



CUMBRIA

CONNEXIONS CUMBRIA LTD

GENERAL TERMS & CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS & SERVICES

NOTE: The following terms and conditions shall apply to all purchases orders, unless otherwise specifically agreed in writing by both parties.

Alternative terms and conditions may be applied for certain high value contracts, or for works or services contracts. These will be specified on the relevant Purchase Order or referred to in any applicable tender documents that are referred to on the Purchase Order.

DEFINITIONS

In these General Terms and Conditions

'Buyer' means Connexions Cumbria or the person named as such on the purchase order.

'Seller' means the person, firm or company named as Supplier on the Purchase Order.

'Goods' means all goods specified by the Purchase Order.

'Purchase Order' means the Buyer's Purchase Order that specifies these general terms and conditions and any other documents (or parts thereof) specified in the Purchase Order.

'Price' means the price of the goods and/or charge for the services.

'Contract' means the contract between the buyer and the seller consisting of the purchase order, these general terms and conditions and any other document specified in the purchase order.

'Services' means all services of whatever nature, to be provided by the seller to the buyer and described in the contract.

'Writing' includes facsimile transmission and electronic mail, providing electronic mail is acknowledged and confirmed as being received.

CONDITIONS

The Purchase Order constitutes an offer by the buyer to purchase Goods and/or services subject to these General Terms and Conditions and no variation of these General Terms and Conditions shall be binding unless expressly agreed in writing by both the Buyer and Seller.

These General Terms and Conditions shall apply to the exclusion of any other term or condition submitted, proposed or stipulated by the Seller, whether in Writing or orally, and any such term or condition is hereby expressly excluded or waived.

QUALITY

The quantity, quality and description of the goods and services shall comply in all respects with the specifications, drawings, sample and patterns specified in the purchase order, or any modifications thereof that may be agreed by the Buyer in writing, and the Buyer shall not be liable for any costs arising from any deviation from the matters so specified in the Purchase Order.

Any specification, drawing sample and pattern supplied by the Buyer to the seller, or specifically produced by Seller for Buyer in connection with the contract, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of the Buyer. On payment of the price and for no further consideration Seller assigns to buyer with the full title guarantee all such copyright, design right and other intellectual property rights. Seller shall not disclose to any third party or provide any such specification to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of Seller, or as is required for the purposes of the contract.

All goods will be of good construction, sound materials, and of adequate strength, shall be free from defects in design materials and workmanship, and shall comply with the rules of the Sale of Goods Act 1982, as applicable to the contract and as amended by any related statutes, and any statutory re-enactments or modifications thereof.

Buyer is under no obligation to test or inspect the goods before or on delivery and, notwithstanding Clause 3.2, section 35 of the Sale of Goods Act 1979 shall not apply to the contract.

DELIVERY

Time of delivery of the goods or performance of the services is of the essence of the contract.

Seller shall comply with all applicable regulations or other legal requirements as regards to the manufacture, packaging, labelling, and delivery of the goods. Seller shall deliver the goods properly and securely packed and supply the services during the buyer's usual business hours.

The Purchase Order will specify the quantity of goods and the nature of the services required and the date or dates and place of delivery of the goods or of provision of the service or services. Seller shall provide such programmes of manufacture as the buyer may require. Each delivery or consignment shall have a packing note quoting the reference

number of the purchase order prominently displayed, and Buyer may reject quantities delivered in excess of those stated on the purchase order.

If goods are in any respect incorrectly delivered the Seller shall immediately effect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in doing so.

If services are provided by Seller otherwise than in accordance with the terms of the contract Seller shall immediately effect correct provision of the services and shall be responsible for any additional costs or expenses incurred by buyer or seller in doing so.

Buyer may reject any goods which are not in accordance with the contract and Buyer shall not be treated as having accepted any goods until buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the goods has become apparent.

PRICE

The price, which shall include all charges for delivery to Buyer, packaging, insurance and carriage, shall be a fixed price for the duration of the contract and shall not be varied without prior written consent of the buyer.

The Buyer reserves the right to set off against the price of the goods or services any sums owed or becoming due to the buyer from the seller.

TERMS OF PAYMENT

Provided that a nominated employee has signed for goods or services in accordance with clause 11, buyer will make payment to the seller by the end of the month following that in which the relevant invoice is received or the relevant goods or services have been accepted by the Buyer, whichever is the later.

VAT, where applicable, shall be shown separately on all invoices as a strictly net extra. The correct purchase order number must be quoted on all invoices, and the buyer will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such purchase order numbers.

The buyer reserves the right to refuse payment of sums invoiced in excess of the prices stated in the purchase order.

LOSS OR DAMAGE IN TRANSIT

Seller shall promptly make good, free of charge to Buyer, any loss in transit of the goods or any damage to or defect in the goods if notified within 21 days of due delivery date or being delivered as is appropriate for the purpose of this clause.

INSPECTION

The seller shall be responsible for the inspection and testing of the goods and shall ensure that they comply with the contract prior to delivery to the buyer.

The Buyer shall have the right to inspect the goods at the sellers works and those of it's subcontractors at all reasonable times and to reject any part thereof that does not comply with the term of the contract. The seller shall ensure that the rights of access, inspection and rejection at premises of sub contractor of the seller are given to the Buyer in sub-contracts between seller and seller's sub-contracts. Any inspection, checking, approval or acceptance given on behalf of the buyer shall not relieve the seller or its sub contractors from any obligations or liabilities set forth in this Contract.

REJECTION

Buyer shall have the right to reject any goods or services which do not comply with the contract, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for purpose for which they are required (such purpose having been made in writing to the seller) or non-compliant with a description or specification or sample, and Buyer may return such rejected goods to the Seller at the Sellers cost and expense.

If the seller is unable to supply acceptable replacement goods or services within a reasonable time, buyer will be entitled to purchase elsewhere other goods or services, as near as is practicable to the same contract specifications and general terms and conditions as circumstances shall permit, but without prejudice to any other right which the buyer may have against the seller including, but not limited to, payment by the seller of any excess costs incurred by the buyer in doing so.

The making of such payment shall not prejudice the Buyers right or rejection and the Seller shall immediately reimburse the buyer with an equal amount to that paid by the buyer in respect of the goods or services and any applicable taxes. Before exercising the said right elsewhere the buyer shall give the seller reasonable opportunity to replace rejected goods or services with goods or services that conform to the contract.

PACKAGES

Packages and containers of all kinds are supplied free and are non refundable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all packages, advice notices and delivery notes.

Where the Buyer has an option to return packages and does so, the buyer will return such packages empty and in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Seller's supplying works or depot indicated by the seller, and will advise the Seller of the date of despatch. Packages returned promptly in the manner aforesaid shall be

subject to an allowance of the seller's standard rate operating at the time the buyer issued the purchase order.

PASSING PROPERTY

Subject to clause 11.2, property and risk in the goods will remain with the seller until the goods are delivered to the place specified in the Purchase Order and a nominated employee of the buyer has signed a delivery note for them, whereupon title will pass to the Buyer, without any limitation, constraint or encumbrance.

If payment of the goods is made prior to delivery, property in the goods shall pass to the buyer once payment has been made and the goods have been appropriated to the contract. In these circumstances goods will be clearly identified as that of buyer and title will pass to buyer, without any limitation, constraint or encumbrance, when a nominated employee of buyer signs an acceptance note. Seller will remain responsible for the safe keeping of goods and for maintaining them in good condition in accordance with purchase order specification until buyer collects them or until they are delivered to the place specified in purchase order.

RESPONSIBILITY FOR INFORMATION

The seller shall be responsible for any errors or omissions in any drawings, calculations, packaging details or other particulars supplied by him, whether such information has been approved by the buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the buyer.

VARIATIONS

The seller shall not vary any of the goods or services except as directed in writing by the buyer.

The buyer reserves the right by notice in writing to modify the quality or quantity of the goods or the nature of the services.

CANCELLATION

Buyer giving notice in writing may cancel any purchase order at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and / or performed for Buyer and is accepted as described in clause 11. Buyer's liability is strictly limited to work in progress and no further loss or liability will accrue.

FREE-ISSUE MATERIALS

Where the buyer for the purposes of the contract issues materials 'free of charge' to the seller, such materials shall be and remain the property of the buyer. The seller shall maintain all such materials in good order and condition subject to fair wear and tear. The

seller shall use such materials solely in connection with the contract. Any surplus materials shall be advised to the buyer and disposed of at the Buyers discretion. Waste of such materials arising from bad workmanship or negligence of the seller shall be replaced at the Seller's expense. Without prejudice to any other rights of the buyer, the Seller shall deliver up such materials whether further processed or not to the Buyer on demand.

PURCHASE ORDER DOCUMENTS

The buyer will not be liable in respect of any purchase orders or delivery instructions other than those issued or confirmed on its official, duly authorised, purchase order documents.

Terms and conditions specified on purchase order may not be varied except in writing and signed by buyer.

FORCE MAJEURE

Neither party shall be liable or deemed to be in fault on account of any delay in delivery or the performance of any other act under this contract due to circumstances which could not have been contemplated and which are beyond the party's reasonable control, provided that the party claiming hereunder shall notify the other as soon as possible of the cause and probable duration of the delay or non performance and shall minimise the effects of such delay or non performance. If a delivery by the Seller, or an acceptance by the buyer of a delivery is delayed or prevented for any reason beyond the reasonable control of either party the buyer reserves the right (without prejudice to any right or remedy available to it) to defer the delivery date or suspend, modify or cancel the affected contract.

HEALTH & SAFETY

All goods and the provision of all services will meet the safety requirements of the health and safety at work act 1974 and also comply with an statutory re-enactments or modifications thereof in relation to subsequent English or European Community Legislation.

The supplier shall comply at all times with Connexions safety policy and shall indemnify and keep Connexions indemnified against all liability incurred by Connexions for breach of its statutory obligations under the Health & Safety at Work etc Act 1974 or otherwise arising out of any failure by the supplier so to comply.

The supplier shall be deemed to have notice of the Connexions safety policy. The document may be viewed during normal working hours.

Connexions will not accept and liability for the cost incurred by the supplier in complying with the safety policy.

The supplier shall provide all necessary safety equipment and protective clothing for his employees or agents as the case may be, and shall ensure that such employees or agents so conduct their activities as not to prejudice the health or safety of personnel of the Purchaser

or Supplier or of third parties on the Purchaser's premises. In particular he shall ensure that such employees or agents at all times make use of any and all safety equipment and protective clothing which may be provided by the Purchaser or the Supplier for their use.

PATENT RIGHTS

The seller will indemnify the Buyer against any claim or infringement of patents, design, trade marks, service marks or copyright (whether any of the same are registered or not) arising from the use of Goods or provision of Services supplied by the Seller to the Buyer and against all expenses, costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer. Provided also that this indemnity is conditional on the Buyer giving to the Seller notice in Writing of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller at the Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

In the event of any claim for infringement the Buyer may (but shall not be obliged to) require the Seller at the Seller's expense to either procure for the Buyer the right to continue using the Goods or replace them with non-infringing Goods or modify the Goods or Service so they become non-infringing provided always that the standard and quality of the Goods and Service is not adversely affected.

WARRANTY

Without prejudice to any rights that the Buyer may have to statute, common law or otherwise, the Seller shall as soon as reasonably practicable repair or replace all Goods and all Services which are or become defective during the period of 12 months from putting into service or 18 months from delivery whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of the Seller's warranties, express or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.

The Buyer's rights and remedies under this condition shall be without prejudice to any other right or remedy, available to the Buyer.

INSURANCE AND INDEMNITY

The Seller shall indemnify the Buyer against all liabilities, damages, claims, costs, losses and expenses incurred or paid by the Buyer howsoever arising from any defect in the Goods of

the Services of any breach by the Seller of its obligations hereunder or of any statutory duty or from any act or omission of the Seller's servants, agents or contractors.

The Seller shall, if required by the Buyer, insure with a reputable insurance company its liabilities under this Contract for a minimum of two million pounds (£2,000,000) sterling per event and if so required at any time produce the policy of insurance and the receipt for the current premium to the Buyer for its inspection. The Seller agrees that any monies received by the Seller from the insurance company in full or part settlement of a claim arising out of this Contract and paid by or due to the Buyer shall be paid immediately to the Buyer without set-off or counter claim.

Any limitation, monetary or otherwise, in such policy shall not be construed as a limitation on the Seller's liability and the Seller shall notwithstanding such limitation remain liable in full for the matters and to the extent not covered by the policy.

The Seller will provide the Buyer, before any Goods are supplied or Services undertaken, with a photocopy of all relevant insurance certificates.

CONFIDENTIALITY

All plans, drawings, designs or specification supplied by the Buyer to the Seller shall remain the exclusive property of, and shall be returned to, the Buyer on completion of the Contract and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Contract.

No photographs of any of the Buyer's equipment, installations or property shall be taken without the Buyer's prior consent in Writing. The Seller shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) all information given by the Buyer in connection with the Contract or which becomes known to the Seller through his performance of the Contract or use the same other than for the purpose of executing the Contract.

The Seller shall not mention the Buyer's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without the Buyer's prior consent in Writing.

COLLUSION

If the Seller shall have offered, or given, or agreed to give to any person any gift or consideration of any kind as an inducement or reward in relation to the contract, or any contract with the Buyer, the Buyer shall be entitled to terminate the contract and without prejudice to any accrued rights or remedies recover from the Seller the amount of loss resulting from such termination.

TERMINATION

If the Seller commits any breach in the General Terms and Conditions of the Contract or if he shall die or become bankrupt or insolvent or having a receiving order made against him or being a company, enter into liquidation, whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction), or have an administrative receiver or a receiver appointed or an administration order made against it or if execution is levied against the Seller's Goods or assets, the Buyer may forthwith by notice in Writing at any time, terminate the Contract, but such termination shall be without prejudice to any rights or remedies of the Buyer subsisting at the time thereof.

EQUAL OPPORTUNITIES

Seller shall take all reasonable steps to secure the observance of the provision and scope of all current legislation with regard to Race Relations; Sex Discrimination; Disabled Persons Employment and Equal Pay for all servants, employees or agents of Seller and all sub-contractors employed in the execution of the contract.

NON-WAIVER

The non-exercise by the Buyer of any of its rights hereunder in any particular incidence of breach or default by the Seller shall not constitute a waiver by the Buyer of such right or extend to or affect any other or subsequent incidence or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of the Buyer under these General Terms and Conditions.

NOTICES

Any notice to be given under these General Terms and Conditions may be delivered, or be sent by first-class pre-paid post addressed to the party to be served at the address for such party or may be transmitted by telex or by telefax to the telex or telefax numbers of the party to be served.

Notices served by post shall be deemed served 48 hours after posting notices served by telex shall be deemed served 24 hours after the recipient's telex machine shall have acknowledged receipt.

INTELLECTUAL PROPERTY RIGHTS

If a member of Connexions Cumbria Ltd. staff either intentionally or unintentionally contributes towards the development of any commercial enterprise, Connexions Cumbria Ltd. shall be entitled (subject to negotiation between the Buyer and Seller) to a percentage of any ensuing Intellectual Property Rights.

GOVERNING LAW

The construction, validity and performance of the Contract and these terms and conditions shall be governed and construed in accordance with English law, and the Seller hereby submits to the non-exclusive jurisdiction of the English Courts.