

Infoplaza Group

General terms and conditions – GOODS

SUPPLEMENT TO GENERAL TERMS AND CONDITIONS FOR DELIVERY OF GOODS AND ON-SITE SERVICES

1. APPLICATION OF THESE CONDITIONS

1. These Conditions shall apply to Engagements given or undertaken by Service Provider that involve the provision of physical goods and / or materials to the Client.

They supplement the General Terms and Conditions of the Service Provider and shall only apply to Contracts in which the Service Provider has agreed to deliver Goods to the Client.

2. DELIVERY OF GOODS

1. Unless a different address has been agreed in the Order Acceptance, the Goods will be delivered to the Client's usual business address.
2. Where Service Provider has provided the Client with a proposed delivery schedule, the timetable therein will be an estimate only and such timetable shall be deemed to commence on the Contract Date or, if later, the date on which Service Provider obtains any applicable export licence.
3. The Client shall inspect the Goods carefully on delivery and immediately notify Service Provider of any alleged defects. If the Client reasonably demonstrates that it was not possible to discover the alleged defects on delivery, the defects must be notified in writing within 7 days after the date on which the defect was discovered or could have reasonably been discovered.
4. Following delivery, Service Provider may at any time and on reasonable notice to the Client undertake an inspection (at no expense to the Client) of the Goods.
5. If the Client fails within a reasonable time to take delivery of the Goods on their arrival at the delivery address, Service Provider may:
 - a. store the Goods and charge the Client for the reasonable costs (including insurance) of storage and such storage shall constitute delivery of the Goods to the Client; and/or
 - b. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) apply any proceeds of sale in reduction of the sums due to Service Provider from the Client in respect of the Goods or otherwise.

3. RISK & TITLE TO GOODS

1. Unless otherwise agreed in the Order Acceptance (whether expressly or by reference to a Proposal), all Contracts for the sale of Goods will be on FCA terms as defined in Incoterms 2010 and risk in Goods shall pass to the Client when the Goods are delivered to the Client or his agent.
2. Where the Client has arranged for transportation of the Goods via a carrier, such carrier shall be deemed to be acting for and on behalf of the Client and delivery of the Goods to such carrier shall be deemed to be delivery to the Client.
3. Title in Goods shall not pass to the Client until the Client has settled the Service Provider invoice in respect of the Goods and also any other overdue Service Provider invoices.
4. Until title to the Goods passes:
 - a. the Client will hold the Goods as fiduciary agent and bailee for Service Provider;
 - b. the Goods shall be kept separate and distinct from all other property of the Client and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to Service Provider;
 - c. Service Provider may at any time revoke the power of sale and use of the Goods by notice to the Client if the Client is in default for longer than [14] days in the payment of any sum whatsoever due to Service Provider;
 - d. the Client's power of sale and use shall automatically cease if the Client becomes subject to any of the circumstances listed in Clause 22;
 - e. upon determination of the Client's power of sale and use, the Client shall place any of the Goods in its possession or under its control, at the disposal of Service Provider and Service Provider shall be entitled to enter the premises of the Client for the purpose of removing the Goods.

4. ACCEPTANCE OF GOODS

1. The Client may, by written notice to Service Provider served within 30 days of delivery, reject any Goods which do not substantially conform with any specification contained in a Proposal. Rejected Goods must be returned to Service Provider at the Client's risk and expense.
2. The Client shall be deemed to have accepted the Goods as in conformity with any specification contained in a Proposal if the Client has not served a notice of rejection on Service Provider within 30 days of delivery of the Goods concerned.
3. Service Provider will replace any Rejected Goods with Goods that comply with the specification and reimburse the Client for the costs incurred pursuant to Clause 9 returning the Rejected Goods to Service Provider. For the avoidance

of doubt, any Goods that are incorrectly rejected will not be replaced in accordance with this Clause 3.

5. WARRANTY FOR GOODS

1. This Clause only applies to Contracts in which Service Provider has agreed to supply Goods to the Client and unless otherwise agreed in the Order Acceptance (whether expressly or by reference to a Proposal), the following Warranty terms shall apply.
2. Subject to Clause 10.3 and subject to any Warranty term of any separate licence agreement for particular applications (which shall in the event of conflict override this Warranty for Goods clause), Service Provider warrants for a period of twelve (12) months from the delivery date that the Goods:
 - a. will be free from defects in material and workmanship under normal use and service; and
 - b. do not infringe any patent, copyright, design right or trade mark or other intellectual property rights of any other person.
3. The Warranty shall be void and unenforceable against Service Provider:
 - a. where the Client allows any person other than Service Provider or its authorized agent to install, commission, repair, adjust, alter, modify, or otherwise tamper with the Goods without the prior written consent of Service Provider;
 - b. where the defect arises through any act or omission of the Client, its servants or agents or any third party contrary to the operating and maintenance instructions provided by Service Provider;
 - c. where further defects arise where the Client knew or ought to have known that defects existed in the Goods and, as a result of continued use of the Goods such use caused or contributed in causing such further defects or exacerbating existing defects;
 - d. where the defect arises through abuse, lightning or other electrical discharge; or
 - e. where the defect is caused by a design fault where the design for the Goods was prepared by the Client or any third party.
 - f. in respect of any Product, if it has been subjected to conditions beyond the limits of its specifications, or if it has been physically damaged or which is attached to apparatus other than apparatus supplied by Service Provider for attachment or specifically approved for attachment by Service Provider in writing.
4. Where any valid claim is brought under the Warranty, Service Provider may, in its sole discretion, undertake an inspection of the Goods and/or either:
 - a. subject to Clause 10.5, repair the Goods (or any defective part);
 - b. subject to Clause 10.5, replace the Goods (or any defective part); or
 - c. refund the Client with the Price of the Goods
5. Where Service Provider elects to repair or replace the Goods pursuant to Clause 10.4, Service Provider reserves the right to charge the Client for any travel costs, travel time, waiting time and subsistence costs arising out of the repairs or replacement and any inspection preceding such repairs or replacement. Replacement or repair of defective parts pursuant to this warranty shall be made at any city, town or port at which Service Provider regularly maintains qualified service personnel. The publishing of a list of any such service stations shall not imply any obligation upon Service Provider to maintain a regularly established service station on any of the locations specified in such list.
6. Subject to Clause 10.4 (c), if Goods are sent to a Service Provider establishment or a service station appointed by Service Provider within the warranty period, then, provided that shipping costs are prepaid by the Client and the part is found defective after inspection at the establishment or service station, replacement or repair of the defective part shall be made.
7. Where a service for any of the Goods is requested and such service does not relate to any warranty covered by this Agreement, then the warranty period applicable to such Service Work shall not exceed 30 days from the date of performance and completion of such Service Work. The warranty period for new spare parts however, shall be six (6) months after date of installation or shipment, whichever period shall first expire. The warranty for exchanged items shall be for a period not to exceed ninety (90) days from date of shipment.
8. In case of Goods sold but not manufactured by Service Provider or its subsidiaries or affiliates, Service Provider only obligation shall be to use its all reasonable endeavours to pass on or arrange for the passing on to the Client of the manufacturer's warranty, subject to any conditions set out by the manufacturer.
9. When Service Provider employees are required to travel for any maintenance and service checks within the warranty period the Client is required to pay the actual travel costs, plus travel time and subsistence costs for the employees.
10. Service Provider shall be entitled to charge the Client at a per man day cost for any time for which Service Provider's engineers are kept waiting because the vessel fails to dock at the time and/or place specified by the Client (or the Client's Representative), or if the Client (or the Client's Representative) hinders Service Provider's engineers in carrying out the warranty or maintenance or where there are delays on the part of the Client, their representatives or ship's masters. Service Provider shall also be entitled to charge the Client for any

extra costs incurred by Service Provider due to a sudden request for a change of arrangements by the Client (or the Client's Representative).

11. The provisions above set forth Service Provider's sole liability in respect of, or for any defect or nonconformity in, any Goods; Service Provider shall have no obligation or liability in respect of any defect or nonconformity discovered after the lapse of the relevant warranty period as specified in the relevant sub-clause. All other warranties, whether express or implied, in contract, statute or at law, are so far as the law permits, expressly excluded. Service Provider shall have no other obligation or liability to the Client in respect of warranty matters.

6. INSPECTION AND SERVICE WORK

1. The Client will pay Service Provider's standard rates for Service Work both within the Warranty period and outside the Warranty period (comprising daily rates, travel costs, travel time, waiting time and subsistence costs).
2. During any warranty period referred to in Clause 10, Service Provider shall be entitled to inspect any installed System or Product at any reasonable point of time. No costs shall be charged to the Client for these inspections.
3. If the Client should request an inspection of the System or any Product by Service Provider or its authorised service representatives, either during a warranty period or after expiry thereof, or if the Client should request repairs, service or other work ("Service Work") which Service Provider is not obliged to execute pursuant to its obligations by virtue of Clause 10, this inspection or Service Work, if agreed upon by Service Provider, will be executed at Service Provider's standard rates for Service Work which will reflect the location at which such service personnel are located and have to travel. In addition, Service Provider may charge the actual travelling and accommodation expenses of such personnel, at the rates applicable. If Service Work is required outside regular working hours, the Client shall pay such extra hours at the hourly rate for overtime applicable for the location of the personnel.
4. Publications in which Service Provider has indicated in which places service stations are to be found are for information purposes only and Service Provider is not obliged to retain such service stations nor shall it be liable for failing to retain them.

7. PROVISION OF ACCESS AND INFORMATION

The Client shall provide access to the Site at such times as may reasonably be required by the Service Provider for its personnel and its sub-contractors. The Client shall make full disclosure of all information it possesses or might reasonably be expected to possess in relation to the subject matter of the Work and shall notify the Service Provider of any known or suspected hazards existing at the Site including, but not limited to, hazardous waste or substances and underground utilities. The Service Provider shall be entitled to rely on the accuracy of drawings, data, information and statements given or made by the Client's employees and agents and by any third parties. The Service Provider shall have no liability for any reports or advice which it may give to the extent that these are based on any such drawings, data, information or statements which prove to be inaccurate.

8. INSTALLATION TRAINING AND SOFTWARE SUPPORT

1. Installation, training and software support (if any) will be in accordance with the provisions relating thereto under separate agreement. Notwithstanding this, clauses 12.2 and 12.3 shall apply to the separate agreement.
2. Service Provider's Software is under constant review and development. Service Provider reserves the right to make substitutions and modifications in the design and specifications of the Software, provided that such substitutions or modifications do not materially or adversely affect the performance of the Software or the way in which it operates. The Client undertakes to accept and use, subject to the separate terms of any Maintenance and Software Support Agreement entered into, the latest release of the version of the Software. Service Provider hereby excludes all liability whatsoever for any loss or damage arising as a result of any failure by the Client to cease to use any previous release promptly following delivery of a new release of the Software.
3. If during the course of this Agreement new releases of the Software are offered for sale to the Client the conditions of this Agreement shall continue to be binding on the Client in respect of both the original Software and any subsequent releases provided to the Client.

9. EQUIPMENT

1. The ownership of any equipment or items used, designed or made by Service Provider in connection with the work shall remain vested in Service Provider, except where alternative arrangements have been agreed in writing by Service Provider.
2. Where the Client provides equipment for use in connection with the work ("Client Equipment"), ownership of such items shall remain vested in the Client.

3. Delivery of Client Equipment shall, unless otherwise agreed in writing, be made by and at the expense of the Client and in accordance with the requirements of Service Provider.
4. Until unloaded at Service Provider's premises all Client Equipment shall remain the Client's risk.
5. If, while in the course of transit to or being unloaded at Service Provider's premises, any Client Equipment is lost or damaged to an extent which, in the opinion of Service Provider, renders it unfit for use in connection with the performance of the work, the Client shall, at his own expense, supply Service Provider with a replacement for such equipment and if delay is caused thereby shall bear the consequences of such delay.
6. After being unloaded at Service Provider's premises, Client Equipment shall be at Service Provider's risk, provided however that Service Provider shall incur no liability in respect of the destruction of or damage to any Client Equipment in the course of performing the work unless such destruction or damage is caused by the negligence of Service Provider, its officers, agents, or employees.
7. Any modifications required to be done to any models or other equipment provided by the Client shall be done and charged to the Client's account, except where some other arrangement has been agreed by Service Provider in writing.
8. The Client Equipment shall cease to be at the risk of Service Provider and shall again be at the Client's risk when loaded at Service Provider's premises for return to the Client or his nominee in accordance with sub-Clause 9 and in any event such equipment shall be at the Client's risk 28 days after either the posting by Service Provider of the final invoice raised upon the completion of the work or upon termination of the Contract, whichever shall occur first, except where some other arrangement has been agreed by Service Provider in writing.
9. Upon receipt of the final invoice, the Client shall make arrangements with Service Provider for the immediate removal of all Client Equipment and shall, at the Client's expense, remove such equipment from Service Provider's premises in accordance with such arrangements. If the Client fails within three months to make such arrangement or, having made such arrangements, fails to remove the equipment in accordance therewith, Service Provider may remove or dispose of such equipment in such manner as it shall think fit, without incurring any liability to the Client to obtain the best possible or any price therefore. The Client shall pay to Service Provider the costs and expenses incurred by Service Provider in connection with such removal or disposal.
10. The Client shall indemnify and hold harmless Service Provider against any claims, expenses and liability incurred by Service Provider arising from any Client Equipment or from the acts or omissions of any employee, agent, representative or invitee of the Client whilst he or she is on Service Provider premises (including, in both cases, liability for death or personal injury).

10. SOFTWARE

1. This Clause applies where the Goods supplied to the Client include Software. In such a case, it may be necessary for Service Provider and the Client to enter into a separate Licence Agreement. This Clause takes precedence over any conflict of terms in any separate Software Licence Agreement in respect of particular applications, with the exception of the Warranty terms under Clause of these Conditions.
2. On the terms of these General Terms and Conditions, Service Provider grants the Client a personal, non-exclusive and non-transferable Licence to use the Software in object code form for the Client's own business purposes only from the date of commencement. The Client's rights to use the Software are expressly limited to that as described in the user manual including:
 - a. loading, storing and running the object code version of the Software on hardware stated in the user documentation accompanying the Software to be compatible with it; and
 - b. displaying the results of running the Software on screen.All copyright, other proprietary notices, disclaimers, caveats, terms and conditions or any references to the same contained on the original must be reproduced on all copies.
3. The Licence shall be for the period set out in the Order Acceptance (whether expressly or by reference to a Proposal) and the Price therein covers that period only. After expiry of that period, the Client shall pay Service Provider renewal fees as set out in the Proposal or as agreed between the Parties from time to time.
4. Service Provider will provide the Client with the Software (in executable code form) and supporting documentation. The Client is permitted to make copies of the Software as reasonably necessary for security back-up purposes only. The Client may reproduce 2 copies of the supporting documentation provided that the same identification marks as on the original are reproduced.
5. All Intellectual Property Rights in Software, in any additions or modifications to the Software and in the supporting documentation and information, shall remain vested in Service Provider (or in the legal person from whom Service Provider derives rights absolutely). The sale of the Goods shall be a sale of the physical property only.

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6. The Client and Service Provider agree that the Software and all other materials, information and documentation made available to the Client by Service Provider or vice versa under or in anticipation of a Contract constitute confidential information and trade secrets of Service Provider or the Client. The Client and Service Provider shall ensure that none of the same is disclosed to any third party. The Client and Service Provider shall ensure that each of its employees (or persons under its control) with access to the same shall keep the same confidential and shall not disclose or make the same available to any other person. The provisions of this sub-clause shall continue notwithstanding the termination of a Contract.
7. Upon the expiry or termination of a Contract the Software and all other material, information and documentation made available to the Client by Service Provider under or in anticipation of a Contract and all copies and any other material held by the Client or its staff which relates to the Software shall be delivered to Service Provider forthwith and the Client undertakes that it shall neither retain any copy of the Software, nor make further use thereof, nor recreate the Software from a backup or in any other way. This undertaking shall continue notwithstanding the termination of a Contract.
8. Unless otherwise agreed in writing, the Client shall not:
 - a. sub-licence, lease or otherwise transfer the Software to a third party;
 - b. make the Software available in any manner to, or for use by, any other person other than the employees of the Client;
 - c. use the Software to provide services to third parties including but not limited to computer bureau service businesses or consultancy firms;
 - d. incorporate or integrate the Software into a System;
 - e. copy, modify or decompile the Software or create derivative works from the Software;
 - f. decode or reverse engineer any licencing, protection and distribution system (included as part of the Software) so as to avoid its application.
9. On expiry or termination of the Licence, the Client will (using Service Provider's instructions) disable any licencing, protection and distribution system included as part of the Software and return to Service Provider any hardware system components such as dongles.
10. The use and application of the Software is entirely at the Client's discretion and risk. The Client shall satisfy himself as to the validity and scope of the Mathematical Model and advise all users within the Client's organization of any known limitations in use. A period of familiarization, comparison and validation is recommended.
11. Where the Software is incorporated into a System supplied by the Client to a third party, the Client will procure that its contract with such third party will contain terms no more onerous than the terms in these Conditions.
12. Installation, training and software support (if any) will be in accordance with the provisions of the Licence Agreement for particular Software applications.
13. Outside of the Warranty period, Service Provider will undertake any further validation and modification exercise subject to mutual agreement and at rates agreed by both Parties. Each of Service Provider and the Client hereby undertakes to notify the other immediately it becomes aware of any failure on the part of the Software whether or not the Software is subject to the Warranty period.