

Hypnos General Terms & Conditions of Purchasing

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Purchase Order.

1. DEFINITIONS

In this Purchase Order:-

'Authority' means the Hypnos Ltd acting through the authorized purchaser named in the Purchase Order.

'Authority Data' means data in any form or media which are supplied to the Contractor by Hypnos Ltd or which the Contractor is required to generate, process, store or transmit pursuant to the contract; or any personal data for which the Authority is the Data Controller.

'Approved' and 'Approved' refer to the written consent of the Purchaser's Representative.

'Condition' means a condition within the Purchase Order.

'Confidential Information' means all personal data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.

'Goods' means such goods as are to be supplied to the Purchaser by the Supplier pursuant to the Purchase Order.

'Information Law' means law which imposes a duty on the Authority to reveal information it holds.

'Intellectual Property Rights' means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registrable or not in any country including but not limited to the United Kingdom.

'Order Value' means the price of the Goods, inclusive of a sum equal to the Value Added Tax chargeable on the value of the Goods, as stated in the Purchase Order Form.

'Parties' means the Purchaser and the Supplier.

'Purchase Order' means these General Terms and Conditions and the Purchase Order Form overlaid (including any Special Conditions entered on that Form and any continuation sheets of that Form as indicated).

'Purchaser' means the person named as the Purchaser in the Purchase Order Form and includes the Purchaser's Representative.

'Purchaser's Representative' means the individual authorised to act on behalf of the Purchaser for the purposes of the Purchase Order.

'Staff' means all persons used by the Supplier in the performance of the Purchase Order, including the Supplier's employees, agents and sub-contractors.

'Supplier' means the person named as the Supplier in the Purchase Order Form, his permitted successors and assigns:

- a reference to a statute includes the statute as subsequently amended or re-enacted;
- headings to Conditions shall not affect the interpretation of the Conditions;
- where the context allows, the masculine includes the feminine and neuter, and the singular includes the plural and vice versa.

2. ENTIRE AGREEMENT

2.1 The Purchase Order constitutes the entire agreement between the Parties relating to the subject matter of the Purchase Order. The Purchase Order supersedes all prior negotiations, representations and understandings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

2.2 In the event of ambiguity or contradiction, the terms and conditions of the Purchase Order shall be given precedence in the following order:

- Special Conditions
- Other matters contained in the Purchase Order Form
- General Terms and Conditions.

3. THE GOODS

3.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Purchase Order Form and all other requirements of the Purchase Order.

3.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or by-laws in force at the date of the Purchase Order.

3.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used. The Purchaser relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of the Purchase Order.

4. PURCHASE ORDER VALUE

4.1 The Purchaser shall pay the Order Value to the Supplier in consideration of the supply of the Goods in accordance with the Purchase Order.

4.2 Unless otherwise Approved, the Supplier shall submit an original and a copy invoice, containing all appropriate references, in respect of each consignment delivered under the Purchase Order. Payment shall be made within the agreed timescale after receipt by the Purchaser (at its nominated date for invoices) of the Supplier's valid original invoice or within agreed timescale after delivery of the Goods, whichever is the later.

4.3 Where the Supplier enters into a sub-contract for the provision of the whole or any part of the Goods, the Supplier shall ensure that a term is included in the sub-contract which requires the Supplier to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

5. DELIVERY

5.1 Carriage / freight costs shall be at the Supplier's expense (Free Delivered Destination).

5.2 The Goods shall be delivered to the place named in the Purchase Order Form. Any access to the Purchaser's premises and any labour or equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance of any liability by the Purchaser. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss in respect of any death or personal injury, or loss of or damage to property, occurring in the course of delivery or installation to the extent that such death or injury, or loss or damage, is caused directly or indirectly by any wrongful act or omission of the Supplier or any of his Staff.

5.3 Where any access to the Purchaser's premises is necessary in connection with delivery or installation, the Supplier and his Staff shall comply with all security measures implemented by the Purchaser in respect of persons attending those premises. The Purchaser shall provide copies of his written security procedures to the Supplier on request. The Purchaser shall have the right to carry out any search of Staff or of vehicles used by the Supplier at the Purchaser's premises.

5.4 The time of delivery shall be of the essence. Failure to deliver within the time specified in the Purchase Order shall entitle the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the order for the Goods, in either case without prejudice to his other rights and remedies pursuant to the Purchase Order.

6. PROPERTY AND RISK

6.1 Property and risk in the Goods shall pass to the Purchaser at the time of delivery, without prejudice to any of the rights or remedies of the Purchaser pursuant to the Purchase Order.

7. DAMAGE IN TRANSIT

7.1 On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (at the option of the Purchaser) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

- in the case of damage to Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;
- in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

8. INSPECTION, REJECTION AND GUARANTEE

8.1 The Supplier shall allow the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall provide all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspections or tests and no approval given during or after such inspections or tests shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

8.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Purchase Order. Such notice shall be given within a reasonable time after delivery of the Goods concerned. If the Purchaser rejects any of the Goods pursuant to this Condition, the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:

- to have the Goods concerned as quickly as possible either repaired by the Supplier or (at the option of the Purchaser) replaced by the Supplier with Goods which comply in all respects with the requirements of the Purchase Order; or
- to obtain a refund from the Supplier in respect of the Goods concerned.

8.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter. If the Purchaser shall within such guarantee period or within 30 days thereafter give written notice to the Supplier of any defect in any of the Goods which arises during such guarantee period under proper and normal use, the Supplier shall as quickly as possible remedy such defects (whether by repair or replacement at the option of the Purchaser) without cost to the Purchaser and without prejudice to any other rights or remedies of the Purchaser.

8.4 Any Goods rejected or returned pursuant to Condition 8.2 or 8.3 shall be returned to the Supplier at the Supplier's risk and expense.

9. LABELLING AND PACKAGING

9.1 The Goods shall be packed and marked in a proper manner and in accordance with any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order Number, part number, the quantity, meterage, the net and gross weights where applicable; the name of the contents shall be clearly marked on each container; all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser as a result of any breach of this Condition.

9.2 All packaging materials shall be either non-returnable and may be destroyed by the Purchaser or returnable at the Supplier's expense. The Purchaser shall have no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall notify the Purchaser of such non-arrival within 10 days of receiving notice from the Purchaser that the packages have been dispatched.

10. AUTHORITY DATA

10.1 The Contractor shall use the Authority Data only as necessary for the performance of its obligations under this Contract unless otherwise authorised in writing by the Authority.

11. PROTECTION OF PERSONAL DATA

11.1 Pursuant to the Data Protection Act 1998 the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor for the purposes of this Contract, and that the terms Personal Data, and Process shall have the meaning as given in that Act.

11.2 The Contractor shall:

- 11.2.1 Process the Personal Data only in accordance with instructions from the Authority in order to meet its contractual and legal obligations;
- 11.2.2 Implement appropriate technical and organisational measures to protect the Personal Data;

11.2.3 Take reasonable steps to ensure the reliability of any Contractor's Personnel including applicable vetting and security checks and ensure that all Contractor's Personnel are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;

11.2.4 Not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with the applicable statutory requirements and any reasonable instructions notified to it by the Authority.

11.3 The Contractor shall comply at all times with the applicable data protection legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its obligations under that legislation.

12. FREEDOM OF INFORMATION

12.1 The Contractor acknowledges that the Authority is subject to the requirements of Information Law and shall assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 The Supplier shall take all necessary measures to ensure that the Goods will not infringe any Intellectual Property Rights of any third party. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser by reason of the possession or use by the Purchaser of any Goods, or other material delivered by the Supplier, which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party. The provisions of this Condition 13.1 shall not apply in respect of any Goods or other materials which are made up in accordance with designs provided by the Purchaser.

13.2 All rights (including ownership and Intellectual Property Rights) in any specifications, instructions, plans, drawings, patterns, models, designs or other material provided or made available to the Supplier by the Purchaser pursuant to the Purchase Order shall remain vested solely in the Purchaser. Except to the extent necessary for the implementation of the Purchase Order, the Supplier shall not without prior Approval use or disclose any such specifications, plans, drawings, patterns, models or designs or other material which the Supplier may obtain pursuant to the Purchase Order.

14. HEALTH AND SAFETY

14.1 The Supplier shall take all reasonable measures to ensure that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the Goods. The Supplier shall make available to the Purchaser adequate information about the use for which the Goods have been designed and tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser as a result of any breach of this Condition.

14.2 The Supplier shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to the Supplier in the performance of the Purchase Order.

15. INDEMNITY AND INSURANCE

15.1 Without prejudice to any other rights or remedies of the Purchaser pursuant to the Purchase Order, the Supplier shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, expenses and any other liability or loss incurred by the Purchaser in respect of any death or personal injury, or loss of or damage to property, to the extent that such death or injury, or loss or damage, is caused directly or indirectly by any defect in the Goods or any wrongful act or omission of the Supplier or his Staff.

15.2 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions. The Supplier shall produce to the Purchaser's Representative, on request, copies of the relevant policy or policies or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. The terms of any insurance on the amount of cover shall not relieve the Supplier of any liabilities under the Purchase Order. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in this Condition 15.2.

16. RECOVERY OF SUMS DUE TO PURCHASER

16.1 Whenever under the Purchase Order any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Purchaser in respect of any breach of the Purchase Order), the Purchaser may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under the Purchase Order or under any other contract with the Purchaser or with any other department, office or agency of the Crown.

16.2 The Purchaser shall give at least 14 days' notice to the Supplier of his intention to make a deduction under Condition 16.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.

16.3 Any overpayment by the Purchaser to the Supplier shall be a sum of money recoverable by the Purchaser from the Supplier.

17. SECURITY

17.1 The Supplier shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Supplier in the performance of the Purchase Order. The Supplier shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that such provisions will apply to them and will continue to apply to them, if so applicable, after the expiry or termination of the Purchase Order.

18. CONFIDENTIALITY

18.1 The Parties acknowledge that, except for any information which is declared by the Authority to fall within one or more of the exceptions in the Confidential Contract Information Exceptions Schedule the content of this Contract is not Confidential Information.

- personal data;
- information protected by intellectual property law;
- third party confidential information;
- IT security; or
- prevention of fraud.

18.2 Subject to 18.1, each Party:

- shall treat as confidential all information obtained from the other Party under or in connection with the Contract;
- shall not disclose any of that information to any third party without the prior written consent of the other Party, except to such Persons and to such extent as may be necessary for the performance of the Contract;
- shall not use any of that information other than for the purposes of the Contract.

18.3 The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Purchase Order.

18.4 The Supplier shall not make any public statement relating to the existence or performance of the Purchase Order without prior Approval, which shall not be unreasonably withheld.

19. TRANSFER AND SUB-CONTRACTING

19.1 The Supplier shall not assign, sub-contract or in any other way dispose of the Purchase Order or any part of it without prior Approval.

19.2 The Supplier shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

20. SEVERABILITY

20.1 If any provision of the Purchase Order is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the Purchase Order shall continue in full force and effect as if the Purchase Order had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Purchase Order, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

21. WAIVER

21.1 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver shall be effective unless it is communicated to the other Party in writing. A waiver of any right or remedy arising from a breach of the Purchase Order shall not constitute a waiver of any right or remedy arising from any other breach of the Purchase Order.

22. VARIATION

22.1 The Purchase Order shall not be varied unless such variation is agreed by the Parties in writing.

23. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

23.1 The Purchaser may terminate the Purchase Order by written notice having immediate effect if:

- the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely on the performance of the Purchase Order; the Supplier shall notify the Purchaser immediately when any such change of control occurs; or
- where the Supplier is an individual or a firm, the Supplier or any partner in the firm becomes bankrupt or has a receiving order or administration order or debt relief order or debt relief restriction order made against him or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- where the Supplier is a company, the Supplier passes a resolution or the Court makes an order that the Supplier be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Supplier's business or any part of it; or the Supplier is unable to pay his debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

24. TERMINATION ON BREACH

24.1 The Purchaser may terminate the Purchase Order by written notice to the Supplier with immediate effect if the Supplier is in breach of the Purchase Order and:

- the Supplier has not remedied the breach to the satisfaction of the Purchaser within 30 days, or such other period as may be specified by the Purchaser, after service of written notice specifying the breach and requiring it to be remedied; or
- the breach is not capable of remedy; or
- the breach is a fundamental breach of contract.

25. DISPUTE RESOLUTION

25.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Purchase Order. By agreement, the Parties may refer a dispute to mediation by a neutral adviser or mediator appointed by the Parties or by the Centre for Dispute Resolution. Unless otherwise agreed, all negotiations occurring in the course of such mediation shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

26. LAW AND JURISDICTION

26.1 This Purchase Order shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.