

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: the contract between Reflex and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Goods: the goods (or any part of them) set out in the Order.

Order: Reflex's order for the Goods, as set out in Reflex's purchase order form, Reflex's written acceptance of the Supplier's quotation, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by Reflex and the Supplier.

Supplier: the person or firm from whom Reflex purchases the Goods.

1.2 Construction. In these Conditions, unless the context requires otherwise, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by Reflex to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing a written acceptance of the Order; and

(b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

3. THE GOODS

3.1 The Supplier shall ensure that the Goods shall:

(a) correspond with their description and any applicable Specification;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Reflex expressly or by implication, and in this respect Reflex relies on the Supplier's skill and judgement;

(c) where applicable, be free from defects in design, material and workmanship and remain so for 24 months after Delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 Reflex shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing Reflex considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Reflex shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Reflex shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY

4.1 The Supplier shall ensure that:

(a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

(b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) if the Supplier requires Reflex to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

(a) on the date specified in the Order, or, if no such date is specified, within 14 days of the date of the Order;

(b) to Reflex's premises at Unit 2A Pencoed Technology Park, Pencoed, CF35 5HZ or such other location as is set out in the Order, or as instructed by Reflex prior to delivery (**Delivery Location**); and

(c) during Reflex's normal business hours, or as instructed by Reflex.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 If the Supplier:

(a) delivers less than 95% of the quantity of Goods ordered, Reflex may reject the Goods; or

(b) delivers more than 105% of the quantity of Goods ordered, Reflex may at its discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Reflex accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without Reflex's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Reflex to the remedies set out in clause 5.

5. REMEDIES

5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, Reflex shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

(a) to terminate the Contract;

(b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

(d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

(e) to recover from the Supplier any costs incurred by Reflex in obtaining substitute goods from a third party; and

(f) to claim damages for any other costs, loss or expenses incurred by Reflex which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 If the Goods are not delivered on the due date Reflex may at its option claim or deduct 2.5 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10 per cent of the total price of the Goods. If Reflex exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

5.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.4 The Supplier shall keep Reflex indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by Reflex as a result of or in connection with:

(a) any claim made against Reflex for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(b) any claim made against Reflex by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

(c) any claim made against Reflex by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 5.4 shall survive termination of the Contract.

5.5 Reflex's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. TITLE AND RISK

Title and risk in the Goods shall pass to Reflex on completion of delivery.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

7.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Reflex.

7.3 Reflex shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4 The Supplier may invoice Reflex for the Goods on or at any time after the completion of delivery.

7.5 Reflex shall pay correctly rendered invoices within 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

7.6 If a party fails to make any payment due to the other under the Contract by the due date for payment (**due date**), then the defaulting party shall pay interest on the overdue amount at the rate of the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

7.7 Reflex may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

8. REFLEX PROPERTY

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by Reflex to the Supplier (**Reflex Materials**) and all rights in Reflex material are and shall remain the exclusive property of Reflex. The Supplier shall keep Reflex Materials in safe custody at its own risk, maintain them in good condition until returned to Reflex, and not dispose or use the same other than in accordance with Reflex's written instructions or authorisation.

9. INSURANCE

During the term of the Contract and for a period of 24 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Reflex's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. CONFIDENTIAL INFORMATION

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11. TERMINATION

11.1 Reflex may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall immediately discontinue all work on the Contract. Upon receiving such notification the Supplier will notify Reflex what part of the Goods it is able to deliver to Reflex. Reflex shall pay the Supplier a fair and reasonable price for that part of the Goods the Supplier is able to deliver.

11.2 Reflex may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;

(g) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;

(i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(h) inclusive;

(j) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

(k) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(l) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. GENERAL

12.1 Assignment and subcontracting.

(a) Reflex 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.

(b) The Supplier 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 Reflex's prior written consent.

12.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

(a) If any court or competent authority 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, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Reflex.

12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual 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.