



# Terms and Conditions for the Supply of Goods and or Services

Capital Limited and or its subsidiaries (**Capital**) requests the Supplier to supply Capital with **Goods** and or **Services** specified in Capital's **Purchase Order** and the Supplier agrees to provide the Goods and or Services on the following terms and conditions.

## 1. Issue and Acceptance of Purchase Order

- 1.1. The Purchase Order is Capital's offer to the Supplier for the Supplier to supply the goods and or services described in the Purchase Order to Capital on the terms and conditions contained herein.
- 1.2. This Agreement is the entire agreement between Capital and the Supplier (the **Parties**) relating to its subject matter. However, if a distinct and fully signed written contract exists between the Parties for the supply of the goods and or services listed on this order, the terms and conditions of that contract take precedence over these terms and conditions.
- 1.3. Subject to clause 1.2, the goods and or services provided by a Supplier are subject to these terms and conditions to the exclusion of anything to the contrary in the terms of the Supplier's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions.
- 1.4. Acceptance of the Purchase Order by the Supplier will constitute a binding contract between Capital and the Supplier to supply the Goods and or Services specified in the Purchase Order (in addition to any Goods or Services described in any document referred to in the Purchase Order) on the terms and conditions contained herein (this **Agreement**).
- 1.5. The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods and or the Services.
- 1.6. If the Supplier is unwilling or unable to accept the offer made by Capital in the Purchase Order under the terms and conditions specified herein, the Supplier must immediately provide Capital with notice in writing of any variations it requires to be made for the acceptance or rejection in writing by Capital.

If the Supplier proceeds with the manufacture and or supply of the Goods and or Services without first requesting or receiving Capital's written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions contained herein and the terms of the Purchase Order.

No addition to or modification of this Agreement will bind either of the Parties unless it is made in writing and signed by both of them.

- 1.7. For the purposes of this Agreement, the relevant jurisdiction is the jurisdiction of the Capital entity issuing the Purchase Order.

## 2. Warranties

- 2.1. The Supplier warrants that the Goods and or Services:
  - (a) are of merchantable quality;
  - (b) are manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of Capital given for the purpose of this Agreement;
  - (c) are free from defects in design, materials and workmanship;
  - (d) do not and will not infringe the intellectual property rights of any third party;
  - (e) comply with the requirements of any relevant statutes, regulations or legally applicable standards;
  - (f) are new on delivery to Capital;
  - (g) are in accordance with and shall perform in accordance with the Supplier's technical specifications; and
  - (h) are performed in accordance with this Agreement.
- 2.2. Without limiting any other provision of this Agreement, (including this clause 2):
  - (a) the Supplier agrees to provide Capital the manufacturer's warranty applicable to the Goods;

- (b) the Supplier must produce written evidence of the assignment to Capital of the manufacturer's warranty in respect of the Goods, or such other evidence sufficient to satisfy Capital that it is legally entitled to the benefit of that manufacturer's warranty.

- 2.3. The Supplier must advise Capital whenever the Supplier believes that compliance with a specification of Capital would render the Goods and or Services unsuitable for Capital's requirements.

- 2.4. All Goods and or Services provided by the Supplier will be subject to acceptance testing by Capital (at any time) and any Goods and or Services tendered, offered or delivered which, in the opinion of Capital, does not comply with this Agreement may be rejected by notice in writing to the Supplier.

2.5.

- (a) Any Goods rejected by Capital pursuant to clauses 2.4 and 2.5 must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection. If the rejected Goods are not removed within that time, Capital may either return them to the Supplier at the Supplier's expense, or store them at the Supplier's expense. Capital will not be liable for any damage to or loss of the Goods whilst they are in transit to the Supplier, or whilst they are in storage.

- (b) Capital will generate a further purchase order when replacement Goods and or Services are required to replace Goods and or Services rejected pursuant to this Agreement. The Supplier must not replace any Goods and or Services rejected by Capital unless the Supplier has received a purchase order for the replacement Goods and or Services. In the event that Capital issues such a purchase order for replacement Goods and or Services then such purchase order is issued (and the replacement Goods and or Services are supplied) without prejudice to any right or remedy that Capital has by reason of the rejected Goods and or Services failing to comply with this Agreement. Capital may require the Supplier to refund any purchase price paid by Capital for the Goods and or Services and recompense Capital for any loss suffered by Capital in respect of such rejected Goods and or Services.

- (c) Goods and or Services or replacement Goods and or Services (or any portion thereof) that have been rejected must not be offered again for acceptance under this Agreement.

- 2.6. Capital's acceptance of the Goods and or the Services will be without prejudice to any rights or remedies that Capital may have arise from any breach by the Supplier of this Agreement. In particular:

- (a) Capital may reject the whole or any portion of the Goods and or Services if it becomes aware (after accepting them) that they do not comply with this Agreement; and

- (b) the Supplier must not replace those Goods and or Services under this Agreement unless a new purchase order is generated in accordance with clause 2.5(b).

## 3. Price and Payment

- 3.1. The price payable for the Goods and or Services shall be that specified on the Purchase Order for the date of delivery of the Goods or the date of commencement of the performance of any Services, unless such price is subject to alteration in accordance with a formula agreed in writing by the Parties.

- 3.2. The price set out in the Purchase Order is all-inclusive and is the total amount payable by Capital (subject to this Agreement) under this Agreement and (without limiting) includes all taxes, duties, charges, levies and fees payable on or in respect of the Goods and the Services. Capital will not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the specified delivery date of the Goods or prior to the specified commencement date of any Services involving such increased cost or charges or price.

- 3.3. The price specified in the Purchase Order will include all packaging charges.
- 3.4. The Supplier must furnish Capital with an invoice which complies with the local requirements of the relevant jurisdiction and:
- (a) shows the amount of tax, a valid adjustment note, or such other valid document as may be required by the law of the relevant jurisdiction in which the goods and services tax, VAT or any other similar tax is payable.
  - (b) for Services – Monthly in arrears specifying Capital's Purchase Order number, setting out the amount the Supplier asserts is payable by Capital, and the basis for its calculation;
  - (c) for Goods:
    - (i) in respect of each consignment of Goods delivered;
    - (ii) as soon as practicable after and in any event within seven (7) days of each delivery of the Goods; and
    - (iii) specifying Capital's Purchase Order number, the amount due to the Supplier, the date of delivery of the Goods to which the invoice relates, a description (including the quantity) of the Goods delivered (by item if applicable) and the Supplier's address for payment.
- 3.5. Invoicing and payment currency will be USD unless the jurisdiction requires payment to be made in the local currency in which case, payment will be based on the USD ask rate as published by Reuters Ask at the date of the invoice, unless the Purchase Order provides otherwise.
- 3.6. Unless otherwise agreed between the Supplier and Capital in writing, amounts payable by Capital pursuant to an invoice rendered in accordance with this Agreement will be paid by Capital no later than thirty (30) days from the date that Capital receives a valid invoice from the Supplier, provided that the Goods and or Services have been accepted by Capital and that the Supplier has complied with this Agreement in all respects. If Capital has a dispute in relation to the contents of any invoice issued by the Supplier then Capital shall bring notice of such dispute to the attention of the Supplier within thirty (30) days of receipt of the invoice. Capital is not required to pay the invoice until the Parties have reached agreement in relation to the dispute or until the Supplier has obtained a judgment against Capital in respect of that amount (whichever occurs first).
- In addition, Capital may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Supplier's performance of the Services is unsatisfactory, or if the Supplier is in breach of this Agreement.
- 3.7. If the Supplier does not provide its Business Registration Number and Tax Identification Number, on any invoice issued, Capital may withhold tax at the relevant rates from the payment and remit it to the Tax Authority in the relevant jurisdiction as required by legislation.
- 3.8. Capital shall pay the Supplier by Electronic Funds Transfer / bank transfer.
- 3.9. Capital's preferred method of receipt of invoices is electronically by email to the local finance team and or other teams as specified in the Purchase Order.
- 3.10. Under no circumstances will the Supplier attach an invoice(s) to the goods being delivered nor hand deliver, fax, email or mail any invoice(s) to any other business / service unit other than those specified in the Purchase Order. Failure to comply with these requirements may result in the possible loss or misplacement of an invoice(s) and the subsequent delay in the payment of the account(s) for which Capital will not be deemed liable. No late payment penalty will apply.
- #### 4. Delivery
- 4.1. The Goods must be delivered on the date specified in the Purchase Order (the **Delivery Date**). Capital may require that all Goods ordered for a specified Delivery Date is delivered at the same time or it may accept delivery in part from time to time such acceptance to be completely within Capital's discretion.
- The Supplier must perform the Services for Capital by no later than the date specified in the Purchase Order.
- 4.2. Subject to clause 5.2 and subject to Capital's right to reject any defective Goods or Services, title will pass to Capital on delivery at the nominated delivery address. The Goods will be deemed to have been delivered only when they have been delivered and unloaded at the nominated delivery point in accordance with the requirements of this Agreement.
- 4.3. Where reasonably practicable, the Supplier must inspect the Goods on delivery to ensure that no loss or damage has resulted from weather or transportation.
- Capital shall specify the method of delivery required at the time of placing the Purchase Order. Where the Supplier arranges transportation of the Goods, risk remains with the Supplier until the Goods are delivered to the nominated place of delivery. Where Capital nominates that delivery be made to a specific carrier, risk will pass on delivery of the Goods to such carrier.
- #### 5. Time is of the Essence
- 5.1. Time is of the essence in the performance of the obligations under this Agreement. The Supplier acknowledges that Capital may return part or all of any shipment of Goods received outside the Delivery Date and charge the Supplier with any loss or expense sustained as a result of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the Goods, the Supplier shall immediately notify Capital of the circumstances and propose a revised delivery date which Capital may elect to agree or not agree to, at its own discretion. The exercise by Capital of its rights under this clause shall be without prejudice to any claim for damages or other rights it may have against the Supplier.
- 5.2. The Supplier acknowledges that Capital may terminate this Agreement if the Supplier does not provide the Goods and or the Services within the date specified on the Purchase Order and Capital shall not be liable to pay for any Goods and/or Services which are delivered outside of the date specified on the Purchase Order (unless each of the Parties have agreed in writing to extend the date).
- #### 6. Inspection
- 6.1. On request and after being given reasonable notice, the Supplier shall arrange for Capital's representative to have access to the premises or processes of the Supplier (or any of the Supplier's sub-contractors which Capital has permitted to undertake works pursuant to this Agreement) for the purposes of inspecting any materials, Services, work in progress or finished Goods being supplied to or manufactured for Capital.
- 6.2. Such inspection shall not be deemed to be acceptance by Capital of the materials, work, Services or Goods inspected or affect any obligation of the Supplier under this Agreement.
- #### 7. Indemnities
- 7.1. The Supplier will indemnify and keep indemnified Capital from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by Capital and arising directly or indirectly out of or in connection with:
- (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods or Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
  - (b) the failure of the Goods or Services to conform to or fulfil any term or condition of this Agreement; or
  - (c) the Supplier's performance or non-performance (including the performance or non-performance of any of the Supplier's employees, contractors or agents) of this Agreement including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the wilful misconduct of Capital or Capital's employees or agents or other contractors of Capital.
- #### 8. Site Work
- 8.1. Where the Supplier, its employees, contractors or agents:
- (a) provide work in connection with the installation or fitting of the Goods,
  - (b) perform Services, or
  - (c) enter upon Capital's premises, the Supplier must, and shall procure that its employees, agents and contractors will:
    - (i) perform all work in a proper and professional manner and in strict accordance with any drawings, specifications and instructions;
    - (ii) perform all work so as not to impede, or interfere with any activities being carried out on Capital's premises, as far as reasonable practicable;

- (iii) comply with all applicable laws and standards and Capital's directions and orders;
- (iv) provide at their own expense (except where otherwise specified) all labour, tools, equipment, personal protective equipment and material necessary to complete the work;
- (v) enter upon Capital's premises at their own risk; and
- (vi) comply with Capital's contractor management system prior to commencing work and at all times during the performance of the work or Services.

## 9. Defects Liability Period

- 9.1. For Contracts for the supply and installation of Goods and or the supply of Services, the Supplier, at its own cost, if required to do so by Capital, must rectify any omission or defect in the Goods and or Services existing at the date of completion or which becomes apparent prior to the expiration of the Defects Liability Period.
- 9.2. Unless otherwise agreed, the Defects Liability Period will be a period of twelve (12) months from the date of completion of work.
- 9.3. If rectification work is not commenced or completed in accordance with Capital's instructions, Capital may have the rectification work carried out at the Supplier's expense (but without prejudice to any other rights Capital may have) and the cost of rectification incurred by Capital will be a debt due from the Supplier to Capital.

## 10. Insurance

- 10.1. Unless otherwise agreed in writing or contained in the relevant Purchase Order, the Supplier warrants that it has obtained and maintains throughout the duration of this Agreement (including any Defects Liability Period) all applicable insurance cover(s) required by the law of the relevant jurisdiction and by this Agreement including but not limited to the following:
  - (a) goods in transit;
 

Transit and Material Damage Insurance for the goods' purchase value (including freight and other charges), up until title and risk in the goods pass to Capital; and
  - (b) site works;
    - (i) Public and Products Liability Insurance with a minimum limit of not less than twenty (20) million dollars (\$20,000,000) for any one occurrence;
    - (ii) Workers Compensation and Employers Liability Insurance in accordance with the law of the relevant jurisdiction in which the work is performed. Such insurance must be unlimited in respect to common law liability; and
    - (iii) Motor Vehicle Comprehensive Cover including Third Party liability with a minimum limit of not less than twenty (20) million dollars (\$20,000,000).
- 10.2. Where this Agreement includes the provision of Services such insurances must include:
  - (a) a Cross Liability clause noting Capital for its rights and interests;
  - (b) a Principal's Indemnity clause noting Capital as Principal; and
  - (c) a waiver of subrogation in favour of Capital.
- 10.3. Where such Services referred to in clause 10.2 include the giving of professional advice or instruction, design, formula or specification, the Supplier shall effect Professional Indemnity insurance with a minimum cover of not less than five (5) million dollars (\$5,000,000) for any one claim.
- 10.4. As and when requested by Capital, the Supplier shall provide copies of the policies of insurance (Certificates of Currency) the Supplier is required to effect and evidence to Capital's satisfaction of their currency.
- 10.5. If the Supplier fails to effect or maintain any such insurance as specified above, Capital may effect or maintain such insurance and recover from the Supplier as a debt or set off against any amount payable to the Supplier, any premium so paid by Capital.

## 11. Termination

- 11.1. Where applicable, this Agreement (and any Contract formed in relation to it) will end on the expiry date determined by the Parties in writing or as otherwise agreed between the Parties. Despite any other provision to the contrary, any Agreement made between Capital and the Supplier has an actual or implied end date.

- 11.2. Despite any other provision to the contrary and without prejudice to any other rights and remedies Capital has under this Agreement, Capital may, at any time, by written notice to the Supplier, terminate the Contract after giving the Supplier 7 days' prior written notice of their intention to terminate.
  - 11.3. Without prejudice to any other rights and remedies it has under this Agreement or at law, Capital may forthwith terminate the Contract by notice in writing if the Supplier is in default of any term or condition of this Agreement.
  - 11.4. Capital may, without prejudice to any other rights or remedies contained in this Agreement, forthwith terminate this Agreement by notice in writing if the Supplier:
    - (i) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
    - (ii) is insolvent or is presumed by a court to be insolvent;
    - (iii) has an administrator, controller or similar officer appointed over all or any of its assets or undertaking; or
    - (vi) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within twenty-one (21) days.
  - 11.5. If Goods to be supplied under this Agreement are of standard stock of the Supplier, then Capital may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without further obligation hereunder, except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.
  - 11.6. If Goods or Services are to be manufactured to Capital's specifications or if the Supplier is required to install or fit Goods, then if at any time prior to performing any such work in fulfilment of this Agreement, Capital terminates this Agreement, then upon receipt of such notice the Supplier must stop all work, except as may be otherwise directed by Capital. Upon termination under this clause, Capital shall pay to the Supplier an amount equal to:
    - (a) the completed pro-rata amount of the contract price; and
    - (b) five percent (5%) of the amount calculated in (a).

The amount described in paragraph (a) must be agreed by both Parties and will reflect the amount completed or committed at the date of termination provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount will not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.
  - 11.7. Termination of this Agreement does not affect any accrued rights or remedies of either party.
- ## 12. Breach
- 12.1. If the Supplier breaches this Agreement, or if it advises Capital that it is not or will not be able to perform all or any of its obligations under this Agreement, then without limiting any other right or remedy Capital may;
    - (a) if it is permitted to do so under this Agreement, terminate this Agreement by notice in writing to the Supplier; and or
    - (b) acquire the Goods and or Services (or their nearest reasonably available substitute) from a third party(s).
  - 12.2. Indemnity for breach
    - (a) Any additional cost to Capital of acquiring substitute Goods and or Services from a third party will be an amount due by the Supplier to Capital immediately upon Capital making demand for that amount.
    - (b) The Supplier must pay to Capital the whole of any cost or expense, loss or damage suffered or incurred by Capital as a result of the Supplier's breach of this Agreement.

### 13. Intellectual Property Rights

13.1. Where this Agreement includes the provision of Services involving the preparation or provision of any design, formula, specification or drawings, the Supplier agrees to assign to Capital absolutely:

- (a) the copyright subsisting in any work created by the Supplier or any of its employees, agents or contractors in the course of the Services and which is the subject of copyright; and
- (b) all rights in respect of any practice, concept, product, and process design the Supplier or any of its employees, agents or contractors creates, develops, discovers or first reduces to practice in the course of the Services and in respect of which intellectual property rights are capable of being protected or registered.

The Supplier agrees to sign all documents and do all acts and things necessary to ensure that legal ownership of copyright and other intellectual property rights vests in Capital.

13.2. Any design, formula, specification, drawings or other documents or information made available by Capital for use by the Supplier for the purposes of this Agreement always remains the property of Capital. This Agreement does not give the Supplier any right, title or interest in Capital's documents or information and the Supplier must use Capital's documents and information solely for the purpose of providing the Goods and or Services to Capital under the terms of this Agreement.

### 14. Notices

14.1 A notice, consent, approval or other communication (each a Notice) under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by pre-paid mail to that person's postal address; or
- (c) sent by electronic mail to that person's email address.

14.2 A Notice given to a party in accordance with clause 14.1 is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; or
- (d) if sent by electronic mail and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if a Business Day, otherwise on the next Business Day.

### 15. General

15.1. Neither Party may disclose any information in respect of this Agreement without the prior written consent of the other party, other than for the purpose of enforcing this Agreement, obtaining legal or tax advice in relation to this Agreement, or as required by law. This obligation of confidentiality shall survive the ending or earlier termination of this Agreement.

15.2. A Party's non-exercise of or delay in exercising any power or right does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right can only be waived in writing, signed by the Party to be bound by the waiver.

15.3. If any clauses in this Agreement or its application to any person or circumstances is or becomes invalid or unenforceable, then the remaining clauses will not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.

15.4. This Agreement is governed by the laws of England and the Parties consent to the jurisdiction of England.

15.5. The Supplier shall not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining Capital's prior written consent which may be granted unconditionally or upon such conditions as Capital thinks fit and may be withheld by Capital in its absolute discretion.

The appointment of subcontractors by the Supplier shall not relieve the Supplier from any liability or obligation under this Agreement. The Supplier shall be liable for the acts and omissions of subcontractors and employees, officers, agents and contractors of subcontractors as if they were acts and omissions of the Supplier. The Supplier shall ensure that its subcontractors comply with the terms of this Agreement.

15.6. The Supplier is engaged and performs all work hereunder as an independent contractor and not as an agent or employee of Capital.

15.7. The Supplier will maintain a true and correct set of records in connection with the Work and all related matters for a period of not less than Twenty Four (24) months after the date of completion of the Work.

15.8. Capital is committed to operating in a sustainable manner. As such, Capital requires that the environment, social and economic impacts of goods and services are considered for all items designed, supplied and constructed for Capital. All Goods and Services supplied and all work performed must be in accordance with all relevant legal requirements including but not limited to the relevant to the environment, industrial codes of practice, business conduct and safety and health etc.

15.9. The Supplier must conform with the provisions of all laws (Federal, State or Municipal) in any way affecting or applicable to the manufacture and or supply of the Goods and must obtain all permits and licences and give all notices required to be given and must pay all fees, deposits and taxes in connection therewith.

15.10. If Capital is restructured by Law, then the rights and obligations of Capital under the Contract are assigned to and assumed by the appropriate legal entity as determined by Capital or the successors of Capital under the restructure.

15.11. Capital will be under no liability to the Supplier for any indirect and or expense (including loss of profit) suffered by the Supplier arising out of a breach by Capital of this Agreement.

15.12. Neither party will be liable for any default due to any act of war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

15.13. If the Parties are in dispute over anything arising out of or in any way connected with an order or this Agreement, and one party requires the dispute to be resolved, then that party must give the other party a written notice of the details of the dispute. Within 14 days of a party receiving the notice, the Parties must meet and attempt to resolve the dispute. If, within 14 days of that meeting, the dispute is not resolved, either party may proceed to litigation.

15.14. Capital reserves its right to review these terms and conditions at any time. If, following any such review, there is to be a change of these terms and conditions, then that change will take effect on the date that Capital notifies the Supplier of such change. Any proposed change to these terms and conditions by the Supplier must be requested in writing. Capital may refuse any such request without providing reasons. Changes requested by the Supplier will only be binding on Capital if Capital accepts them in writing.