

**STANDARD TERMS AND CONDITIONS FOR  
SUPPLY OF GOODS AND SERVICES**

**OF**

**N.E.M. CO. Limited**

**1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Contract" means the contract between the Supplier and the Customer for the sale and purchase of goods and services in accordance with these Terms & Conditions and the terms of any applicable Quotation;
- 1.2 "Contract Materials" means the raw materials purchased by the Supplier specifically in connection with the fulfilment of the Contract;
- 1.3 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.4 "Delivery Date" means the date of delivery specified by the Supplier when the Supplier issues the written acceptance of the Order.
- 1.5 "Excess Contract Materials" means the unused Contract Materials remaining when:
  - (a) the Contract has expired or been terminated for any reason;
  - (b) the Customer notifies the Supplier in writing that there is no further requirement for the product which uses the Contract Materials;
  - (c) the Contract Materials become obsolete due to design changes; or
  - (d) two years have elapsed since the Customer last ordered the product that uses the Contract Materials.
- 1.6 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.7 "Order" means the Customer's order for the goods and services, as set out in the Customer's written acceptance of the Supplier's Quotation;
- 1.8 "Quotation" means a statement of work, quotation or other similar document describing the goods and services to be provided by the Supplier;
- 1.9 "Supplier" means N.E.M. CO. Limited (Company No. 01738476) of Wedgwood Way, Stevenage, Herts SG1 4SX.

**2 GENERAL**

- 2.1 These Terms and Conditions shall apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing;
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Quotation which shall specify the goods and services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Quotation. All Quotations shall be subject to these Terms and Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

### **3 PRICE AND PAYMENT**

- 3.1 The price for the supply of goods and services are as set out in the Quotation. The Supplier shall invoice the Customer Net 30 days unless otherwise agreed in writing by the Supplier.
- 3.2 Invoiced amounts shall be due and payable within net 30 days of receipt of invoice unless alternative payment terms have been agreed in writing by the Supplier. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 3.00% per annum above the base rate of the Bank of England. In the event that the Customer's procedures require that an invoice be submitted against a purchase order, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied.
- 3.3 Credit Terms offered will be subject to satisfactory customer credit rating, following standard commercial review of customer credit history and/or customer accounts.

### **4 SPECIFICATION OF THE GOODS**

- 4.1 All goods shall be required only to conform to the specification in the Quotation. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the Contract.
- 4.2 The Supplier reserves the right to amend the specification of the goods and services in the Quotation if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### **5 DELIVERY**

- 5.1 The Supplier shall use all reasonable endeavours to deliver the goods by the Delivery Date but time for delivery shall not be of the essence.
- 5.2 The Supplier shall have no liability for any failure to deliver the goods to the extent that such failure is caused by an event, circumstance or cause beyond the Supplier's reasonable control or due to the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.
- 5.3 All risk in the goods shall pass to the Customer upon delivery.
- 5.4 Delivery and packing costs will be charged to the Customer unless agreed to the contrary by the Supplier in writing.
- 5.5 The Customer must give notice in writing along with photographic evidence to the Supplier within 3 working days of delivery if some or all of the goods have been damaged in transit.

### **6 TITLE**

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

### **7 CUSTOMER'S OBLIGATIONS**

- 7.1 To enable the Supplier to perform its obligations under the Contract the Customer shall:
- 7.1.1 co-operate with the Supplier;
  - 7.1.2 provide the Supplier with any information reasonably required by the Supplier;

- 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 7.1.4 comply with such other requirements as may be set out in the Quotation or otherwise agreed between the parties.
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.
- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Quotation, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Quotation, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.
- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under the Contract, then the Supplier shall notify the Customer as soon as possible and:
  - 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
  - 7.4.2 if applicable, the timetable for the project will be modified accordingly;
  - 7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.
- 7.5 The Customer shall not:
  - 7.5.1 use, incorporate, re-export or otherwise re-sell or transfer any goods supplied by the Supplier for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons whether it is known or suspected that they are intended or likely to be used for such purposes;
  - 7.5.2 re-export or otherwise re-sell or transfer any goods supplied by the Supplier to a destination subject to UN, EU, UK, OSCE embargo where that act would be in breach of the terms of that embargo; or
  - 7.5.3 use, or allow to be used, any goods supplied by the Supplier or any replica of them in any nuclear explosive activity or unsafeguarded nuclear fuel cycle.

## **8 ALTERATIONS TO THE QUOTATION**

- 8.1 The parties may at any time mutually agree upon and execute new Quotations. Any alterations in the scope of goods and/or services to be provided under the Contract shall be set out in the Quotation, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Quotation by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Quotation shall be amended to reflect such alterations and thereafter the Supplier shall perform the Contract upon the basis of such amended terms.

## **9 WARRANTY**

- 9.1 The Supplier warrants that as from the date of delivery for a period of 12 months the goods and all their component parts, where applicable, are free from any defects in design (if the design has been carried out by the Supplier), workmanship, construction or materials.
- 9.2 Where tested goods are supplied the Supplier warrants that the goods shall pass the agreed test procedures and that the specified materials have been used and assembled in accordance with the accepted industry standards and practices.
- 9.3 Where the goods are supplied untested the Supplier warrants that the specified materials have been used and assembled in accordance with the accepted industry standards and practices.
- 9.4 The Supplier warrants that the services performed under the Contract shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 9.5 Subject to Clause 9.6, if:
- 9.5.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the goods do not comply with the warranty set out in Clause 9.1;
  - 9.5.2 the Supplier is given a reasonable opportunity of examining such goods; and
  - 9.5.3 the Customer (if asked to do so by the Supplier) returns such goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective goods, or refund the price of the defective goods in full.
- 9.6 The Supplier shall not be liable for the goods' failure to comply with the warranty set out in Clause 9.1 if:
- (a) the Customer incorporates such goods into their own products after delivery;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (d) the Customer alters or repairs such goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description in the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.7 Except as expressly stated in these Terms and Conditions, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.
- 9.8 Except as provided in this Clause 9, the Supplier shall have no liability to the Customer in respect of the goods' failure to comply with the warranty set out in Clause 9.1.
- 9.9 These Terms and Conditions shall apply to any repaired or replacement goods and any Excess Contract Materials supplied by the Supplier.

## **10 INDEMNIFICATION**

The Customer shall indemnify the Supplier against all claims, costs and expenses which the  
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Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under the Contract, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Quotation infringes a patent, copyright or trade secret or other similar right of a third party.

## **11 LIMITATION OF LIABILITY**

- 11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of the Contract, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.
- 11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

## **12 TERMINATION**

Either party may terminate the Contract forthwith by notice in writing to the other if:

- 12.1 the other party commits a material breach of the Contract and in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 12.2 the other party commits a material breach of the Contract which cannot be remedied under any circumstances;
- 12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 12.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## **13 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of the Contract shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

## **14 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **15 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under the Contract or any applicable Quotation.

## **16 SPECIALS AND FREE ISSUE MATERIALS**

- 16.1 The Supplier does not guarantee the suitability of materials or the design of goods made specially to the Customer's requirements and differing from the Supplier's standard specifications even if the purpose for which the goods are required is known to the Supplier.
- 16.2 Where an allowance for material lost as process scrap has been set out in the quotation (or otherwise agreed in writing between the Customer and the Supplier), such losses are included in the contract price. No such losses shall be the subject of any claim by the Customer.
- 16.3 Where materials are supplied by, or on behalf of, the Customer to the Supplier (referred to in this Condition 16.3 as "free issue material"),
  - 16.3.1. the Customer shall be responsible for ensuring that the free issue material is of satisfactory quality and shall indemnify the Supplier against any loss, damage, injury or expense arising directly or indirectly from any actual or alleged fault in or incorrect specification of such free issue material; and
  - 16.3.2. the Customer shall supply with each delivery of the free issue material a corresponding safety data sheet in accordance with the Chemicals (Hazard Information and Packaging) Regulations 1994 (as amended, modified or re-enacted from time to time); and
  - 16.3.3. the Supplier shall only check such free issue material for type and quantity. If the Customer requires more detailed inspections, and the Supplier agrees in writing to carry out such inspections, the Supplier shall only carry them out if the Customer provides the Supplier with all documentation required by the Supplier to carry them out. The Supplier shall be entitled to charge the Customer for such inspections at such rate as the Customer and the Supplier may agree from time to time in writing.
  - 16.3.4. Where material is supplied free by the customer an allowance must be made for in-process attrition at the rates given in our Schedule of Attrition

## **17 EXCESS MATERIALS**

- 17.1 The Supplier shall be entitled to submit an invoice to the Customer in respect of its reasonably and properly incurred costs of any Excess Contract Materials.
- 17.2 The price for the Excess Contract Materials:
  - 17.2.1 shall be the price set out in the Order or, if no price is quoted, the price which is 10% above the Supplier's cost price for the Excess Contract Materials;
  - 17.2.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Excess Contract Materials;
  - 17.2.3 shall be exclusive of amounts in respect of value added tax chargeable from time to time; and
  - 17.2.4 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 17.3 Subject to clause 17.5, on exercising its rights under clause 17.1, the Supplier shall deliver the Excess Contract Materials to the Customer's premises or such other location as may be advised by the Customer prior to delivery.

- 17.4 Time of delivery is not of the essence. The Supplier shall not be liable for any failure or delay in delivering the Excess Contract Materials to the extent that such failure or delay is caused by an event, circumstance or cause beyond the Supplier's reasonable control or due to the Customer's failure to provide the Supplier with adequate delivery instructions.
- 17.5 The Customer may notify the Supplier in writing at any time prior to delivery that the Supplier may retain, resell or otherwise dispose of the Excess Contract Materials.
- 17.6 The Supplier reserves the right to charge the Customer for its reasonable costs incurred in connection with any services provided by third parties for the storage, selling or disposal of the Excess Contract Materials in accordance with these terms.
- 17.7 The Supplier shall, at the request of the Customer (such request not to be made more frequently than once every three months), supply the customer with details of all Contract Materials.

## **18 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Contract without the prior written consent of the Supplier.

## **19 SEVERABILITY**

If any provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if the Contract had been agreed with the invalid illegal or unenforceable provision eliminated.

## **20 QUALITY STANDARDS**

Work undertaken will be released to the following IPC Quality standards unless specifically requested by the Customer, in which case this will be detailed in our Quotation:

SMT and Conventional Assembly - IPC-A-610 (Acceptability of Electronic Assemblies) Class 2 as standard, with the capability for Class 3 release, if required.

Cables and Wire Harness Assemblies - IPC/WHMA-A-620 (Requirements and Acceptance for Cable and Wire Harness Assemblies) Class 2 as standard, with the capability for Class 3 release, if required.

## **21 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this the Contract.

## **22 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Quotation or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## **23 ENTIRE AGREEMENT**

These Terms and Conditions and the Contract contain the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in these Terms

and Conditions, the Contract may be varied only by a document signed by both parties.

**24 NO THIRD PARTIES**

Nothing in these Terms and Conditions is intended to, nor shall it confer any rights on a third party.

**25 GOVERNING LAW AND JURISDICTION**

The Contract and these Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

Customer Name: .....

Signed: .....

Position: .....

Date: .....