

STANDARD TERMS AND CONDITIONS OF PURCHASE

14th July 2020

1. INTERPRETATION

- 1.1 The following words shall have the following meanings:
 - "**Agreement**" means the agreement between the Company and the Supplier being the Purchase Order, the Supplier's acceptance of it, the Terms and any other documents specified in the Purchase Order;
 - "**Company**" means PML Applications Ltd, registered in England and Wales (no 4232750), limited by share and whose registered office is at Prospect Place, West Hoe, Plymouth, Devon PL1 3DH and includes its subsidiaries and affiliates;
 - "**Delivery Point**" means delivery address specified in the Purchase Order for the Products and/or Services;
 - "**Intellectual Property Rights**" means all rights in inventions, discoveries, know-how and processes; all copyright, database rights, design rights (registered or unregistered), trade marks, service marks, trade names, trade secrets, formulas, collections of data, confidential information, patents, all rights in techniques and software (including source and object code), and any applications for any of the foregoing and similar proprietary rights anywhere in the world;
 - "**Purchase Order**" means the order submitted by the Company to the Supplier setting out the Products and/or Services ordered by the Company;
 - "**Products**" means the Supplier's products specified in the relevant Purchase Order ;
 - "**Price**" means the price to be paid by the Company for the supply of the Products and/or Services;
 - "**Services**" means the Supplier's services, if any, ordered by the Company, as more particularly described in the relevant Purchase Order;
 - "**Supplier**" means the person, firm or company to whom the Company issues the Purchase Order;
 - "**Terms**" means these terms and conditions.
- 1.2 Headings are for convenience only and shall be ignored in interpreting the Agreement.
- 1.3 In these terms and conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

2. BASIS OF PURCHASE

- 2.1 The Purchase Order constitutes an offer by the Company to purchase the Products and/or acquire the Services subject to the Terms.
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of the Purchase Order, specification or similar document will form part of the Agreement and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.3 The Company reserves the right to cancel the Purchase Order unless unconditionally accepted by Supplier in writing within 14 days of its date.
- 2.4 The Terms apply to all the Company's purchases of Products and Services and any variation to the Terms shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company.

3. SUPPLY OF PRODUCTS AND SERVICES

- 3.1 The Supplier shall meet all Purchase Orders for the Products and/or Services forwarded to the Supplier by the Company in accordance with the terms of delivery, as set out in the Agreement.
- 3.2 The Company is responsible for ensuring that the terms of the Purchase Order and any applicable specification are complete and accurate.

4. WARRANTIES AND INDEMNITY

- 4.1 The Supplier warrants:
 - (a) that the manufacture, sale, and use of the Products and/or performance and receipt of the Services will not infringe any third party rights;

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- (b) that the Products and/or Services conform in all respects to any description, design or specification in the Purchase Order or otherwise specified by the Company;
 - (c) that the Products will be supplied with all reasonable information and instructions as to use in particular to ensure that, when put to use, they will be safe and without risks to health or property;
 - (d) to comply with all applicable regulations and other legal requirements concerning the manufacture, packaging and delivery of the Products and the performance of the Services;
 - (e) that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Company to expect in all circumstances.
- 4.2 The Supplier shall keep the Company indemnified in full against all direct, indirect or consequential liabilities, damages, injury, and expenses (including professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- (a) defective workmanship quality or materials;
 - (b) an infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Products or the performance or receipt of the Services;
 - (c) any claim made against the Company in respect of any loss, injury, or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such loss, injury, or expense was caused by, relates to or arises from the Products and/or Services as a consequence of direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Agreement by the Supplier;
 - (d) breach of any warranty given by the Supplier in relation to the Products and Services;
 - (e) any act or omission of the Supplier or its employees, agents or sub-contractors in connection with the performance of the Services.

5. QUALITY AND DEFECTS

- 5.1 In the absence of a specification or sample all Products supplied shall be in accordance with normal industry standards.
- 5.2 The Products and/or Services shall be of best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order.
- 5.3 The Company's rights under the Terms are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1994 and the Supply of Goods and Services Act 1982.

6. DELIVERY

- 6.1 The Products and the Services shall be delivered to or performed at the Delivery Point as is set out in the Purchase Order and shall be off-loaded as directed by the Company.
- 6.2 The date for delivery shall be specified in the Purchase Order, or if none the delivery shall take place within 28 days of the Purchase Order.
- 6.3 The Supplier shall supply the Company in good time with any instructions or other information required to enable the Company to accept delivery of the Products and performance of the Services.
- 6.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.5 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Supplier at the cost of the Supplier.
- 6.6 Time for delivery of the Products and of performance of the Services shall be of the essence.
- 6.7 Unless otherwise stipulated by the Company in the Purchase Order, deliveries of the Products and performance of the Services shall only be accepted by the Company between 9:00 and 17:00 on normal working days.
- 6.8 If any excess Products are delivered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 6.9 If excess Products and/or the Services are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
 - (a) cancel the Agreement in whole or in part;
 - (b) refuse to accept any subsequent delivery of the Products and/or the Services;

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- (c) recover from the Supplier any expenditure reasonably incurred in obtaining the Products and/or Services elsewhere; and
 - (d) claim damages for any additional costs, loss or expenses incurred by the Company which are attributable to the Supplier's failure to deliver the Products and/or Services on the due date.
- 6.10 Where the Company agrees in writing to accept delivery of the Products and/or Services by instalments the Agreement will be construed as a single agreement in respect of each instalment. A failure by the Supplier to deliver any one instalment shall entitle the Company to treat all Agreements for the instalments as repudiated.

7. COMPLIANCE WITH REGULATIONS

- 7.1 Whilst on the Company's premises, the Supplier's personnel, agents and sub-contractors shall at all times conduct themselves in full compliance with the Company's site, safety and security regulations that are brought to their notice and shall immediately report to the Company any accidents in which they are involved.

8. RISK AND TITLE

- 8.1 The Products shall remain at risk of the Supplier until delivery to the Company is complete (including off-loading, stacking, inspection and acceptance of the Products by signing the delivery form) when ownership of the Products shall pass to the Company.

9. PRICES AND PAYMENT

- 9.1 The Price of the Products and/or Services shall be as stated in the Purchase Order and unless otherwise agreed, shall be:
- (a) exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a VAT invoice); and
 - (b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Products to the Delivery Point and any duties, imposts or levies other than value added tax.
- 9.2 The Supplier shall invoice the Company for the Products supplied and Services performed upon satisfaction completion of delivery or performance. Unless otherwise stated in the Purchase Order, payment will be made within 30 days from the date of the invoice, subject to receipt of the Supplier's correct and valid invoice and satisfactory completion of delivery or performance.
- 9.3 Value added tax, where applicable, shall be shown separately on all invoices.
- 9.4 The Company reserves the right to set off any amount owing from the Supplier against any amount payable by the Company.

10. VARIATIONS

- 10.1 The Supplier shall not alter or vary the Products and/or Services except as directed in writing by the Company. The Company shall have the right, by notice in writing, to direct the Supplier to add to or to omit, or otherwise vary, the Products and/or Services. If the Supplier receives such a direction which affects the Price the Supplier shall as soon as is reasonably possible advise the Company in writing to that effect.
- 10.2 If the Company accepts in writing any variation in the Price, the Supplier shall carry out such variations, as though the said variations were stated in the Agreement.
- 10.3 If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Agreement it shall so notify the Company and the Company shall inform the Supplier in writing as soon as is practicably possible whether or not the same shall be carried out. No variation shall be effective until the Company confirms its instructions.

11. INTELLECTUAL PROPERTY RIGHTS IN THE PRODUCTS

- 11.1 The Intellectual Property Rights in the Products and/or any materials relating thereto are and shall remain the property of the Supplier, unless otherwise provided in the Purchase Order.
- 11.2 The Company shall own all Intellectual Property Rights in the Services created, made and developed under or in connection with this Agreement by the Supplier, its employees, agents and/or sub-contractors.

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11.3 The Supplier, its employees, agents and sub-contractors shall execute such further documents and do such further things as the Company may reasonably request from time to time, at Company's expense, to give effect to Clause 11.2.

11.4 Neither party will gain by virtue of the Agreement any rights of ownership of or in Intellectual Property Rights owned by the other.

12. MANUFACTURER'S WARRANTY AND INDEMNITIES

12.1 In the event that the Products are not manufactured by the Supplier, the Supplier agrees to assign to the Company the benefit of the manufacturer's guarantee and warranties both express and implied.

13. REMEDIES

13.1 Without prejudice to any other right or remedy which the Company may have, if the Supplier fails to comply with any of the terms of the Agreement the Company shall be entitled to any one or more of the following remedies, even if any part of the Products or Services have been accepted by the Company:

- (a) to rescind the Purchase Order;
- (b) to reject the Products (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier for a full refund for the Products so returned;
- (c) to reject the Services (in whole or in part), in which case the Supplier shall refund sums paid for the Services rejected;
- (d) to refuse to accept any further deliveries of the Products and/or Services but without any liability to the Supplier;
- (e) to carry out at the Supplier's expense any work necessary to make the Products or Services comply with the Agreement; and
- (f) to claim damages.

14. TERMINATION

14.1 Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating the Agreement with immediate effect if:

- (a) the other party commits a breach of any of the terms of the Agreement which if remediable is not remedied within 7 days of receiving notice of such breach; or
- (b) any distress, execution or other process is levied upon any of the assets of the Supplier;
- (c) the Supplier ceases or threatens to cease to carry on its business; or
- (d) the financial position of the Supplier is that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations is in jeopardy.

15. EFFECTS OF TERMINATION

15.1 Termination of the Agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination.

15.2 Clauses 1, 4, 11, 12, and 16 shall survive termination of the Agreement.

16. CONFIDENTIALITY

16.1 The Supplier undertakes that it and the Supplier's personnel, agents, and subcontractors will keep confidential and will not use for its own purposes nor, without the prior written consent of the Company, disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to the Supplier from the Company ("Confidential Information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of the Agreement or subsequently comes lawfully into the possession of that party from a third party.

16.2 To the extent necessary to implement the provisions of the Agreement the Supplier may subject to imposing the obligations of clause 16.1 disclose the Confidential Information to those of its employees, agents and sub-contractors as may be reasonably necessary or desirable.

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17.1 The Company reserves the right to defer the date of delivery or payment or to cancel the Agreement or reduce the volume of the Products or cancel or reject the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company.

18. ENTIRE AGREEMENT

18.1 The Agreement constitutes the entire understanding between the parties with respect to the subject matter of the Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it, except for fraudulent misrepresentations.

19. AMENDMENTS

19.1 Save as expressly provided in the Agreement, no amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

20. WAIVER

20.1 Failure or delay by the Company in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.

21. ASSIGNMENT AND TRANSFER

21.1 The Supplier shall not assign or transfer or purport to assign or transfer the Agreement or the benefit thereof, to any other person whatsoever without the prior written consent of the Company.

22. NOTICES

22.1 Any notice required to be given pursuant to the Agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the address of the relevant party set out in the Agreement or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

23. RIGHTS OF THIRD PARTIES

23.1 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

24. GOVERNING LAW

24.1 The Agreement is exclusively governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

25. GENERAL

25.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.