred to in the Order and in any variations thereto;

3.2 the Goods and Services (together with the Supplier's performance of its obligations hereunder) shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force;

3.3 the Goods shall be of satisfactory quality, of good materials and workmanship, substantially free from defects, fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Order; and

3.4 it will provide the Services in accordance with the terms of the Order, with reasonable care, skill and diligence, using properly experienced and qualified people.

#### 4. THE PRICE

4.1 The price of the Goods and Services shall be as stated in the Order and includes all costs of supplying the same.

4.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under the Order. If the Goods and Services are accepted by the Purchaser, payment shall be due 60 days after receipt of the same or the correct invoice thereof, whichever is the later.

4.3 The Purchaser reserves the right to withhold any disputed portions of payments until the dispute is resolved but undisputed amounts shall be paid by the due date.

4.4 The Purchaser may offset any amount owing to it from the Supplier against any amount owed to the Supplier by the Purchaser.

#### 5. DELIVERY

5.1 The Supplier shall deliver the Goods and provide the Services at the place, date and time specified in the Order. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser in respect of any Loss resulting from or in connection with any damage or injury (whether fatal or otherwise) in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

5.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with reasonable requirements of the Purchaser's Facilities Management.

5.3 The time of delivery shall be the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or Services, to cancel all or part of the Order thereof, and/or return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use.

#### 6. PROPERTY AND RISK

Property and risk in the Goods shall pass to the Purchaser at the time of delivery. If the Supplier postpones delivery for any reason, title shall pass on the date that the Goods should have been delivered but risk shall only pass upon actual delivery.

#### 7. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

#### 8. INSPECTION, REJECTION AND GUARANTEE

8.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his or of any his sub-contractor's premises.

8.2 The Purchaser may by written notice to the Supplier reject any of the Goods or Services which fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Goods

concerned. If the Purchaser shall reject any of the Goods or Services pursuant to this Condition the Purchaser shall be entitled either to obtain a refund from the Supplier in respect of the Goods and/or Services, or:

- (a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with the Goods which comply in all respects with the requirements specified herein; and/or
- (b) to have the relevant Services re-performed so as to meet the requirements specified herein.

8.3 The Supplier further warrants that the Goods and Services shall meet the requirements specified herein from delivery or performance of the same until 12 months (or such longer period as the parties may agree) after such Goods are put into service or such Services are performed (as the case may be). If the Purchaser shall within such period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods and/or Services as may have arisen during such period under reasonable use the Supplier shall as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

8.4 Any Goods rejected or returned by the Purchaser as described in paragraph 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

## 9. LABELLING AND PACKAGING

9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order number, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

The Supplier shall indemnify the Purchaser against all such Loss resulting from or in connection with any breach of this Condition.

9.2 The Purchaser accepts no liability for packaging materials unless expressly agreed in advance.

## 10. PATENTS AND INFORMATION

10.1 It shall be a condition of the Order that, except to the extent that the Goods are made up strictly in accordance with designs furnished by the Purchaser, none of the Goods or Services will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial or intellectual property ("IPR") of any third party and the Supplier shall indemnify the Purchaser against all Loss resulting from or in connection with any such infringement or alleged infringement.

10.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser in connection with the Order ("Materials") shall remain vested solely with the Purchaser (except the right to use such Materials solely to the extent necessary for the implementation of the Order). The Supplier shall not, without prior written consent of the Purchaser, use or disclose any such Materials or rights therein and in particular the Supplier shall not refer to the Purchaser or the Order in any advertisement without the Purchaser's prior written agreement.

10.3 Any IPR arising out of or in relation to the Supplier's performance of its obligations in respect of any Order (including any IPR in relation to any Goods and Services) shall, upon its creation, vest in the Purchaser and the Supplier shall do

all such further acts and execute all such documents as may from time to time be necessary to give full effect to this Condition.

10.4 The Supplier shall not use, copy or disclose any Confidential Information for any purpose other than to the extent required to perform its obligations hereunder and shall use its best endeavors to prevent any such activity which is not in accordance with this Condition. This Condition does not apply to information which is or becomes publicly known other than by a breach of these Conditions; can be shown to the Purchaser's satisfaction to have been known by the Supplier before disclosure by the Purchaser to the Supplier; is or becomes available to the Supplier otherwise than from the Purchase and free from any restrictions as to its use or disclosure; and/or is required to be disclosed by law providing the Supplier gives prior notice to the Purchaser (save where it is prohibited by law from doing so).

## 11. INDEMNITY AND INSURANCE

11.1 The Supplier shall indemnify the Purchaser against all Loss resulting from or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which, in either case, may result directly or indirectly from any defect in the Goods or the negligent or wrongful acts of the Supplier.

11.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of the latest premium due thereunder.

11.3 Nothing in these Conditions shall exclude or restrict either party's liability for fraud or for death or personal injury caused by that party's negligence.

## 12. TERMINATION

The Purchaser may cancel the whole or any part of an Order at any time by written notice to the Supplier if:

12.1 the Supplier breaches any obligation hereunder (and, where the breach is capable of remedy, fails to remedy such breach within 14 days of receiving notice of the same);

12.2 circumstances exist or are likely to exist which in the Purchaser's reasonable opinion materially adversely affect the Supplier's performance of its obligations hereunder, or the basis on which any Orders were entered into; and/or

12.3 any substantive step is taken towards the Supplier's bankruptcy, administration, administrative receivership, receivership, winding up and/or dissolution;

## 13. RACIAL DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees and agents of the Supplier and all sub-contractors employed in the execution of the Order.

## 14. ASSIGNMENT AND SUB-CONTRACTING

14.1 The Supplier shall not without the written consent of the Purchaser sub-contract and/or assign the benefit or burden of the whole or any part of an Order

14.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Order.

## 15. NOTICES

Any notice given under or pursuant to the Order may be sent by post or by registered post or by the recorded delivery service or transmitted by facsimile or any other means of telecommunication resulting in the written communication in permanent form and so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means or transmission it would first be received by the addressee in normal business hours.

## 16. GENERAL

16.1 The headings to Conditions shall not affect their interpretation.

16.2 The rights and remedies of the Purchaser provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided at law or in equity.

16.3 The rights and remedies of the Purchaser may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Purchaser shall not constitute a waiver of that or any other right or remedy.

16.4 A person who is not party to an Order shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Order. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16.5 Nothing in these Conditions is intended to create a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other.

16.6 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification and/or deletion as may be necessary to make it valid and enforceable. No such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.

16.7 The Supplier shall ensure that it and its sub-contractors comply at all times with the Data Protection Act 1998. The Supplier acknowledges that if it or its sub-contractors 'process' any 'personal data' (as defined in such Act) pursuant to an Order, they shall do so only on the instructions of the Purchaser and that they shall maintain in place all appropriate measure, procedures and policies to protect the security and integrity of any such personal data.

16.8 The Supplier shall (at its own expense) provide all such assistance as may be required by the Purchaser to enable the Purchaser to comply with its obligations under the Freedom of Information Act 2000 and shall provide the Purchaser with a copy of such information as the Purchaser may request from time to time to comply with those obligations. The Supplier shall transfer promptly to the Purchaser any request for information made pursuant to such Act and shall not respond directly to any such requests.

16.9 These Conditions shall be governed by and construed in accordance with English law and the parties hereby irrecoverably submit to the jurisdiction to the English courts save in relation to enforcement where jurisdiction shall be non-exclusive.

