

## **Terms and Conditions of Purchase (Goods and/or Services) ESR Technology Ltd ESRT-HO-0099 01-**

### **1 INTERPRETATION**

1.1 In these Conditions of Purchase the following words shall have the following meanings:

"Conditions of Purchase" means the terms and conditions set out in this document which shall apply to the Contract unless the Order expressly refers to a specific contract, in which case the specific contract shall apply in conjunction with these terms and conditions but at all times the specific contract shall take precedence; together with any other terms or conditions incorporated into the Contract by express written agreement between ESR and the Supplier;

"Contract" means the contract for supply of the Goods and/or Services and comprises these Conditions of Purchase, the Order and where appropriate any specification, description, drawing or sample of the Goods or Services, delivery schedule or other document incorporated by express reference on the face of the Order;

"Delivery Address" means the delivery address specified in the Order;

"Goods" means the goods (if any) to be provided by the Supplier and as specified in the Order;

"Order" means the purchase order (which is subject to these Conditions of Purchase) setting out details such as the specification, quantity, price, delivery time, Delivery Address, date and invoicing requirements.

"Services" means the services (if any) to be provided by the Supplier and as specified in the Order;

"Supplier" means the person, firm or company identified as the supplier in the Order; and

"ESR" means ESR Technology Limited (Company No. 05462871) of 202 Cavendish Place, Birchwood Park, Warrington, Cheshire WA3 6WU.

1.2 The headings in these Conditions of Purchase are for convenience only and shall not affect their construction.

### **2 AGREEMENT TO PURCHASE**

2.1 The Supplier shall be deemed to have accepted all the Conditions of Purchase for the Contract to the exclusion of any other terms or conditions contained in any quotation, tender, acknowledgement, acceptance of the order, delivery note, or any other document of the Supplier unless agreed otherwise in writing by ESR.

2.2 No variation of the Conditions of Purchase or Order shall be binding unless made by written agreement between ESR and the Supplier.

### **3 PRICE**

3.1 The price of the Goods and Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of value-added tax (which shall be payable by ESR subject to receipt by ESR of a value-added tax invoice) and inclusive of all charges for packaging, packing, carriage, insurance and delivery of the Goods to the Delivery Address and any other duties or imposts other than value added tax.

3.2 ESR shall be entitled to set off against any sum due to the Supplier any sum owed to ESR by the Supplier.

### **4 QUALITY AND DESCRIPTION**

4.1 Any Goods supplied shall be of first-class quality and durability and be fit for their intended purpose. Any Services supplied shall be carried out with all reasonable skill, care and diligence and conform to the relevant best industry standards. Any Goods or Services supplied shall conform as to quality, quantity and description with the specifications, stipulations and other information contained in the Order as supplied by ESR to the Supplier or agreed in writing by ESR and shall correspond in all respects with any samples or patterns provided by the Supplier to ESR or by ESR to the Supplier.

4.2 The Supplier shall comply with any applicable regulations and other legal requirements concerning the manufacture, packaging, carriage, packing and delivery of the Goods and/or the performance of the Services.

4.3 The Supplier shall, if requested by ESR, supply details of any Quality Management System that they operate and evidence of any approval to the appropriate British Standard or equivalent best industry standard.

Furthermore, if ESR requires further evidence of the Supplier's ability to meet satisfactory quality standards, the Supplier shall allow ESR to carry out an appraisal of their systems.

### **5 INSPECTION AND TESTING**

5.1 The Supplier shall permit ESR to inspect and test the Goods at any time during manufacture, processing, or storage and to inspect and test the performance of the Services at the premises of the Supplier or any third party and the Supplier shall provide or procure the provision of all such facilities and accommodation as may reasonably be required by ESR for inspection and testing. The Supplier shall at the request of ESR supply to ESR a copy of the Supplier's test sheets certified by the Supplier to be a true copy

5.2 If, as a result of such inspection or testing, ESR is of the opinion that the Goods and/or Services do not comply with the Contract or are unlikely to complete of manufacture or processing so to comply, upon ESR informing the Supplier, the Supplier shall immediately take such steps as may be necessary to enable the Supplier to comply with the Contract.

5.3 For the avoidance of doubt such inspection or right to inspect on the part of ESR shall not constitute acceptance or approval by ESR of the Goods and/or Services.

### **6 DELIVERY**

6.1 The Goods shall be delivered and the Services shall be performed at the Delivery Address or as may be directed by ESR on the date or within the period stated in the Order in either case during ESR's usual business hours where the date of delivery of the Goods or of performance of the Services is not specified in the Order, the Supplier shall give ESR reasonable notice of the date therefore.

6.2 ESR shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until ESR has had a reasonable time to inspect them following delivery or, if later, when a reasonable time after any latent defect in the Goods has become apparent.

6.3 Time of delivery of the Goods and of performance of the Services, shall be of the essence to the Contract.

6.4 Any extension of time for delivery or performance must be agreed in advance between ESR and the Supplier in writing.

6.5 If the Goods are to be delivered or the Services are to be performed by instalments the Contract will be treated as a single contract and not severable.

6.6 Delivery shall not be effected until the Goods have been unloaded and accepted by an authorised officer, employee or representative of ESR. The Services shall not be deemed completed until they have been accepted by an authorised officer, employee or representative of ESR.

6.7 The Order number shown on the Order must be quoted in all correspondence relating to the Order. A delivery or advice note must accompany all Goods despatched to the Delivery Address. Goods or Services not accompanied by a delivery or advice note may be refused. The Supplier shall give ESR in good time any instruction or information required to enable ESR to take delivery of the Goods and/or performance of the Services.

## **7. TITLE AND RISK**

7.1 Property in and title to the Goods shall pass to ESR upon delivery unless payment is made prior to delivery in which case it shall pass to ESR once payment has been made and the Goods have been appropriated to the Contract.

7.2 Risk of damage to or loss of the Goods supplied shall pass to ESR upon delivery in accordance with the Contract.

7.3 The Supplier shall insure the Goods to their full value against all risks of damage or loss prior to completion of delivery.

7.4 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on ESR'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.

## **8. WARRANTIES AND LIABILITIES**

8.1 The Supplier warrants to ESR that the Goods will:

- i) be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier by ESR;
- ii) be free from defects in design, material and workmanship;
- iii) correspond with any specification or sample; and
- iv) comply with statutory requirements and regulations relating to the sale of the Goods.

8.2 The supplier warrants to ESR that the Services will be performed by appropriately qualified and trained personnel acting with all reasonable skill, care and diligence and to a high standard of quality as it is reasonable for ESR to expect in all the circumstances, and in accordance with all relevant standards and statutory requirements and regulations relating to the provision of the service.

8.3 The Supplier shall indemnify ESR against all liabilities, costs, damages, expenses (including legal expenses) and claims made against or

awarded against, or incurred or paid by ESR as a result of or in connection with:

- i) any breach of any warranty given by the Supplier in relation to the Goods or Services;
- ii) any claim that the Goods infringe or the importation, use or resale infringes the patent, copyright, design, right, trademark or other intellectual property rights of any other person except to the extent that any such claim arises from compliance with a specification or design supplied by ESR;
- iii) any liability under the Consumer Protection Act 1987 in respect of the goods;
- iv) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying delivering and installing the Goods or in performing the Services;
- v) the supply, delivery and installation of the Goods and the performance of the Services provided however, that nothing in this sub-clause 8.3.5 shall render the Supplier liable to indemnify ESR insofar as the matter in respect of which ESR seeks indemnity has been caused by the negligence of ESR or its employees acting in the course of their employment.

8.4 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then ESR shall be entitled to:

- i) require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days at the Supplier's cost; or
- ii) at ESR's sole option and whether or not ESR has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breaches and require the repayment of any money which has been paid to the Supplier.

8.5 Nothing in this contract shall prejudice any rights which ESR may have including rights of rejection or termination.

## **9. FORCE MAJEURE**

9.1 ESR shall not be liable for any failure to take or make use of the Goods or Services or for any delay in taking or making use of the same which is due wholly or partially to any strike, lock-out or other industrial action or from any other events, circumstances or causes beyond its reasonable control.

## **10. TERMINATION**

10.1 ESR may by notice in writing to the Supplier terminate the Contract immediately if the Supplier fails at any time to perform the Contract with all due skill, care and diligence and expedition or if the Supplier breaches the Contract in any other way or if the Supplier becomes bankrupt or insolvent or has a receiving order made against it or being a company, is ordered by the court to be wound up or if it passes or purports to pass a resolution to enter into liquidation (whether compulsory or voluntarily) or if it ceases or threatens to cease to carry on its business for any reason. Upon such termination, ESR shall be at liberty to enter into any agreement with such other persons, companies or firms as ESR may think fit in respect of the provision of the Goods and/or Services and ESR shall be entitled to recover from the Supplier all costs and damages incurred by ESR in consequence of the termination of the Contract. The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which has accrued or shall accrue to either party.

## **11. GENERAL**

- 11.1 The Order is personal to the Supplier and the Supplier shall not without the written consent of ESR sub-contract or assign all or any of its rights or obligations under the Contract or any part of the Contract.
- 11.2 Any consent given by ESR to the Supplier under Condition 11.1 shall not impose any duty on ESR to enquire as to the competency of any sub-contractor and the Supplier shall ensure that any sub-contractor is competent and that performance of the Contract is properly carried out.
- 11.3 No waiver by ESR of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.5 Any notice required or permitted to be given by either party to the other shall be in writing 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 to the party giving the notice.
- 11.6 Neither the existence nor terms of the Order shall be used by the Supplier for the purposes of advertisement or publicity without the prior written consent of ESR.
- 11.7 The Contract does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.
- 11.8 This Contract does not either, create a partnership between ESR and the Supplier, or make one of the parties the agent of the other for any purpose.
- 11.9 The Supplier warrants that it owns all intellectual property rights in all documents, drawings, computer software and other work specifically prepared or developed by the Supplier under the Contract (the Materials) and that the use by ESR of the Materials shall not infringe the rights of any third party. The Supplier hereby assigns the Materials with full title guarantee to ESR and waives all moral rights in relation to the same. The Supplier shall provide ESR with copies of all materials and or documents relied upon or referred to in the creation of the Materials with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such works in connection with the use of the Materials.
- 11.10 The Supplier undertakes to maintain in strictest confidence and not to disclose to any third party without the prior written consent of ESR any trade or business secret or other information by its nature or expressed to be confidential supplied by ESR to the Supplier. The provisions of this will survive any termination of the Contract for a period of two years from termination.
- 11.11 The Supplier shall comply with all of its obligations under the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of ESR, shall only carry out such Processing for the purposes of providing the Goods and/or Services in accordance with instructions from ESR.
- 11.12 This Contract shall be governed by the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

## **12. TERMS OF PAYMENT**

- 12.1 Payment terms are 60 days from date of invoice (the due date).
- 12.2 ESR shall only accept electronic supplier invoices which should be sent to the following e-mail address: [purchaseledger@esrtechnology.com](mailto:purchaseledger@esrtechnology.com). All invoices sent via e-mail should be complete with all invoicing information and quote a complete purchase order number. Without this, your invoice cannot be processed and will be returned.
- 12.3 If any undisputed monies are not paid by the due date, then the Supplier or ESR (as applicable) may charge interest on such undisputed monies on a day to day basis from the date falling 10 days from the due date, (or such other date as may be agreed in writing between the parties), to the date of payment (both dates inclusive) at the rate of two (2) per cent per annum over the base lending rate of the Bank of England from time to time. The

parties agree that this clause provides each of the parties with a substantial remedy in respect of any late payment of sums due for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

12.4 ESR shall be entitled to set off against any sums due to the Supplier under the Order any sums which become payable by the Supplier to ESR in relation to the Contract or any other contract between the parties.

### **13. SERVICES**

13.1 This contract is divisible. The work performed in each month during the currency of this contract shall be invoiced separately. Each invoice for work performed in any month shall be payable by the customer in full, in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in the work performed or to be performed in any other month

### **14. SALE OF GOODS**

14.1 This contract is divisible.

14.2 Each delivery made hereunder:

- (i) shall be deemed to arise from a separate contract, and
- (ii) shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other instalment.

### **15. ENVIRONMENTAL POLICY**

15.1 ESR is committed to minimising the environmental impact of its activities.

In supplying the Goods and/or Services the Supplier must at all times adhere to ESR Technology's Health and Safety and Environmental Management Policy Compliance.

15.2 The Supplier shall (and shall procure that any other person it appoints to perform Services or provide the Goods on connection with this Order shall):

- (i) Comply with all applicable laws and regulations relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010;
- (ii) Comply with the ESR Technology General Business Principles.
- (iii) Within 14 days of a written request from ESR, certify in writing signed by an authorised officer, that it has complied with this clause. The Supplier shall provide such supporting evidence of compliance as ESR may reasonably request.

15.3 If the Supplier is in breach of this clause ESR shall, without prejudice to any other right, be entitled to immediately terminate this Order.