

# All Steels Trading Ltd

## Standard Terms & Conditions of Purchase Order – June 2009

### 1. Definitions

- 'Buyer' means All Steels Trading Ltd or the person named as such on the Purchase Order.
- 'Seller' means the person, firm or company named as Supplier on the Purchase Order.
- 'Parties' means Buyer and the Seller.
- 'Subcontractor' means a third party performing Work under an agreement (a 'subcontractor') with the Supplier.
- 'Third Party Intellectual Property' means the intellectual property of a third party which the Supplier uses or incorporates into the Work.
- 'Goods' means all goods specified by the Purchase Order.
- 'Packages' includes bags, cases, pallets and other containers.
- 'Purchase Order' means the Buyers Purchase Order that specifies that these Standard Terms and Conditions apply to it, or to which these Standard Terms and Conditions are attached.
- 'Contract' means the contract between the Buyer and the Seller consisting of the Purchase Order, these general terms and conditions and any other documents (or parts thereof) specified in the Purchase Order.
- 'SOW' means Statement of Work meaning the document specifying, without limitation, the scope, objective, and time frame of the Work the Supplier will perform for the Buyer.
- 'Price' means the price of the goods and/or charge for the service.
- '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 that the electronic mail is acknowledged and confirmed as being received.
- 'Specification' means the requirements to which the Goods and/or Services supplied shall conform as detailed in the Purchase Order.
- 'Delivery Date' means the date or dates specified in the Purchase Order by which the Supplier is required to deliver the Goods/Services.
- 'Release' means the permission given by the Buyer to the Seller to deliver the Goods/Services.
- 'Intellectual Property Rights' means any and all tangible and intangible:
  1. copyrights and other rights associated with works or authorship throughout the world, including but not limited to copyrights, neighbouring rights, moral rights, and mask works, and all derivative works thereof;
  2. trademarks and trade name rights and similar rights;
  3. trade secret rights;
  4. patents, designs, algorithms, utility models and other industrial property rights, and all improvements thereto;
  5. all other intellectual and industrial property rights (of every kind and nature throughout the world however designated) whether arising by operation of law, contract, licence, or otherwise;
  6. all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof or hereafter in force (including any rights in any of the foregoing).
- 'Harmful Code' means any software intentionally designed to:
  1. Disrupt, disable, harm or impede operation
  2. Impair operation based on the lapse of time, including but not limited to viruses, worms, time-bombs, time locks, drop-dead devices, access codes, security keys, back doors, trap door devices.

### 2. Documents

- All advice notes, invoices and packing notes issued by the Supplier shall be clearly marked by the Supplier with the Suppliers name and address, The Purchase Order Number, the item code, date of despatch, description of the Goods/Services, the address of their intended destination and the due delivery date.
- The following Document will be recognised by the Buyer and the Seller as the records required by the Purchase Order:
  1. Purchase Order
  2. Release
  3. Delivery note
  4. Packing list
  5. Test certificate
  6. Weighbridge certificate/ticket
- The Supplier will supply signed delivery notes as proof of delivery. Goods may be deemed not to have been delivered by the Seller if the Seller cannot produce a signed receipt from an authorised officer of the Buyer.

### 3. Conditions & Terms of Agreement

- The Purchase Order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes and other information, whether physically attached or incorporated by reference, constitutes the entire and exclusive agreement between the Buyer and the Seller. The submission of the Purchase Order is conditioned on the Supplier's agreement that any term different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any Purchase Order confirmation, invoice, acknowledgement, release or acceptance or other written correspondence, irrespective of the timing, shall not form part of the Purchase Order, even if the Supplier purports to condition its acceptance of the Purchase Order on the Buyers agreement to such different or additional terms. The Supplier's electronic acceptance, acknowledgement of this Purchase Order, or acceptance of commencement of performance constitutes the Suppliers acceptance of these terms and conditions. Notwithstanding the foregoing, if a master agreement covering procurement or the Goods/Services described in the Purchase Order exists between the Buyer and the Seller, the terms of such a master agreement shall prevail over any inconsistent terms herein.
- The Purchase Order Terms and Conditions are those conditions which cover all 'Purchase Orders' and shall apply, unless reference to a specific contract is given on the Purchase Order, in which case the terms and conditions of the specified contract shall apply in conjunction with these terms and conditions in the order of priority identified in the specified contract. Minor changes to these terms and conditions may be evidenced on the face of the purchase order form. Any purchase by the Buyer is conditional upon acceptance of these terms and conditions by the Provider.  
If the Provider does not wish to accept these terms and conditions, then the Provider should not accept the Purchase Order, and should inform the Buyer forthwith.

- The Purchase Order constitutes an offer by the Buyer to purchase Goods and/or Services subject to these Standard Terms & Conditions.

#### **4. The Purchase Order**

- The Purchase Order will specify the quantities 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/s. The Seller shall provide such programmes of manufacture and delivery as the Buyer may require. Each delivery shall have a release document permitting the Seller to make the delivery. Each Delivery shall have a delivery document quoting the relevant Purchase Order Number, Release Number and showing exactly what will be delivered along with other supporting documentation such as weighbridge tickets, test Certificates.

#### **5. Assignment & Subcontracting**

- The Seller shall not assign, transfer or subcontract in whole or in part any of the Purchase Order without prior written consent of the Buyer.
- In the event that the Buyer has consented to the placing of subcontracts copies of each subcontract and order shall be sent by the Seller to the Buyer immediately it is issued.
- If All Steels Trading consents to the use of a subcontractor, the Supplier will guarantee and remain liable for the performance of all subcontracted obligations.

#### **6. Quality & Performance**

- The quantity, quality and description of the Goods/Services shall comply in all respects with the specifications, drawings, samples 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 the Seller for the 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 the Seller assigns to the Buyer with full title guaranteed all such copyright, design right and other intellectual property rights. The Seller shall not disclose to any third party (except subcontractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the subcontract) or provide any such specification, drawing, sample or pattern to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of the Seller, or as is required for the purpose of the Contract.
- All goods will be of good construction, sound materials, and of adequate strength, shall be free of defects in design materials and workmanship, and shall comply with the rules of the Sale of Goods Act 1979, and the Supply of Goods & Services Act 1982, as applicable to the Contract and as amended by any related statutes, and any statutory re-enactment/s or modification/s thereof. All Goods shall be fit for the purpose for which they are procured by the Buyer and be capable of the required performance.
- The Buyer is under no obligation to test or inspect the Goods before or on delivery and, notwithstanding clause section 35 of the Sale of Goods Act 1979 shall not apply to the Contract.
- All Services performed under the Purchase Order must be executed by the Seller in a timely, efficient and professional manner to the appropriate prevailing standards and to the reasonable satisfaction of the Buyer.

#### **7. Delivery**

- The time of the delivery of the Goods/Service is the essence of the Contract.
- No delivery is to take place without prior consultation of the Buyer regardless of the information given in the Purchase Order. All deliveries must be booked in with the Buyer, a booking reference in the form of a Release, obtained and a time agreed with the Buyer and the Delivery Point (if this is to be different to that originally stated in the Purchase Order).
- The Seller shall deliver Goods/Services as instructed in the Purchase Order and obtain a receipt for them from an authorised officer of the Buyer. Any requirements as to the manner, quantities or special requirements for delivery, specified in the Purchase order, shall also be complied with by the Seller.
- The Seller shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling, preservation and delivery of the Goods (including the preservation, such as sheeting of wagons, of product during delivery). The Seller shall deliver the Goods properly and securely packed and supply the Services during the Buyers usual business hours in accordance with the instructions shown on the Purchase Order or the subsequent Release.
- The buyer will allow the Seller access to its premises as necessary for the delivery of Goods/Services. The buyer may refuse admission to the Sellers personnel or require such personnel to leave its premises at any time and shall not be obliged to give the Seller the reason/s for its decision. The Buyer will not apply the provisions of this clause vexatiously.
- Whilst on the Buyers premises, the Seller shall abide by the Buyers rules and regulations relating to the premises.

#### **8. Loss or Damage in Transit**

- The Seller shall promptly make good, free of charge to the Buyer any loss, damage or defect to the Goods if notified within 21 days of the due date of being delivered as is appropriate for the purpose of this clause.
- Delivery shall not be deemed to have taken place until restoration has taken place to the satisfaction of the Buyer or the Buyer has accepted replacement goods.
- Goods may be deemed not to have been delivered by the Seller if the Seller cannot produce a signed receipt from an authorised officer of the Buyer.

#### **9. Rejection, Inspection & Acceptance**

- The Seller is responsible for the inspection and testing of Goods and shall ensure that they comply with the Contract prior to delivery to the Buyer.
- The Buyer may reject quantities in excess of those stated on the Purchase Order or the Release.
- The Buyer shall have the right to inspect the Goods at the Sellers works and those of its subcontractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Contract.
- If the Goods/Services are in any respect incorrectly delivered the Seller shall immediately effect correct delivery and shall be responsible for any additional costs to expenses incurred by both parties in doing so.
- The Buyer shall have the right to reject any Goods/Services which do not comply with the contract, and are without limitation, not of a stipulated quality or quantity of measurement, unfit for the purpose for which they are required or non-compliant with

the description or specification or sample, and the Buyer may return such rejected Goods to the Seller at the Seller's cost and expense.

- If the Supplier is unable to supply acceptable replacement Goods/Services within a time agreed, or within any extension of such time as the Buyer may grant, the Buyer may be entitled to purchase elsewhere 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 a payment shall not prejudice the Buyer's right of rejection and the Seller shall immediately reimburse the Buyer with an amount equal to that paid by the Buyer in respect of the Goods/Services and any applicable taxes. Before exercising the said right elsewhere the Buyer shall give the Seller reasonable opportunity to replace the rejected Goods/Services with goods/Services that conform to the Contract.

#### **10. Price & Variation**

- The price shall include all charges for delivery, unless otherwise stated, to the Buyer, packaging, insurance, duties, carriage, shall be exclusive of VAT and 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/Services any sums owed or becoming due to the Buyer from the Seller.
- The prices in the Purchase Order shall apply (without variation) for both the period and/or stated quantity of the Goods/Services, unless specifically otherwise agreed in writing by the Parties.
- The Seller shall not vary any of the Goods/Services except as directed in writing by the Buyer.
- The Buyer reserves the right by notice in writing to modify the quantity or quality of the Goods or the nature of the Services.

#### **11. Terms of Payment**

- Provided that a nominated employee has signed for Goods/Services in accordance with the Delivery Terms the Buyer will then make payment to the Seller either
  - By the end of the month following that in which the relevant invoice is received or
  - The relevant Goods/Services have been accepted by the Buyer.Whichever is the later unless otherwise agreed in writing between the Parties.
- 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 for sums invoiced in excess of the prices stated in the Purchase Order.

#### **12. Inspection & Testing**

- Before despatching the Goods or commencing the Service the Provider shall if appropriate and if previously agreed by the Parties, allow the Buyer to inspect and test the Goods/Services for compliance with the specification and/or any other provisions of the Purchase order. If in the Buyer's reasonable opinion, the Goods/Services do not comply with the Specification, the Buyer shall inform the Seller (in writing unless this is impractical) either, of the Buyer's intention to reject the Goods, or the remedial steps which must be undertaken by the Seller to ensure compliance with the Specification.

#### **13. Ownership, License, Intellectual Property, Representations & Warranties**

- The Supplier represents and warrants that:
  1. It has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.
  2. It has the right and unrestricted ability to assign the work to the Buyer including without limitation, the right to assign any Work performed by Supplier Personnel and Subcontractors.
  3. The work and the Buyer's use of the work, do not and will not infringe upon any party's intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law.
  4. The supplier will not disclose to the Buyer, bring onto the Buyer's premises, or induce the Buyer to use any confidential or property information that belongs to anyone other than the Buyer or Supplier which is not covered by a non-disclosure agreement between the Buyer and the Seller.
  5. Software supplied by the Supplier does not contain any Harmful Code.
  6. The Supplier's Work conforms to the Buyer's specification, Supplier's quotation or proposal, and the Supplier's brochures or catalogues, and if none of the foregoing is applicable, then such work is suitable for the intended use.
- The Buyer warrants and represents to the Seller that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.
- Intellectual property and other rights in the Goods/Services shall vest in the party from whom the Goods/Services originate unless the Goods/Services are produced for the Buyer bespoke. If the latter applies such rights shall vest in the buyer upon their creation and the Seller shall do all such things and execute all such documents as the Buyer may require in order to perfect such vesting. The Seller shall ensure that it includes corresponding provisions in its contracts with its own subcontractors and providers.
- The Buyer is the sole and exclusive owner of deliverables. The Supplier irrevocably assigns and transfers to the Buyer of all of its world-wide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights.
- Notwithstanding the above clause the Supplier grants to the Buyer a non-exclusive, world-wide, royalty-free, irrevocable, perpetual, transferable, sub-licensable license to any Intellectual Property Rights in the Deliverable, which arose outside the scope of the Purchase Order to the extent necessary for the Buyer to exercise its rights in the Deliverables as reasonably contemplated by the Purchase Order.
- The Supplier grants to the Buyer a non-exclusive, world wide, royalty-free, irrevocable, perpetual, transferable, sub-licensable license to any Intellectual Property Rights in Goods/Services which are necessary for the Buyer to use, import, copy, execute, reproduce, display, perform and distribute copies of and modify (including creating improvements and derivative works based on) the Goods/Service.
- In the event of any breach of any such intellectual property rights the Seller shall indemnify the Buyer, unless the Buyer is responsible for the breach in question.
- Without prejudice to any rights the Buyer may have to statute, common law or otherwise, the Seller shall as soon as reasonably practicable repair or replace all Goods and 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 tests (if any) whichever is appropriate after repair or replacement.

- The Buyer's rights and Remedies under the aforementioned condition shall be without prejudice to any other right or remedy available to the Buyer.
- To the extent allowed by applicable law, no other warranties are made, either expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose.

#### **14. Passing Property, Risk & Property**

- Risk and title in the Goods/Services shall only pass to the Buyer upon acceptance (signature on documents prescribed in the above clauses and/or Purchase Order) of a nominated employee of the Buyer of the Goods/Services when delivered to the place and address specified in the Purchase, unless otherwise agreed in writing by the Parties.
- The Buyer also reserves the right to take possession of all Goods to which it has title.
- 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 the Buyer and title will pass to the Buyer, without limitation, constraint or encumbrance, when a nominated employee of the Buyer signs an acceptance note. The Seller will remain responsible for the safe keeping of Goods and for maintaining them in good condition in accordance with the Purchase Order specification until the Buyer collects them or until they are delivered to the place specified in the Purchase Order.

#### **15. Changes, Cancellation, Rescheduling & Extension of Time**

- The Buyer giving the Seller 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 the Buyer and is accepted as described in the Passing Property Clause. The Buyer's liability is strictly limited to work in progress and no further loss or liability will accrue.
- If, for any cause beyond the reasonable control of the Seller, delivery of the Goods/Services is delayed, then unless time is of the essence the time for delivery/performance may be rescheduled by the Buyer (acting reasonably). Delay for any other reason shall be at the sole discretion of the Buyer, in which case the Seller shall be responsible for any additional costs.
- Notification of any anticipated actual delay must be immediately communicated to the Buyer by the Seller specifying the reason for the delay.
- If in the reasonable opinion of the Buyer it is inappropriate to reschedule delivery of the Goods/Services then the Buyer may cancel the Purchase Order without incurring any liability for such cancellation.

#### **16. Liability, Insurance & Indemnity**

- The Seller shall indemnify the Buyer against liabilities, damages, claims, costs, losses and expenses incurred or paid by the Buyer howsoever arising from any defect in the Goods /Services or 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.
- Neither party excludes or limits liability to the other for death or personal injury as a result of negligence.
- The Seller's liability for breach of confidentiality or infringement of intellectual property rights shall be unlimited unless otherwise agreed in writing by the Parties.
- The liability of either party for direct loss, or damage to, the tangible property of the other shall be limited to five million pounds sterling per claim unless otherwise stated in the Purchase Order.
- The Supplier will ensure that it has insurance in place and shall maintain such insurance throughout the period covered by this contract to cover its liabilities under the Purchase Order, to include professional indemnity insurance for two million pounds sterling (where services are to be provided) which must be in force for the duration of the Contract, public liability insurance for two million pounds sterling and employers liability insurance (where relevant) for five million pounds sterling (unless otherwise agreed in writing between the Parties). The Seller, if required, will produce such policy of insurance and the receipt for the current premium to the Buyer for its inspection.
- The Buyer will not be liable to the Supplier for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Purchase Order whether or not the Buyer was advised of the possibility of such damage.
- Nothing in the Purchase Order limits either party's liability for bodily injury of a person, death, or physical damage to property, liability in the tort of deceit or for any other liability which cannot be excluded under applicable law.

#### **17. Confidentiality & Publicity**

- Subject to legislative requirements, any confidential information supplied by the Buyer to the Seller or visa versa (including details of the Purchase Order) shall be kept confidential and shall only be used by the Seller for the performance of its obligations under the Purchase Order. Upon request, and in any event upon expiry or termination of the Purchase Order for whatever reason, the Seller shall either immediately destroy, or at the Buyer's written request, immediately return to the Buyer, any confidential information provided to it pursuant to the Purchase Order.
- All plans, drawings or specifications supplied by the Buyer to the Seller shall remain the property of the Buyer, and shall be returned to the Buyer on completion of the Contract and shall not be copied, and no information relating to the Goods/Services shall be disclosed to any third party, except as is required for the purpose of the Contract.
- No Photograph 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 subcontractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the subcontract) all information given by the Buyer in connection with the Contract of which becomes known to the Seller through its performance of the Contract or use the same other than for purposes 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 written consent.

#### **18. Free Issue Material**

- Where the Buyer for the purpose of the Contract issues materials 'free of charge' to the Seller, such materials shall remain the property of the Buyer. The Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Seller shall use such materials solely in connection with the Contract. Any surplus material shall be advised to the Buyer and disposal of at the Buyers discretion. Waste of such materials arising from bad workmanship or negligence of the Seller shall be replaced at the Sellers expense. Without prejudice to any other rights of the Buyer the Seller shall deliver in such materials whether further processed or not to the Buyer on demand.

#### **19. Force Majeure**

- Neither party shall be liable to be in default on account of any delay 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 a Seller, or acceptance of 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.

#### **20. Compliance with Laws & Governing Law**

- The laws of England and Wales shall govern this contract and the Parties shall submit to the exclusive jurisdiction of the English Courts.
- The Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Purchase Order. In particular and without limitation, the Supplier shall not act in any fashion or take any action that will render the Buyer liable.
- Notwithstanding the foregoing, either Party may seek interim or temporary injunction relief in court of appropriate jurisdiction with respect to an alleged breach of such Party's intellectual property or property rights.
- Health and Safety at Work Act 1974 applies.
- Contracts (Rights of Third Parties) Act 1999 applies.

#### **21. Responsibility of Information**

- The Seller shall be responsible for any errors or omissions in any drawings, calculations, packaging details or other particulars supplied by them, 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.

#### **22. General**

- Any notice to be given under the Purchase Order will be in writing and addresses to the Party at the address at the front of the Purchase Order. Notices will be deemed given and effective if:
  1. Personally delivered, upon delivery.
  2. Sent by an overnight service with tracking capabilities, upon receipt.
  3. Sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal.
  4. Sent by certified or registered mail within five days of deposit in the mail.
- If there is any conflict between or among the Purchase Order and any documents attached to and incorporated by reference, the conflict will be resolved as follows:
  1. A conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favour of the Purchase Order.
  2. A conflict between the terms of the Purchase Order and those set forth in an SOW will be resolved in favour of the SOW.
  3. A conflict between the terms of an exhibit or hyperlink and those set forth in an SOW will be resolved in favour of the SOW.
- If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the Parties.
- Any Parties election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive and future omission or breach, or any other provision of the Purchase Order.

#### **23. Patent Rights**

- The seller will indemnify the Buyer against any claim or infringement of patents, designs, trade marks, service marks or copyright (whether any of the same are registered or not) arising from the use of the 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'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 Sellers expense to either procure for the Buyer the right to continue to using the Goods or replace them with non-infringing Goods or modify the Goods/Services so they become non-infringing provided always that the standard and quality of the Goods/Services is not adversely affected.

#### **24. Collusion, Corruption & Whistleblowing**

- 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 from the Seller the amount of loss resulting from such termination.
- The Seller shall not do anything, or omit to do anything, which may be considered to be an inducement to any employee of the Buyer. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy. The Seller shall report any request for any inducement to the Buyer.

**25. 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 have a receiving order made against them or being a company, enter into liquidation, whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction), to have an administrative receiver or a receiver appointed or an administration order made against it or if execution is levied against the Sellers Goods or assets, the Buyer may forthwith by notice in writing at anytime terminate the Contract, but such termination shall be without prejudice to any rights or remedies of the Buyer subsisting at the time thereof.

**26. Eskrow**

- Where computer software is to be supplied as part of the fulfilment of this contract, a condition of contract award shall be the setting up of an ESCROW agreement (an agreement between the Supplier and an independent body as agreed between the Buyer and the Seller concerning the deposit and release of source codes of the Supplier software attached to the licence) in a form acceptable to the Buyer unless these source codes are also provided to the Buyer as part of the fulfilment of the Contract. The Supplier may submit an alternative proposal ensuring that the Buyer has unhindered access to source codes in the event that the Supplier is unable to meet its obligations under the contract with respect to software or software maintenance, regardless of the legal status of the Supplier at that time.
- Before any goods are supplied or services undertaken, the Seller will provide the Buyer with signed evidence from the said independent body stating that they are holding the source code and that this will be available to the Buyer upon demand.

**27. 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 extended to 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.

**28. Equal Opportunities**

- The 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 Person Employment and Equal Pay for all servants, employees or agents of the Seller and all subcontractors employed in the execution of the Contract.

**29. Intellectual Property Rights**

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