

CONDITIONS OF PURCHASE

1. Definitions

- 1.1 The term "buyer" shall mean "ACTIA (UK) Ltd.
- 1.2 The term "seller" shall mean the person, firm or company to whom the purchase order is issued.
- 1.3 The term "purchase order" shall mean the purchase order placed by the buyer with the seller for the supply of the goods and any specifications, data, instructions, descriptions, standards, samples or other items issued by the buyer pursuant thereto (including any release authorisations or schedules for control of production materials, quality or specifications).
- 1.4 The word "goods" includes all goods and /or services to be supplied by the seller under the purchase order and includes any labels, instructions or handbooks relating to the goods.
- 1.5 The "contract" shall mean the contract between the buyer and seller consisting of the purchase order, these conditions of purchase, any other documents (or parts thereof) referred to in the purchase order and the seller's acceptance of the purchase order but not any terms and conditions, other than these conditions, incorporated in or referred to in such acceptance.
- 1.6 The term "date for delivery" shall mean the date for delivery specified in the purchase order.
- 1.7 The term "contract price" shall mean the sum stated in the purchase order to be paid by the buyer to the seller for the supply of the goods.

2. General

No terms and conditions of sale submitted or referred to by the seller in any quotation or tender or during the course of negotiations between the parties shall form part of the contract unless the buyer specifically agreed in writing to their incorporation in the contract and confirmed such agreement in the purchase order.

3. Amendment Of Conditions

Neither party shall be bound by any variation, waiver or addition to these conditions except as agreed by the parties in writing and signed on their behalf by one of their duly authorised officers.

4. Specification, Description, Sample And Standard

The goods shall conform in all respects with:

- 4.1 the provisions of the contract and in particular with the specification, drawings, descriptions or samples contained or referred to in the contract;
- 4.2 any standards specified in the contract and where no standard is specified with the relevant British Standards;
- 4.3 the requirements of any legislation current at the date for delivery.

5. Quality And Fitness For Purpose

- 5.1 The supplier will in all applicable cases ensure compliance with the buyers Quality Assurance Procedure or any replacement thereof (which is hereby incorporated into these Terms & Conditions)
- 5.2 The goods shall be of satisfactory quality as that expression is defined in the Sale and Supply of Goods Act 1994 including all the aspects of quality as listed in s.14(2)(B) of the said Act.
- 5.3 If the purposes for which the goods are required has been made known to the seller expressly or by implication then the goods shall be fit for that purpose.

6. Delivery

- 6.1 Time shall be of the essence of the contract and the goods shall be delivered by the seller to the buyer by the date for delivery or any extended date as provided for under clause 12.1.
- 6.2 Should the supplier fail to deliver the goods within the period specified the buyer (without prejudice to any other remedies to which he may be entitled) reserves the right to:
- Cancel that part of the purchase order which is undelivered at the end of the specified period and,

Charge to the supplier any additional costs, losses or expenses in which they may be involved due to the suppliers failure to deliver the goods at the stipulated time.

- 6.3 Goods delivered in excess of the specified requirements may be returned to the supplier at no risk or expense to the buyer.

6.4 The seller shall supply the buyer with such programme of manufacture and delivery as the buyer may reasonably require. The seller shall give the buyer notice immediately if such programme is or is likely to be delayed and the buyer shall have the right to require the seller to take such steps at the seller's expense as may be required in order to deliver the goods by the date for delivery.

6.5 The seller shall at his own expense deliver the goods to the buyer at the delivery point specified in the purchase order and unless otherwise specified in the purchase order delivery shall include the offloading of the goods. If the goods are incorrectly delivered the seller will be responsible for any additional expense incurred in delivering them correctly.

7. Title And Passing Of Property

The supplier hereby agrees that as a condition of this purchase order: The supplier has the right to sell the goods and the goods are and will remain until property therein passes to the buyer the absolute property of the supplier free from any lien charge or other encumbrance. The goods shall become the property of the buyer when they have been delivered in accordance with clause 6 above without prejudice to the buyer's right to reject the goods under Clause 11.

8. Passing Of Risk

The risk in the goods shall pass to the buyer on completion of delivery in accordance with clause 6 above provided that the risk in any goods rejected by the buyer under Clause 11, shall revert to the seller immediately upon notice being given by the buyer of such rejection.

9. Contract Price

Unless otherwise specifically stated in the order, the price for the goods shall be fixed and firm and shall include delivery and the cost of packing.

10. Payment Terms

- 10.1 The seller shall be entitled to submit an invoice for the goods as soon as delivery has been completed. Invoices shall be submitted in the manner described in the purchase order.
- 10.2 Except as otherwise agreed in writing, payment shall be made by the buyer within 30 days of receipt of an invoice properly prepared unless by the time when payment is due the buyer has rejected the goods or any of them under clause 11.
- 10.3 If the buyer has rejected the goods or any of them without having made payment and such rejected goods are thereafter replaced by the seller with goods which conform to the contract then payment shall be made by the buyer for the goods within 30 days of receipt of a properly prepared invoice for the same.

11. Rejection

- 11.1 If any of the goods do not comply strictly with any of the terms of the contract the buyer may reject them within a reasonable time after delivery and irrespective of whether such goods have been accepted or paid for and s.15A of the Sale of Goods Act 1979 shall not apply.
- 11.2 The seller shall forthwith replace any such rejected goods with goods which conform to the contract.
- 11.3 If the seller does not so replace the rejected goods forthwith the buyer shall have the right to purchase elsewhere replacement goods of the same or similar description and without prejudice to any other rights which the buyer may have against the seller to recover from the seller:
- 11.3.1 any payments made in respect of the rejected goods; and
- 11.3.2 the difference between the price of the rejected goods and the price of the replacement goods.
- 11.4 The buyer may return any rejected goods to the seller carriage paid and at the seller's risk.

12. Inspection

- 12.1 The buyer shall have the right to check the progress and inspect the goods at the Works of the seller and of the seller's sub-contractors.
- 12.2 The buyer may reject any of the goods or parts thereof which are not in accordance with the contract.
- 12.3 Any inspection, checking, or approval on behalf of the buyer under this clause shall not relieve the seller of any of his obligations under the contract. The seller shall ensure that the terms of his sub-contracts provide for the rights of the buyer as stated in this clause.

13. Delayed Delivery

- 13.1 If the seller is delayed in the performance of the contract by any act or default of the buyer or any circumstance of force majeure as defined in clause 16 below the buyer shall grant to the seller such extension of the date for delivery of the goods as may be reasonable. Notwithstanding the granting of any such extension the seller shall use his best endeavours to deliver the goods by the date for delivery.
- 13.2 If the seller shall fail to deliver the goods by the date for delivery or extended date under sub-clause 1 of this clause the buyer shall be entitled to terminate the contract and purchase other goods of the same or similar description from elsewhere and recover from the seller the amount by which the cost of purchasing such other goods exceeds the contract price without prejudice to any other rights which the buyer may have in respect of the seller's breach of contract.

14. Defects Liability

- 14.1 The seller shall without delay and without cost to the buyer repair or replace at the buyer's option any of the goods which are or become defective within a period of 18 months from delivery or 12 months from putting into service, whichever shall be the shorter, due to faulty workmanship or materials or faulty design, if the seller is responsible for design, errors in instructions, labels or handbooks or any other breach by the seller of his obligations under the contract or at law whether express or implied.
- 14.2 Any goods so replaced or repaired shall be subject to the like obligations for a further defects liability period of 12 months from their re-delivery after repair or replacement.
- 14.3 If the seller shall fail to so repair or replace such defective goods the buyer shall have the right to have the work of repair or replacement undertaken by others and to recover the costs of so doing from the seller. The seller shall further be liable to the buyer for all direct damages sustained by the buyer arising out of the said defects in the goods up to the limit of liability stated in the purchase order or if no such limit is stated the contract price.

15. Direct And Consequential Damages

- 15.1 If either party fails to perform its obligations under the contract then that party shall be liable to the other for the damages arising directly and naturally in the ordinary course of events from the breach of contract concerned.
- 15.2 Neither party shall be liable to the other for any indirect or consequential damages which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same is due to the negligence of that party or not.

16. Force Majeure

- 16.1 If either party is prevented from or delayed in the performance of its obligations under the contract by an event arising after the formation of the contract which was unforeseeable, irresistible, insurmountable and independent of the will of the party concerned, that party may notify the other of the existence of an event of force majeure and the contractual obligations of the parties shall be suspended.
- 16.2 If the event of force majeure continues for a period less than 90 days then on the ending of the force majeure event the contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the force majeure event as may be agreed between the parties, or in default of agreement, as may be determined by arbitration.
- 16.3 If the event of force majeure shall continue for a period of more than 90 days then the contract shall be considered as terminated by mutual consent.
- 16.4 If the contract is so terminated then the buyer shall pay to the supplier such reasonable sum as may be agreed between the parties in respect only of expenditure actually incurred and commitments entered into by the supplier in the performance of the contract up to the date of the force majeure notice or in default of agreement as may be determined by arbitration.

17. Patent Infringement

- 17.1 The supplier hereby warrants to the buyer that the sale or use of the goods in any part of the world (alone or as part of any product) will not infringe
- any letters patent registered designs copyright trademark or industrial property rights of any person or amount to the passing off of such goods as the products of any person.
- 17.2 The seller shall indemnify the buyer from and against all costs, claims, proceedings or demands in respect of any infringement of patent, registered design, trade mark, copyright or other intellectual property rights arising out of the sale or use of any goods supplied under this contract provided always that the seller shall not be required to indemnify the buyer against such infringements where the goods are supplied to the particular design or specification of the buyer.

18. Assignment And Sub-Contracting

The contract shall not be assigned by the seller nor sub-let as a whole. The seller shall not sub-let any part of the contract without the buyer's written consent, which shall not be unreasonably withheld. The consent of the buyer shall not however be required for the sub-contracting of materials or minor items or for any item for which the sub-contractor is named in the contract.

The seller shall be responsible for all work done and goods supplied by sub-contractors as if the work had been done or the goods supplied by itself.

19. Insolvency And Bankruptcy

If the seller becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) the buyer may, without prejudice to any of its rights, terminate the contract forthwith by notice to the seller or to any person in whom the contract may have become vested.

20. Law

The contract shall in all respects be governed by and interpreted in accordance with English law.

21. Dispute Resolution

If any dispute or difference shall arise between the parties in connection with or arising out of the contract which cannot be settled amicably, then either party shall give to the other 14 days' written notice to such effect and such dispute or difference shall be referred to a single arbitrator agreed between the parties within 14 days after the date of the said written notice, or in default of agreement, as may be nominated by the president for the time being of the Chartered Institute of Arbitrators.

22. Cancellation

The Buyer shall be entitled to cancel this order at any time by giving written notice to the supplier. If the Buyer exercises his right of cancellation it shall be bound to pay a reasonable price for any work already completed but shall otherwise be free from liability.

23. Indemnity

The Seller shall keep the Buyer fully and effectively indemnified against:

- (a) any royalties paid by the seller and
- (b) any claim in contract or tort or otherwise; for any direct or indirect damages, expenses or costs relating to damage to property; injury or loss to any person, firm or company, or for any loss of profit or production arising out of, or occasioned by, any error in design or drawings; or any defects in or failure of the goods or part thereof provided; or work performed by the supplier or occasioned by any reason or act of omission by the seller or any subcontractor of his.

24. Confidentiality

The Seller shall hold as confidential all information, details, specifications, drawings and any other matter relating to the goods or services to be supplied in any way whatsoever and shall not disclose the same or any of the same to any other person except such of his employees and permitting subcontractors and suppliers as may be necessary for the performance of his obligations under his contract. All documents and drawings containing such information and any copies thereof shall upon completion of the contract, or its termination for any reason be returned to the Buyer.

25. Buyers Project

Jigs, tools, equipment, drawings plans, data, models, patterns, samples, materials and any other items at any time supplied by the buyer to the supplier or for which the buyer has provided the whole or part of the cost to enable the supplier to execute this purchase order and the copyright and all other rights therein are and remain the property of the buyer (which may use or reproduce them for any purpose whatsoever) and will be delivered returned or otherwise transferred to the buyer on demand and (except as otherwise agreed) at the expense of the supplier. No such item will be used by any person except in connection with the purchase order or sold or supplied to any person other than the buyer or removed from the premises of the supplier, except in accordance with the purchase order and no information relating thereto will be disclosed to any person except with the prior written consent of the buyer.

26. Changes In Specification Or Design.

The supplier undertakes not to make any changes in specification or design of the goods without giving the buyer a minimum of six months notice in writing of the change or such lesser period as the buyer may agree in writing.

In the event that any such changes cannot reasonably be incorporated in a buyer design or are unacceptable to a customer of the buyer the buyer reserves its right to determine the contract.