

ZB3 Technologies Ltd

CONDITIONS OF PURCHASE

DEFINITIONS

In these conditions of purchase:

"the Buyer" means ZB3 Technologies Ltd "the Supplier" means the person or company to whom this purchase order is addressed, "Conditions" means the terms and conditions set out in this purchase order, "Contract" means contract between the Supplier and Buyer for the supply of Goods which is subject to the Conditions (as varied, if it be the case, in accordance with clause 2.2 below), "Purchase Order" means a purchase order subject to the Conditions and otherwise substantially in the form of this purchase order and "Specification" includes any specification, design, plan, prototype, drawing, software, data or other information relating to the Goods. Where a Contract or Purchase Order is for the provision of services the word "Goods" shall be read, where the context permits as meaning and/or including any services which the Supplier contracts to provide.

OPERATIVE CLAUSES:

1. Exclusion of Supplier's Terms and Conditions

Every supply of Goods to the Buyer by the Supplier is made on the Conditions and all terms and conditions proposed by the Supplier (except to the extent that they are repeated in and are not inconsistent with the Conditions) are hereby expressly excluded

2. Basis of Purchase

2.1 The Purchase Order constitutes an offer by the Buyer to purchase the Goods from the Supplier subject to the Conditions. No verbal or written order, request or enquiry for Goods is binding on the Buyer unless set out in a Purchase Order signed by a duly authorised representative of the Buyer.

2.2 No variation to a Purchase Order or the Conditions is binding on the Buyer unless agreed in writing between the authorised representative of the Buyer and the Supplier

2.3 Execution by the Supplier of a Purchase Order in whole or in part constitutes acceptance thereof.

3. Specification

3.1 The quantity, quality and description of the Goods and each instalment of the Goods shall correspond exactly with those specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Supplier and referred to in the Purchase Order.

3.2 Any specification supplied by the Buyer to the Supplier, or specifically produced by the the Supplier for the Buyer, in connection with the Contract, together with any dies, moulds, tools and materials and any intellectual property rights in the Specification, shall be an remain the exclusive property of the Buyer.

3.3 The Supplier shall not disclose to any third party or use any Specification except to the extent that it is or becomes within public knowledge otherwise than as a result of a breach by the Supplier of this clause 3.3, or as required for the performance by the Supplier of the Contract.

4. Prices

Unless otherwise stated in the Purchase Order all prices are fixed and include the cost of packing and delivery and all taxes (other than VAT) and other dues.

5. Delivery

5.1 The Goods shall be delivered to the address for delivery and on the date or within the period stated overleaf, between 08:00 and 15:30 hours on a weekday which is not a bank holiday.

5.2 If no date for delivery of the Goods or time for performance is specified or such date or time may be specified after acceptance of the Purchase Order, the Buyer may at any time give notice to the Supplier requiring the Supplier to perform the Contract by the time specified in such notice.

5.3 The time of delivery of the Goods (and performance of any services comprised therein) is of the essence of the Contract.

5.4 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

5.5 The Goods shall be securely and properly packed in a manner acceptable to the Buyer

5.6 If the Goods are to be delivered by installments, the Contract will be treated as a single Contract and not severable.

5.7 Notwithstanding the provision of clause 5.1 the Buyer may by notice in writing to the Supplier given at any time before the actual delivery of the Goods, postpone delivery, in which case the Supplier shall store the Goods at the Supplier's risk.

5.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with eth Contract, and shall be deemed not to have accepted any Goods until the Buyer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after, any latent defect in the Goods has become apparent.

5.9 If Goods are not supplied in accordance with the Contract, then without prejudice to any other remedy to which it shall be entitled whether pursuant to the Conditions or otherwise, the Buyer shall be entitled to terminate the Contract and to be repaid forthwith any price paid or to obtain equivalent Goods or rectification from a suitable source, the cost of which shall be reimbursed by the Supplier to the Buyer.

6. Terms of Payment

6.1 The Supplier shall be entitled to invoice the Buyer on or at any time after delivery of all the Goods (or performance of all services comprised therein), and each invoice shall quote the number of the Purchase Order.

6.2 Unless otherwise stated in the Purchase Order, the Buyer shall pay the price of the Goods within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, 60 days after acceptance of the Goods by the Buyer. Any invoice which fails to state clearl yhe correct reference of the Goods as set out in the relevant Purchase Order shall not be a proper invoice for the purpose of this Condition.

6.3 The Buyer shall be entitled to set off against the price any sums owed to the Buyer by the Supplier on whatever account.

6.4 The Supplier shall not be entitled to suspend or to cancel any delivery by reason of any failure by the Buyer to make any payment (under the Contract or otherwise) on the due date.

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods, including any components thereof and/or raw materials incorporated therein, shall pass to the Buyer on delivery.

7.3 All property of the Buyer (including without limitation the Goods and the Specification) for the time being in the custody or possession of the Supplier shall be at the risk of the Supplier which shall at its own expense insure such property against the risk of loss and/or damage from whatever cause and all other usual risks.

7.4 All tooling of the Buyer in custody or possession of the Supplier shall be maintained in good condition at the Supplier's expense.

8. Warranties and Liability

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8.1 The Supplier warrants to the Buyer that the Goods are of merchantable quality and fit for any purpose held out by the Supplier in writing at the time of the Purchase Order, are and will for twelve months after delivery, be free from defects, whether of design, material, workmanship or otherwise, correspond with any specification or sample, and comply with all statutory requirements and regulations relating to their supply.

8.2 Without prejudice to any other remedy, if the Goods or any of them are not delivered or, in the case of services are not performed, in accordance with the Contract, the Buyer is entitled to require the Supplier either to repair the Goods or to supply replacement Goods in accordance with the Contract or in the case of services to perform the same by such date as the Buyer shall notify to the Supplier to treat the Contract as discharged by the Supplier's breach and to require immediate repayment of any part of the price which has been paid.

8.3 The Supplier shall indemnify the Buyer in full against all direct, indirect and consequential liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with;

8.3.1 late delivery of, or breach of any warranty given by the Supplier in relation to the Goods;

8.3.2 any claim or alleged claim that the Goods infringe or the importation, use or resale, infringes any intellectual property or other right of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods and

8.3.4 any breach of the Contract and any other act or omission of the Supplier or its employees, agents or sub-contractors in supplying delivering or installing the Goods.

8.4 The Supplier represents warrants and undertakes to the Buyer that it has carried out all testing and evaluation and other work necessary to eliminate any risk to health or safety from use of the Goods and that if in any circumstance there is or may be any such risk then no later than the delivery of the Goods the Supplier will bring such circumstance to the attention of the Buyer in writing and provide free of cost full and proper information about such circumstance and the safeguards to be observed to ensure that the Goods are used safely and without risk to health. Goods which are hazardous must have prominent warning in English on all packing and documents.

8.5 The Supplier undertakes to the Buyer that prior to delivery it will inspect and test the Goods to ensure that they comply in all respects with the Contract and, on request by the Buyer, will free of charge provide a certificate that the Goods comply in all respects with the Contract.

9. Inspection and Testing

9.1 The Buyer, through such persons as it shall nominate, shall have the right to inspect and test the Goods at the Supplier's premises during manufacture, processing and storage. For the purposes of such inspection and test the Supplier shall, free of charge to the Buyer, afford all reasonable assistance and facilities. Such inspection and testing by the Buyer shall not relieve the Supplier of any obligation to the Buyer to which the Supplier would otherwise be subject nor shall create any estoppel in favour of the Supplier against the Buyer.

9.2 If as a result of inspection or testing the Buyer is not satisfied that the Goods comply in all respects with the Contract, then the Buyer shall be entitled within seven days thereafter to terminate the Contract and any monies paid to the Supplier by the Buyer and an amount equal to the cost to the Buyer of any material provided to the Supplier shall be repaid immediately by the Supplier to the Buyer.

10. Termination

10.1 In addition to an without prejudice to the rights conferred on it by any other of these Conditions, the Buyer shall be entitled at any time to terminate the Contract in whole or in part upon payment to the Supplier whichever is the lesser of (i) the balance of the amount payable by the Buyer to the Supplier under the Contract and (ii) the aggregate of the amounts already expended by the Supplier in purchasing materials specifically for the purpose of and necessary for its performance of the Contract which have not been incorporated in the finished Goods delivered to the Buyer and in unavoidable cancellation costs incurred by the Supplier to third parties in consequence of termination of the Contract after deducting from such aggregate the amount of any saving from which the Supplier will benefit in consequence of such termination.

10.2 The Buyer shall be entitled by notice in writing to the Supplier to terminate the Contract forthwith without compensation in any of the following events:-

- (1) The Supplier committing any irremedial breach of its obligations under the Contract or any other contract between the Buyer and the Supplier;
- (2) The Supplier failing within seven days of written notice requiring it so to do remedy any remediable breach of its obligations under the Contract or any such other contract;
- (3) The Supplier compounding with or negotiating for any composition with its creditors or failing to satisfy any final judgement within seven days thereof or suffering any execution over any of its assets
- (4) The Supplier being insolvent, ceasing business, or entering into liquidation or bankruptcy or any receiver or administrator of the Supplier or any of its assets being appointed

11. General

11.1 The Purchase Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

11.2 Failure on the part of the Buyer to exercise any right conferred by the Contract or at law shall not be deemed a waiver of such right nor bar the exercise or enforcement thereof at any time thereafter.

11.3 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

11.4 The Contract shall be governed by the laws of England. The Supplier submits to the jurisdiction of the English courts.