

# General Terms & Conditions of Sale

## Euroenvironment Limited

**The Customer's attention is particularly drawn to the provisions of clause 9.**

### **1. Basis of contract**

1.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

1.2 The Order shall only be deemed to be accepted by the Supplier when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

1.3 The Contract constitutes the entire agreement between the parties and supersedes and replaces any written or oral agreements, representations or understandings between them. The Customer acknowledges that it has not entered into the Contract in reliance of any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier that has not been expressly incorporated into in the Contract.

1.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

1.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Supplier may amend these Conditions at any time at its discretion.

1.6 Any quotation given by the Supplier shall not constitute an offer. It is only valid for a period of 30 days from the date of issue unless the Supplier agrees in writing to extend that period.

1.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified. Special terms may apply in respect of software support services and/or other specific services if agreed between the parties.

## **2. Goods**

2.1 To the extent that the Goods are to be manufactured in accordance with Goods Specification provided by the Customer, the Customer shall indemnify and hold harmless the Supplier from and against all liabilities, costs, expenses, damages and losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for any actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 2.1 shall survive termination of the Contract.

2.2 The Supplier reserves the right to amend any Goods Specification provided by the Customer as may be required by any applicable statutory or regulatory requirements.

## **3. Delivery of Goods**

3.1 The Supplier shall deliver the Goods to the location(s) as set out in the Order Confirmation (the "Delivery Location") and in accordance with the INCOTERM referred to in the Order Confirmation (in the absence of written agreement to the contrary) at any time after the Supplier notifies the Customer that the Goods are ready for delivery.

3.2 Delivery of the Goods shall be deemed completed once the Goods are made available at the Delivery Location.

3.3 Any times or dates quoted for delivery of the Goods are approximate only and the time of delivery shall not be of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply or delivery of the Goods or any other events beyond the Supplier's control. The Customer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of the Contract.

3.4 If the customer does not possession of the Goods or otherwise remove the Goods from the Delivery Location within Five (5) Calendar Days of the Supplier notifying the Customer that Goods are ready, then except where such failure or delay is caused by a Force Majeure Event:

- (a) the Supplier shall be entitled to invoice the Customer in respect of the Goods deemed delivered; and/or

(b) the Supplier, may in its sole discretion and without providing formal notice, store the Goods at its premises or at a third party's premises until such time that the Customer remove the Goods and pays Supplier all costs and expense (including but not limited to insurance and transportation) arising from or relating to the storage of the Goods. The Supplier shall have the right to charge at least 5% of the invoiced value of the stored Goods monthly for storage at the Supplier's premises. If the storage is at a third party's premises, all costs so incurred shall be borne by the Customer.

3.5 If any Goods are not removed from the Delivery Location or the place of storage as per Clause 3.4 above within Twenty Eight (28) Business Days after the Supplier notified the Customer that the Goods were ready, the Supplier may, in its sole discretion and without providing formal notice, resell or otherwise dispose of part or all of the Goods at the risk and expense of the Customer and without prejudice to any and all damages to which the Supplier shall be entitled.

3.6 The Supplier may deliver the Goods by instalments. The Supplier will be entitled to invoice the price for each instalments separately. Each instalment shall constitute a separate contract. No cancellation, delay in delivery or defect of any one Contract relating to an instalment shall entitle the Customer to cancel the Order or any other instalment.

3.7 If the Supplier shall be responsible for obtaining any licence, including but not limited to any licence for the export/shipment/import of the Goods, deliveries by the Supplier as part of its performance of the Contract shall be subject to the reservation that there are no impediments opposing to such licence due to applicable national or international regulations, particularly export control regulations, embargo or other sanctions. The Customer shall provide the Supplier with all information and documents required for the export/shipment/import of the Goods.

#### **4. Quality of Goods**

4.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (the "Warranty Period"), the Goods shall:

- (a) conform in all material respects with their description; and
- (b) be free from material defects in design, material and workmanship

((a) and (b) above together constitute the "Warranty").

4.2 Subject to clause 4.3, if:

- (a) the Customer gives notice to the Supplier in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the Warranty; and

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost for testing and in the reasonable opinion of the Supplier the Goods do not comply with the Warranty, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full and refund the costs of returning the Goods to the Supplier.

4.3 The Supplier shall not be liable for any non-compliance with the Warranty if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2(a);

(b) the defect arises out of or in connection with the Customer or other person's failure to follow the Supplier's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if none of the above is applicable) good trade practice;

(c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Customer has failed to make due and full payment for the Goods.

4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer or any other person in respect of any failure of the Goods to comply with the Warranty.

4.5 For the avoidance of doubt, if the Customer shall fail to give notice in accordance with clause 4.2(a) above, the Goods shall be deemed to be in compliance with the Warranty in all respects.

4.6 All terms, conditions or warranties implied by statute or common law relating to the Goods are excluded from the Contract to the fullest extent permitted by law.

4.7 The Supplier shall not be obligated to accept delivery of or work on returned Goods if the decontamination instructions have not been adhered to. The decontamination instructions will be provided to the Customer upon request.

4.8 The terms herein shall apply to the repaired and/or replacement of the Goods supplied by the Supplier under clause 4.2.

## **5. Title and risk**

5.1 Unless otherwise expressly agreed in writing, risk in the Goods shall pass to the Customer from the completion of delivery of the Goods irrespective of any duties which the Supplier may have undertaken with regard to packing, delivery, erection, installation or assembly.

5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cleared funds) for the Goods and all other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time the Supplier has received the payment of all such sums.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the property of the Supplier;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full Price on the Supplier's behalf from the date of completion of delivery; and
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.4(b) to clause 10.4(d).

## **6. Supply of Services**

6.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

6.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

6.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

6.5 The Supplier does not warrant that any result or objective, whether stated in the Contract or not, shall be achieved, be achievable or attained at all or by a given performance date or any other date.

## **7. Customer's obligations**

### **7.1 The Customer shall:**

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions, approvals, authorisations, permits, exemptions, registrations and consents which may be required for the Services before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (the "Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisations.

### **7.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (the "Customer Default"):**

- (a) the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default to the Supplier's satisfaction, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **8. Charges and payment**

8.1 The Price for the Goods shall be the price set out in the Order Confirmation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods unless otherwise stated.

8.2 The Charges for the Services shall be on a time and materials basis as agreed between the Customer and the Supplier prior to the provision of any of the Services:

(a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Order Confirmation;

(b) the number of hours in one working day shall be from 9:30 a.m. to 5:30 p.m. (Hong Kong time) in respect of Services delivered in Hong Kong and from 10:30 a.m. to 5:00 p.m. (Macau time) in respect of Services delivered in Macau, unless as otherwise agreed between the Customer and the Supplier;

(c) if the number of agreed hours is exceeded, the Supplier shall be entitled to charge overtime rates on a pro-rata basis for each part-day or for any time worked by individuals engaged by the Supplier on the Services outside the hours referred to in clause 8.2(b) as follows:

(i) an additional 50% on the standard daily fee rate for work carried out on week days and a Saturday;

(ii) an additional 100% on the standard daily fee rate for work carried out on a Sunday and public holiday;

(d) the Supplier may offer the Services outside the working hours as stated in clause 8.2(b) at its sole discretion which shall be subject to, among others, the resources available to the Supplier at the time; and

(e) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals engaged by the Supplier in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, the costs of services provided by third parties and required by the Supplier for the performance of the Services, and the costs of any materials.

8.3 The Supplier reserves the right to:

(a) increase its standard daily fee rates for the Charges for the Services, provided that such Charges cannot be increased more than once in any 12-month period. The Supplier will give the Customer written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving 6 weeks written notice to the Customer; and

(b) increase the Price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the costs of the Goods to the Supplier that is due to, without limitation:

(i) any factor(s) beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

8.4 In respect of the Goods and/or the Services, the Supplier shall invoice the Customer on or at any time after completion of delivery of the Goods or completion of the Services.

8.5 The Customer shall pay each invoice submitted by the Supplier:

(a) unless otherwise agreed in writing, within 30 days of the date of the invoice;

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier; and

(c) time for payment of the invoice shall be of the essence of the Contract.

8.6 If the Customer fails to make full payment of the amounts due to the Supplier under the Contract by the due date for payment, the Customer shall pay interest on the overdue amount at the Hong Kong dollar prime lending rate quoted by The Hongkong and Shanghai Banking Corporation Limited from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

8.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, condition or qualification, deduction for or on account of any tax, levy, impost, duty, charge, fee or withholdings of whatever nature. If the Customer shall be compelled by law to make any deduction in respect of any such taxes, levies, imposts, duties, charges, fees or withholdings then the Customer shall pay such additional amount as may be necessary to ensure that the net amount received by the Supplier shall equal the amount which would have been received by the Supplier had the Customer not been compelled to make such deduction. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.



## **9. Limitation of liability**

9.1 Nothing in these Conditions shall have the effect of limiting or excluding the Supplier's liability for:

- (a) death or personal injury caused by its negligence in so far as the same is prohibited by the laws of Hong Kong;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 14 of the Sale of Goods Ordinance (Cap. 71 of the Laws of Hong Kong);
- (d) as against Customers dealing as consumers, breach of the terms implied by sections 15, 16 or 17 of the Sale of Goods Ordinance (Cap.71 of the Laws of Hong Kong).

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise, including without limitation any loss of profit, loss of business, loss of goodwill, loss of opportunity or any indirect or consequential loss, damage, costs or expenses of any nature whatsoever arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstance exceed the amount paid by the Customer to the Supplier under the Contract for the Goods and/or the Services from which the claim arises.

9.3 This clause 9 shall survive termination of the Contract.

## **10. Termination**

10.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 3 months' written notice.

10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so.

10.3 Without limiting its other rights or remedies, the Customer may terminate the Contract

on 30 days' notice by giving such notice in writing to the Supplier, if the Supplier commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so.

10.4 Without limiting its other rights or remedies, the Supplier may, at its discretion, terminate the Contract and suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer takes any steps or actions in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease, to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy.

10.5 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry of the Contract.

## **11. Force Majeure Event**

11.1 For the purposes of the Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, shortage or unavailability of raw materials from normal source of supply or default of suppliers or subcontractors.

11.2 The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

11.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

## **12. General**

### **12.1 Assignment and other dealings**

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, deal with or otherwise transfer in any other manner all or any of its rights and obligations under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

### **12.2 Notices**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case).

(b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.3 Severance

If any provision or part-provision of the Contract is or becomes prohibited by law or judged by a court to be invalid, void, unlawful or unenforceable, it shall be deemed modified to the minimum extent necessary to make it legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

### 12.4 Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and in respect of a specific breach or default and unless otherwise specified shall not be deemed to be a waiver of any subsequent breach or default.

### 12.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish, constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party shall have, nor represent that it has, any authority to act as agent for, or to bind, the other party in any way.

### 12.6 No Third Party Rights

For the purposes of the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) and notwithstanding any other provision of the Contract, the Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

### 12.7 Protection of Personal Data

In the performance of the Contract, both Parties shall comply with their obligations as a data user, as defined in the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).

### 12.8 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

## 12.9 Headings

The headings in these Conditions are intended for reference only and shall not affect their construction.

## 12.10 Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Hong Kong.

## 12.11 Jurisdiction

Each party irrevocably agrees that the courts of Hong Kong shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## **13. Interpretation**

In these Conditions, the following definitions apply:

13.1 Business Day: a day other than a Saturday, Sunday or public holiday in Hong Kong.

13.2 Charges: the charges of the Supplier for the provision of the Services to the Customer.

13.3 Conditions: these terms and conditions as amended from time to time in accordance with clause 1.5.

13.4 Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

13.5 Customer: the entity that purchases the Goods and/or Services from the Supplier.

13.6 Deliverables: the deliverables as set out in the Order.

13.7 Delivery Location: has the meaning given to it in clause 3.1.

13.8 Force Majeure Event: has the meaning given to it in clause 11.

13.9 Goods: the goods (or any part of them) as set out in the Order.

13.10 Goods Specification: any specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Customer and the Supplier.

13.11 Hong Kong: the Hong Kong Special Administrative Region of the People's Republic of China.

13.12 Intellectual Property Rights: patents, rights to inventions, copyrights and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

13.13 Macau: the Macao Special Administrative Region of the People's Republic of China.

13.14 Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

13.15 Order Confirmation: the Supplier's order confirmation issued to the Customer.

13.16 Price: the price of the Goods supplied by the Supplier to the Customer.

13.17 Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

13.18 Service Specification: the description or specification for the Services provided by the Supplier to the Customer.

13.19 Supplier: Eurovironment Limited.

13.20 Supplier Materials: has the meaning given to it in clause 7.1(g).