

Standard Terms and Conditions For the supply of Goods and Services of Techworx Ltd

- 1. Definitions**
- 1.1 In this document the following words shall have the following meanings:
- 1.2 "Agreement" means these Terms and Conditions together with the terms of any applicable specification document.
- 1.3 "Customer" means the organisation or person who purchases goods from the supplier.
- 1.4 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable; "Specification Document" means a statement of work, quotation or similar document describing the goods and services to be provided by the Supplier;
- 1.5 "Supplier" means Techworx Ltd, Unit A3, Midacre, Willenhall, West Midlands, WV13 3JW.
- 2. General**
- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services, the supplier shall submit to the Customer a Specification Document 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 Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be the essence in the performance of any services.
- 3. Price and Payment**
- 3.1 The price for the supply of goods are set out in the specification document. The supplier shall invoice the Customer upon delivery of the goods on the condition that a credit account is opened for the Customer. None account holders shall pay on a pro-forma basis for their goods. Pro-forma payment must be cleared into the suppliers account prior to work being processed.
- 3.2 Invoiced amounts shall be due and payable within the agreed terms.
- 3.3 The Customer shall be responsible for issuing such purchase order before goods and services are supplied.
- 3.4 Any quotation is given on the basis that no Contract shall come into existence until the Company supplies an acknowledgement of order to the buyer. Any quotation is valid for a period of 30 days only from its date, unless otherwise specified.
- 3.5 The price for the Goods shall be exclusive of Value Added Tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the goods.
- 3.6 The payment for the price of the Goods is due in pounds sterling and paid in accordance to agreed payment terms.
- 3.7 No payment shall be deemed to have been received until the Company has received cleared funds.
- 3.8 The Buyer shall make all payments due under the Contract in full without any deduction, whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the buyer.
- 3.9 If the buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to these debts in accordance to the payment terms and conditions set out by HSBC Invoice Finance Ltd. If the Buyer does not hold a credit account with the Company through HSBC Invoice Finance Ltd he shall be liable to pay interest to the Company on such sum that from the due date for payment at an annual rate of 4% above base rate, accruing on a daily basis until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4. Specification of the Goods.**
- 4.1 All goods shall be required only to conform to the specification on the order. For avoidance of doubt, no specification other than that as agreed in writing shall form part of the contract.
- 4.2 All goods shall be supplied to normal commercial tolerances associated with the fabrication and construction industry. The buyer must state the required tolerances and request clarification of the tolerances of the Company's products before placing an order.
- 4.3 Material certificates will be supplied upon written request at the time of order.
- 4.4 The Company has no metallurgical facilities and is therefore reliant on material suppliers supplying materials to the correct specification. Any claims for non-specification of material represents no negligence by the Company, as such will be passed onto the material supplier.
- 4.5 The Company accepts no responsibility for a Buyers free issue material whilst undergoing cutting or bending processes. Free issue materials are handled, laser cut and formed at the Buyer's own risk.
- 4.6 Any Buyer supplying free issue material must ensure that it is safe to laser cut and process without any risk to Health and Safety. The Buyer should notify the Company in writing of any special precautions that need to be taken.
- 5. Delivery**
- 5.1 The date of delivery specified by the supplier is an estimate only. Time for delivery shall not be the essence of the contract. The Supplier shall not be held liable for and loss, costs, damages, charges or expense caused directly or indirectly by any delay in the delivery of the goods.
- 5.2 All risk in the goods shall pass to the Customer upon delivery.
- 5.3 The Buyer shall not be entitled to rescind this contract due to any delay in delivery of the goods (even if through negligence of the Company).
- 5.4 If the Company delivers to the Buyer a quantity of goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object, or to reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 5.5 The Company may deliver the Goods in instalments and shall be paid for in accordance to the provisions of the contract.
- 5.6 The Company is responsible for the loading of the Goods onto transport at the Company's place of business. The Buyer must ensure that appropriate equipment is provided at the Buyer's chosen delivery point for the unloading of the Goods.
- 5.7 Buyer will take delivery of the Goods within 7 days of the Company giving 8 notice that the Goods are ready for delivery.
- 5.8 If the Company has agreed to deliver the Goods to the Delivery Point then the Buyer will be obliged to pay the Delivery Charge agreed otherwise by the Company in writing.
- 5.9 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss to include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.
- 5.10 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided adequate instructions, documents including but without limitation engineering drawings, licenses or authorisations:
- a) The risk of goods will pass to the Buyer including for loss or damage caused by the Company's negligence
- b) The goods will be deemed as delivered and;
- c) The Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance)
- 5.11 The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.12 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of the date when the Goods would, in the ordinary course of events, have been received.
- 5.13 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods
- 6. Title**
- 6.1 The Goods are at the risk of the buyer from time of delivery
- 6.2 Ownership of the good shall not pass to the buyer until the Company has received, in full (in cleared funds) all sums due to it in respect of the goods and all other sums which are or which become due to the Company from the buyer on any account.
- 6.3 The Buyer may use, modify or re-sell the Goods before ownership has passed to it solely on the following conditions:
- a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and;
- b) any such sale shall be a sale of the Company's property on the Buyer's behalf and the buyer shall deal as principal when making such sale.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- a) the buyer has a bankruptcy order made against them or makes an arrangement or composition with his creditors, or
- b) otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or
- c) conveys a meeting of creditors, or enters liquidation except for a solvent voluntary liquidation for the purpose of reconstruction or amalgamation, or
- d) has a receiver / manager or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administrative order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the buyer or
- e) the Buyer suffers or allows and execution, whether legal or equitable, to be levied on his / its property or obtained against it, or fails to observe any of its obligations under the Contract between the Contract and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or
- f) the buyer ceases to trade or the Buyer encumbers or in any way charges any of the goods.
- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to recover them.

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- 7. Cancellation**
- 7.1 Without prejudice, in the event of the Customer unlawfully cancelling an order requirement, the Customer shall be required to pay the Supplier for any direct costs incurred. The Customer will be required to agree the genuine costs of the Supplier's losses prior to acceptance of the cancellation. For the avoidance of doubt, the Customer's failure to comply with any obligations within the Terms and Conditions shall be deemed to be a cancellation of goods and subject to the payment of damages set out in this Clause.
- 7.2 In the event of the Customer or any third party omitting anything which will prevent or delay the Supplier from undertaking or complying with any of its obligations within this agreement, the Supplier will notify the customer as soon as possible and:
- the Supplier will have no liability in respect of any delay to the completion of any order requirement,
 - Where applicable, we will modify the timescale on the order;
 - Notify the customer if there is any claim for additional costs due.
- 8. Communications**
- 8.1 All communications between the parties about this Contract must be in writing and delivered by hand, sent by first class post, sent by facsimile transmission or by electronic mail. (in the case of the communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company, or (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 8.2 Communication shall be deemed to have been received:
- if sent by first class post, 3 days (excluding Saturdays, Sundays and bank holidays) after posting (exclusive of day of posting);
 - if delivered by hand, on the day of delivery;
 - if sent by facsimile transmission or electronic mail prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 9. Quality**
- 9.1 Where the Company is not the manufacturer of the goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Goods will correspond to their specification.
- 9.3 The Company shall not be liable for a breach of the warranty unless:
- the Buyer gives written notice of the defect to the Company within 4 days of the time when the Buyer discovers or ought to have discovered the defect, and the Company is given reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranty in Condition 9.3 if:
- the Buyer makes any further use of such goods after giving such notice; or
 - the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice. The Buyer in entering into these terms is aware that the Goods can be liable to corrosion and therefore the Goods should at all times be stored in dry secure conditions; or
 - the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to Conditions 9.3 and 9.4, if any of the Goods do not conform with the warranty in Condition 9.2 the Company shall, at its option, repair or replace such Goods (or the defective part), credit or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of the warranty in Condition 9.2 in respect of such Goods.
- 9.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed.
- 10. Limit of Liability**
- 10.1 Subject to Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- any breach of these Conditions and;
 - any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.
- 10.2 All warranties, Conditions and other terms implied by statute or common law (save for the Conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 10.4 Subject to Conditions 10.2 and 10.3:
- the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the amount payable for the Goods as stated on the relevant Company invoice and
 - the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of good will or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11. Assignment**
- 11.1 The Company may assign the Contract, or any part of it to any person, firm or Company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12. Independent contractors**
- 12.1 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.
- 12.2 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 this Agreement or any applicable Specification Document.
- 13. Force Majeure**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 14. Severability**
- If any provision of this Agreement 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 this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.
- 15. 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 Agreement.
- 16. Entire Agreement**
- This Agreement contains 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 this Agreement, this Agreement may be varied only by a document signed by both parties.
- 17. No Third Parties**
- Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.
- 18. Governing Law and Jurisdiction**
- This Agreement shall be governed by and construed in accordance with the law of England and the parties hereto submit to the exclusive jurisdiction of the English courts.