

1 Definitions

- 1.1. 'Deliverables' shall mean the goods or materials upon which the Services have been rendered;
- 1.2. 'Conditions' shall mean the terms and conditions set out in this document as amended from time to time in accordance with clause 2.2;
- 1.3. 'Contract' shall mean the contract between the Seller and Buyer for the sale and purchase of the Goods and/or Services in accordance with these Conditions;
- 1.4. 'Order' shall mean the Buyer's order for the Goods and/or Services as set out in the Buyer's purchase order form overleaf;
- 1.5. 'Seller' shall mean Denatec Ltd of 5a Chorley Business & Technology Centre, East Terrace, Euxton Way, Euxton, Chorley. PR7 6TE;
- 1.6. 'Buyer' shall mean the person, firm, company or other corporation who purchases Goods and/or Services from the Seller;
- 1.7. 'Goods' shall mean all or any of the goods or materials which, from time to time, the Seller contracts to supply; and
- 1.8. 'Services' shall mean any or all of the services which, from time to time, the Seller contracts to supply.
- 1.9. 'Intellectual Property' means design rights, trade marks and service marks (in each case whether registered or not), patents, registered designs, copyright, moral rights, rights in databases, utility models and all similar property rights whether registrable or not, including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semiconductor topographies Information, business or brand names, domain names, metatags, goodwill or the style of presentation of goods or services and including applications for protection of any such rights;

2 Basis of contract

- 2.1 These conditions shall apply to all contracts, whether written, oral or implied for the supply of Goods and/or Services by the Seller to the Buyer.
- 2.2 The Contract constitutes the entire agreement between the parties. Any conditions of purchase or other terms provided by the Buyer shall be excluded. Any variation or alteration to these Conditions shall not be effective unless specifically made in writing and signed by the Seller.
- 2.3 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 2.4 No binding contract shall be created by the placing of an Order unless and until the Seller's written acknowledgement or acceptance (Order Acknowledgment) of the Order shall have been issued, at which point the Order shall be accepted and the Contract shall come into existence. For the avoidance of doubt, any Order Acknowledgment will be deemed to repeat these Conditions.

3 Quotations

Any quotation in whatever form provided by the Seller is given subject to these Conditions and as an invitation to treat and does not constitute an offer to sell. The validity of such quotation shall expire 30 days after the date of issue.

4 Prices

- 4.1 The price for Goods and/or Services shall be the price set out in the Order or, if no price is quoted, the agreed rate and/or cost as stated in any applicable Scope of Work or Service Agreement. Subject to anything to the contrary contained in any quotation or the Order Acknowledgment issued by the Seller; prices for the Goods or the Services are, unless otherwise stated, exclusive of value added tax and any other similar tax, carriage, handling, packaging and any insurance charges.
- 4.2 The Buyer shall have no right to set off whether statutory or otherwise.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's reasonable control.
- 4.4 Unless otherwise expressly stated in writing by the Seller, all prices payable must be settled in pounds sterling, but if the Seller agrees in the Order Acknowledgment to accept foreign currency and does not

specify an exchange rate, the exchange rate will be that of the Bank of England at the close of business on the day preceding the date of the Order Acknowledgement.

5 Designs, Drawings & Intellectual Property

- 5.1 All design and development will be performed in accordance with the Buyer's written specification which will include acceptance criteria.
- 5.2 Where the Buyer is unable to provide a written specification, the Seller will, at its own discretion, provide a written specification which shall form the basis of the contract. It is the responsibility of the Buyer to ensure that the written specification describes in full, the functional and operational requirements.
- 5.3 Where the Seller prepares designs or drawings at the request of the Buyer, the Buyer shall approve such designs and drawings in writing and until such approval has been received by the Seller (such approval not being unreasonably withheld, conditioned or delayed), the Seller shall be under no obligation to the Buyer to supply the Goods and/or Services.
- 5.4 If the Goods or Deliverables are manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification or requirement submitted by the Buyer and agreed by the Seller (at its sole discretion), the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller arising out of or in connection with any use made by the Seller of such specification or requirement.
- 5.5 The intellectual property rights in all design, drawings, technical innovations, development and customisation shall remain with the Seller.

6 Quality of Goods

- 6.1 The Seller warrants that on delivery, the Goods and Deliverables shall:
 - 6.1.1 conform with their description; and
 - 6.1.2 be free from material defects in design, material and workmanship.
- 6.2 Subject to clause 6.3 and 14.1, if:
 - 6.2.1 the Buyer gives notice in writing within 14 days of discovery that some or all of the Goods or Deliverables do not comply with the warranty set out in clause 6.1;
 - 6.2.2 the Seller is given a reasonable opportunity of examining such Goods and Deliverables; and
 - 6.2.3 the Buyer (if asked to do so by the Seller) returns such Goods and Deliverables to the Seller's place of business at the Buyer's cost; the Seller shall, at its option, repair or replace the defective Goods and Deliverables, or refund the price of the defective Goods or Services in full.
- 6.3 The Seller shall not be liable for the Goods' or Deliverables' failure to comply with the warranty in clause 6.1 if: -
 - 6.3.1 the Buyer makes any further use of such Goods or Deliverables after giving notice in accordance with clause 6.2;
 - 6.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Deliverables or (if there are none) good trade practice;
 - 6.3.3 the defect arises as a result of the Seller following any drawing, design or Goods or Deliverables specification or equipment supplied by the Buyer;
 - 6.3.4 the Buyer alters or repairs such Goods or Deliverables without the written consent of the Seller;
 - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.3.6 the Goods or Deliverables differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6 and subject to clause 14.2: the Seller shall have no liability to the Buyer in respect of the Goods' or Deliverables' failure to comply with the warranty set out in clause 6.1.

The terms of these Conditions shall apply to any repaired or replacement Goods or Deliverables supplied by the Seller under clause 6.2.

7 Patent Infringement

The Buyer warrants that any instructions, plans or designs furnished or given by it shall not cause the Seller to infringe any patent, copyright, registered design, right of confidence or trade mark (Intellectual Property) in providing the Goods and/or Services and agrees to indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller arising out of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the use of the Intellectual Property.

8 Supply of Services

- 8.1 The Seller shall provide the Services to the Buyer in accordance with the Scope of Work for the Services as specified in the relevant Order or Order Acknowledgement.
- 8.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the relevant quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Seller 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 Seller shall notify the Buyer in any such event.
- 8.4 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

9 Variation and cancellation

The Seller shall be under no obligation whatsoever to accept any variation or cancellation of an Order once an Order Acknowledgment has been issued. However, if the Seller (at its sole discretion) agrees to accept any such variation or cancellation it may levy such charges as it (in absolute discretion) sees fit on the Buyer and the Buyer shall be required to pay such charges in addition to the price for the Goods and/or Services.

10 Payment and Default by Buyer

- 10.1 The Seller reserves the right at any time at its discretion to demand security for payment before commencing and/or continuing with the contract or delivering Goods or Deliverables and the Seller shall give such requested security to the Seller.
- 10.2 Subject to clauses 10.3 and 10.4 and unless otherwise agreed in writing by the Seller, the Buyer shall pay the Seller in full for the Goods and/or Services. In the event that the Buyer fails to make payment by the due date or otherwise commits a breach of these Conditions (Buyer Default), the Seller may in its absolute discretion and without prejudice to any other rights which it may have: -
 - 10.2.1 suspend performance of its obligations under the Contract until the Buyer remedies the Buyer Default and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 10.2.2 require payment in advance for any future deliveries or Orders; and
 - 10.2.3 in the case of non-payment on or before the due date or on demand (as mentioned in paragraph 10.5 below) charge interest on the amount due on a day to day basis at the rate of eight percent per annum compounded daily from the time of delivery or date of invoice which is the earlier until the date of actual payment, whether before or after judgment.
- 10.3 The Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 10.
- 10.4 The Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.
- 10.5 Without prejudice to any other rights the Seller may have by virtue of paragraph 10.2.3 the Seller may demand immediate payment of all sums whether or not due in the event that: -

- 10.5.1 the Buyer makes a voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.5.2 an encumbrancer takes possession of, or a receiver is appointed over, any of the properties or assets of the Buyer; or
- 10.5.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 10.5.4 the Seller reasonably apprehends that any of the events mentioned above in this clause 10.5 is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11 Delivery and collection

- 11.1 Subject to the provisions of clause 12, the Seller may arrange delivery to the Buyer's premises as detailed in the Order at the Buyer's request and cost. In all other circumstance, the Goods or Deliverables will be made available for collection by the Buyer at the Seller's premises at any time after the Seller has notified the Buyer that the Goods or Deliverables are ready for collection.
- 11.2 When delivery takes place at the Buyer's premises it will be the Buyer's responsibility to ensure delivery can take place at the time and place specified in the Order or otherwise agreed. The Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller arising out of or in connection with any breach by the Buyer of this clause 11.2. Without prejudice to the foregoing, if the Seller or its agents or employees agree to assist in the loading or unloading of the Goods or Deliverables as the case may be then the Seller will not be liable for any loss or damage howsoever arising through any act, omission or negligence of any of its agents or employees.
- 11.3 Although given in good faith delivery times for the delivery or supply of the Goods or Services by the Seller in its quotation and/or Order Acknowledgement are intended as estimates only and are not treated as being of the essence of the contract or binding on the Seller. The Seller will not be liable to the Buyer for any loss or damage direct or indirect occasioned by the Seller's failure (whether as a result of negligence or otherwise) to deliver the Goods or Deliverables by the date or within the time stated, and in no case shall delay be a ground for rejecting the same.
- 11.4 The right to deliver the Goods or the Deliverables in part is expressly reserved by the Seller and the condition shall apply to any such part or parts mutatis mutandis.
- 11.5 In the event that the Buyer is responsible for collecting the Goods or Deliverables and such collection does not occur within seven days of the Buyer having been informed that such Goods or Deliverables are ready for the collection, the Seller may charge the Buyer for storage of any such Goods or Deliverables until collection occurs in addition to the price for the Goods and/or Services.

12 Risk

The liability for the Deliverables shall pass to the Buyer:

- 12.1 in the case of collection at the Seller's premises: at the time when the Seller notifies the Buyer that the Goods or Deliverables are available for collection; or
- 12.2 in the case of delivery at the chosen location: at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods or Deliverables, at the time when the Seller has tendered delivery.

13 Title to Goods

- 13.1 Title to the Goods or Deliverables shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
 - 13.1.1 the Goods;
 - 13.1.2 any other goods that the Seller has supplied to the Buyer; and
 - 13.1.3 the Services.

- 13.2 Until title to the Goods or Deliverables has passed to the Buyer, the Seller shall:

- 13.2.1 hold the Goods and Deliverables on a fiduciary basis as the Seller's bailee;
- 13.2.2 store the Goods and Deliverables separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 13.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and Deliverables;
- 13.2.4 maintain the Goods and Deliverables in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery; and
- 13.2.5 notify the Seller immediately if it becomes subject to any of the events listed in clauses 15.2 and 15.3.

13.3 If before title to the Goods or Deliverables passes to the Buyer the Buyer becomes subject to events listed in clauses 15.2 and/or 15.3, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods or Deliverables have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Seller may at any time require the Buyer to deliver up the Goods or Deliverables and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods or Deliverables are stored in order to recover them.

14 Exclusion of Liability

- 14.1 The Seller shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design, specifications or raw materials (whether free issue or otherwise) supplied by the Buyer to the Seller and except where the Goods or Services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other term implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
- 14.2 Nothing in these Conditions shall limit or exclude the Seller's liability for death, personal injury, fraud or any other liability which it would be illegal or unlawful for the Seller to limit or exclude liability for.
- 14.3 Subject to clause 14.3; the Seller shall not be liable for any claim made against the Buyer by any third party nor to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - 14.3.1 loss of profit;
 - 14.3.2 loss of business;
 - 14.3.3 loss of business opportunity; or
 - 14.3.4 special, indirect or consequential damage.
- 14.4 Subject to clauses, 6.2, 14.2 and 14.3: the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed the sums received by the Seller from the Buyer pursuant to the Contract.

15 Termination

Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 15.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach;
- 15.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or

15.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

16 Force Majeure

Without prejudice to the generality of any of the foregoing conditions, the Seller shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the Seller's reasonable control. Should any such event occur the Seller may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

17 Export

17.1 Subject to any special terms agreed in writing between the Seller and the Buyer, the provisions of this clause 17 shall apply notwithstanding any other provisions in these Conditions.

17.2 Where the Goods are supplied for export from the United Kingdom the Buyer shall be responsible for:

17.2.1 complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;

17.2.2 by arranging for testing and inspection of the Goods at the Seller's premises before shipment, Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which claim is made after delivery.

17.3 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered in accordance with shipping agreements determined by the Seller and notified to the Buyer.

17.4 Unless otherwise agreed in writing between the Buyer and the Seller payment of all amounts due to the Seller shall be made either:

17.4.1 by irrevocable of credit opened by the Buyer in favor of the Seller and confirmed by a bank notified to the Seller and which the Seller has confirmed is acceptable; or

17.4.2 if the Seller has confirmed in writing on or before acceptance of the Buyer's order that the foregoing requirements will be waived, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable thirty days after sight to the order of the Seller or as otherwise specified in the bill of exchange.

18 General

18.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

18.2 No waiver by the Seller of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

18.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions of these Conditions or the remainder of the provision shall not be affected.

18.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.5 These Conditions, the quotation and Order Acknowledgement supplied by the Seller shall constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between the parties relating to their subject matter.

18.6 The construction, validity and performance of the contract shall be governed by and interpreted in accordance with English law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English courts for the purposes of these Conditions.