

VIPER INNOVATIONS LTD

STANDARD TERMS AND CONDITIONS

OF PRODUCT SALE



1. **Intention**

These Standard Terms and Conditions shall govern all sales of goods and associated services Viper Innovations Ltd (VIL) referred to in VIL's quotation. The Contract shall be governed by and interpreted in accordance with the laws of England and Wales.

In the event of conflict between the provisions of the Contract, the contract documents shall be given the following priority: 1) the separate contract document if any, or the Purchase Order, 2) these Standard Terms and Conditions and 3) any appendices of the Contract.

The Contract contains the entire understanding and agreement of the parties with respect to the Work, and supersedes any prior written or oral agreements between them with respect thereto. Except as so set forth, there are no representations, agreements, arrangements or understandings, written or oral, between the parties with respect to the subject matter of the Contract.

2. **Definitions**

- a) "Contract" means the Purchase Order and these Conditions of contract including eventual appendices.
- b) "Contract Object" means the item which Supplier, according to Contract, shall deliver, together with all parts thereof, except for Purchaser Provided Items. "Purchaser" means any company, firm or individual or agent thereof to whom the Supplier's quotation or acknowledgement of order is addressed.
- c) "Contract Price" is the total sum payable according to Contract.
- d) "Day" shall mean calendar day.
- e) "Delivery Date" means the date of delivery of the Contract Object set out in Purchase Order.
- f) "Force Majeure" means any occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into Contract and could not have avoided or overcome it and its consequences.
- g) "Purchaser" means the recipient named in the quotation.
- h) "Purchase Order" means the purchase order for the Contract Object placed by Purchaser.
- i) "Supplier" means VIL
- j) "Work" means all the work which Supplier shall perform in accordance with Contract.

3. **Price**

Unless otherwise specified by Supplier in quotation, prices are given in GBP excl. VAT, EXW VIL's Facilities - UK, according to applicable INCOTERMS.

The total purchase order amount shall be inclusive of all taxes applicable to the EXW Supply, UK and thus exclusive of any Taxes outside of the UK including any applicable for Service personnel. VIL provides for all taxes inclusive of ex. Works delivery in the UK, and excludes all taxes that may become applicable outside the UK.

Contract Objects supplied free of VAT to overseas Purchasers must be exported from the UK. The Purchaser shall provide Supplier with proof of export including destination and date of movement of any ex-works Contract Objects outside of the UK in the form of either an airway bill or bill of lading within a period of 90 days of the movement of the Contract Object. If the Purchaser fails to comply Purchaser shall pay Supplier an additional amount equal to the VAT at the prevailing UK rate. This VAT invoice shall be due for payment immediately upon receipt by the Purchaser.

4. **Terms of payment**

Sums payable under this contract shall be paid by Purchaser in accordance with the terms stated on the quotation provided by Seller for the Work. Interest on any overdue payments will be charged at a rate of 1 percent per month for each month commenced.

5. **Guarantee**

Provided that the Contract Object is used for its intended purpose, operated and maintained in accordance with the Supplier's instructions and sound industrial practice and has not been modified without Supplier's written consent the Contract Object is guaranteed against defects for a period of 12 months after being taken into use for its intended purpose, or for 24 months after Ex. Works delivery, whichever comes first.

The guarantee extends to provision of replacement parts and is limited to replacement of defect parts or equipment based on Ex. Works delivery and does not include any on site repairs, man-hours, travelling or accommodation. The guarantee period for remedial work shall be 12

months, but the total guarantee period shall however under no circumstances extend beyond 36 months from delivery Ex. Works.

6. **Force Majeure**

If either party is prevented, directly or indirectly, from carrying out the provisions of this Contract by reason of a force of majeure event including but not limited to an act of God, war, revolution, strike, riot, earthquake, cyclone, flood, unforeseeable acts of government authorities with regard to export/re-export licenses, the affected party shall, within 48 hours of being affected, notify the other party of such an occurrence. Upon notification of such an occurrence, both parties agree to work together to resolve, to the satisfaction of both parties, the best methods for dealing with the effects.

7. **Cancellation**

- 7.1 Purchaser may by notice to Supplier cancel the Contract with the consequence that the performance of the work ceases.
- 7.2 Following such cancellation, Purchaser shall pay:
 - a. The unpaid balance due to Supplier for that part of the work already performed,
 - b. all costs incurred by Supplier and his sub-contractors in connection with Materials ordered prior to receipt of the notice of cancellation by Supplier, and compensation for work performed on such Materials prior to the said date, provided that such costs are not covered by payment under Art. 7.2a,
 - c. all necessary cancellation charges and administration costs incurred by Supplier in connection with the cancellation,
 - d. supplier and Subcontractors other expenses directly attributable to an orderly closeout of the Contract, calculated as far as possible in accordance with the provisions of "Variation to the Work",
- 7.3 In addition to the amounts stated in Art. 7.2, Purchaser shall pay, within 30 Days after receiving an invoice, a cancellation fee equal to the lesser of:
 - a. 6% of the Contract Price, or
 - b. 10% of the part of the Contract Price which is not paid at the date of cancellation and shall not be paid pursuant to item 7.2.a.
- 7.4 Purchaser shall only be entitled to deduct from the cancellation fee such claims as have been presented to Supplier prior to the date of cancellation and have been accepted by Supplier.
- 7.5 Supplier shall, in accordance with Purchaser's instructions, make his best efforts to cancel Subcontracts on terms acceptable to Supplier.
- 7.6 Payment shall be made in accordance with Art. 4 - Terms of Payment.

8. **Liability, limitation and exclusion of liability**

8.1 **Delay - Liquidated damages**

If the Contract Object is delayed in relation to the delivery time stipulated in the Contract then Purchaser will be entitled to claim liquidated damages in accordance with this Art. 8.1. If, however, the conditions for delivery are met on delivery date then Purchaser's right to be paid liquidated damages for such earlier delays ceases, unless and to the extent Purchaser can show that it has suffered losses by such earlier delays.

The liquidated damages for each day of delay shall be calculated based on the contractual value of the work, which should have been completed according to the stipulated delivery time. The daily liquidated damages for not meeting the delivery time stipulated in the Contract shall be 0.15 % of the total amount of the contractual value of the Work which should have been completed. Supplier's cumulative liability for liquidated damages under the contract is limited to 5% of the contract price. Liquidated damages shall be to the exclusion of any other remedy of the Purchaser in respect of the Supplier's failure to complete within the agreed delivery date.

8.2 **Limitation of liability for rectification work**

Supplier is liable only for defects which appear under the conditions of operation provided for in the agreement and under proper use of the Contract Object. Supplier shall remedy the defect without undue delay. The repair shall be carried out at supplier's premises unless supplier finds it appropriate to have the repair carried out where the Contract Object is located. Purchaser shall be responsible for and bear the cost of any measures necessary to gain access to the Contract Object. Supplier is under no circumstances liable for costs relating to: dismantling of other objects than the

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Contract Object to provide access to the Contract Object, board and lodging offshore, transport to, from, and at the offshore location, heavy lift operations offshore, or extra costs associated with guarantee work performed below the water line.

8.3 Consequential damages and indirect losses

- a. Notwithstanding any other provision of the Contract, neither Party shall have any liability to the other Party for any indirect or consequential loss, howsoever occasioned, arising from its execution of, or failure to execute, the Contract.
- b. Notwithstanding any other provision of the Contract, neither Party shall have any liability to the other Party whether arising from breach of contract, negligence, or other breach, act or omission, for any loss of profit or revenue, loss of opportunity, loss of contracts, loss of savings, or other purely economic loss, whether direct, indirect or consequential, howsoever occasioned, arising from its execution of, or failure to execute, the Contract.

8.4 Overall limitation of liability

Notwithstanding any other provision of the Contract to the contrary, Supplier's total cumulative liability under the Contract, whether for delay, default, damages, rework, re-performance and/or replacement, shall not exceed 25% of the Contract Price.

9. Indemnity

Supplier and Purchaser shall indemnify the other party from and against any claim concerning a) personal injury or loss of life of any employee, and b) loss or damage to its property or any third party in connection with the Work or caused by the Contract object, unless attributable to the other Parties negligent, willful or reckless acts or omission in their performance of obligations hereunder.

10. Confidentiality

All information exchanged between the parties shall be treated as confidential and shall not be disclosed to a Third Party without the other party's written permission. The provisions of this clause will exceed the duration of the contract period by 5 years.

11. Variations to the Work

Any variation to the scope of Work shall be made by means of a variation order issued by Purchaser. This order shall contain a complete description of the work and a schedule for its execution, together with the effects on contract price and the contract schedule, and shall be issued without undue delay. Supplier will issue a variation order request either as a result of Supplier or purchaser recognizing a variation requirement. Rates for variation work to reflect the general level of pricing. Purchaser cannot order variation work which cumulatively exceeds what could be expected when the contract was entered into. Disputes are to be resolved through arbitration in accordance with art. 14 Disputes.

12. Title and Risk

Title in the Contract Object will pass from Supplier to the Purchaser when paid for by Purchaser. The Purchaser shall be responsible for risk or loss of damage to the Contract Object with effect from delivery date.

13. Notices and amendments

All notices, claims and other notification to be given in accordance with the provision of the contract shall be submitted in writing to the relevant party's representative (to be specified in Purchase Order).

No variation of or amendment to the Contract Scope of Work shall bind either party unless made in writing and signed by the authorized representatives of both parties.

14. Disputes

These Terms and Conditions shall be governed by English Law. In the event of a dispute occurring, the parties shall first meet to attempt a resolution by negotiation. If the parties are still unable to reach agreement, the dispute shall be settled by arbitration. In the event of a dispute being brought to arbitration, neither party shall be relieved of its responsibility to continue obligations for previously agreed deliveries. All disputes shall be settled under English Law, under exclusive jurisdiction of the English Courts, and will be conducted in the English language in the UK

15. Intellectual Property

All designs, drawings and other technical information relating to the Works, services or Contract Object, including any software provided by Supplier under the Purchase Order, and the intellectual property rights therein made

shall remain Supplier property. Purchaser indemnifies Supplier against any claim bought by any third party for any infringement of their rights.

16. Indemnity For Infringement of Intellectual Property Rights

Supplier shall have no liability for infringement of any patents, trademarks, copyrights, trade secrets or similar rights except as provided in this Art. 16. Supplier will defend and indemnify Purchaser against allegations of infringement of patents, trademarks, copyrights, and trade secrets (hereinafter 'Intellectual Property Rights'). Supplier will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Purchaser based on an allegation that an item sold pursuant to this Contract infringes the Intellectual Property Rights of a third party. Supplier's obligation to defend and indemnify Purchaser is contingent on Purchaser notifying Supplier within ten (10) days after Purchaser becomes aware of such allegations of infringement, and Supplier having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an item sold hereunder is subject to a claim that it infringes the Intellectual Property Rights of a third party, Supplier may, at its sole expense and option, procure for Purchaser the right to continue using said item, replace or modify said item so as to make it non-infringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Supplier shall have no liability for claims of infringement based on information provided by Purchaser, or directed to items delivered hereunder for which the designs are specified in whole or part by Purchaser, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. The foregoing provisions of this Art. 16 shall constitute Supplier's sole and exclusive liability and Purchaser's sole and exclusive remedy for infringement of Intellectual Property Rights.

If a claim is based on information provided by Purchaser or if the design for an item delivered hereunder is specified in whole or in part by Purchaser, Purchaser shall defend and indemnify Supplier for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

17. Exchange rate

If prices given in another currency than GBP, the following shall apply: If exchange rates fluctuate from quoted level VIL reserves the right to adjust the price accordingly.

18. Material adjustment

If the quoted prices are subject to fluctuations regarding price of raw materials, the quotation will specifically state this.

19. Free Issue equipment

All free issue equipment must be delivered duty paid when delivered from outside the UK and include paid carriage. In the event this is not possible, any costs incurred by VIL will be reverse charged and include an administration fee. Visual inspection for transit damage will be performed upon receipt at VIL premises, free of charge. Request for further inspection such as functional testing, dimensional checks etc. may be performed at rates to be agreed.

20. Service work

Unless specifically stated in the quotation provided, field service work is not included. Field service can be provided according to VIL applicable service rates and separate terms and conditions.

21. Terms and Conditions of Sale

All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of Supplier's products are subject to and shall be governed exclusively by the terms and conditions stated herein. Purchaser's acceptance of any offer to sell is limited to these terms and conditions. Any terms or conditions in addition to, or inconsistent with those stated herein, proposed by Purchaser in any acceptance of an offer by Supplier, are hereby objected to, unless Purchaser receives written acceptance to the contrary from Seller. Failing receipt of said written acceptance, Supplier's acceptance of any offer to purchase by Purchaser is expressly conditional upon Purchaser's assent to all the terms and conditions stated herein, including any terms in addition to, or inconsistent with those contained in Purchaser's offer, and acceptance of Supplier's products shall in such event constitute such assent.