

Damovo UK Limited ("Damovo") Standard Terms and Conditions of Purchase

DAMOVO STANDARD TERMS AND CONDITIONS OF PURCHASE ("Standard Terms")

1. INTERPRETATION

- 1.1. In these terms and conditions ("Conditions"), the following words shall bear the following meanings:

"**Associated Companies**" means in respect of a party, any company which is the subsidiary company of that party or the holding company of that party, or the subsidiary of that party's holding company, "subsidiary" and "holding company" being as defined in s736 of the Companies Act 1985 (as amended);

"**Goods**" means all goods, including software and hardware, to be supplied to Damovo by the Supplier pursuant to the Order, as detailed in the Order;

"**IPR**" means patents, copyright, trade marks, rights in proprietary and confidential information, inventions and all other industrial, commercial and intellectual property rights arising anywhere in the world;

"**Order**" means Damovo's order to which these Conditions are attached;

"**Services**" means all services provided or to be provided by the Supplier pursuant to the Order; and

"**Supplier**" means the person, firm or company to whom the Order is addressed.

- 1.2. In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3. For the purposes of interpretation, the paragraph headings contained herein shall be ignored.
- 1.4. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression are illustrative and do not limit the sense of the words preceding those terms and shall be deemed to be followed by the words "without limitation".

2. APPLICATION OF TERMS

- 2.1. Each Order shall be deemed to be an offer by Damovo to purchase Goods or Services subject to these Conditions. No binding contract for the supply of any goods or services shall exist between the Supplier and Damovo until the Supplier accepts the Order. The Supplier shall accept or reject each Order by written notice within 48 hours of its receipt. If it fails to issue such written notice, it shall be deemed to have accepted the Order.
- 2.2. Unless otherwise agreed by the parties in writing, these Conditions govern the Order to the exclusion of all other terms and conditions, including any terms or conditions contained in the Supplier's quotation, acknowledgement or acceptance of order or otherwise.
- 2.3. No variation or amendment of the Order or these Conditions shall bind either party unless made in writing and signed by duly authorised officers of both parties.
- 2.4. The Order shall not affect the parties' obligations or rights under any other agreement between them.

3. PRICE AND PAYMENT TERMS

- 3.1. All Goods and Services shall be supplied at the price stated on the relevant Order. Value added tax (VAT) shall be payable in addition on receipt by Damovo of a valid VAT invoice.
- 3.2. No additions to the price given on any Order shall be accepted unless expressly accepted in writing by an authorised employee of Damovo.
- 3.3. Payment terms shall be within 45 days of receipt by Damovo of a valid tax invoice as specified in Condition 3.1 or within 45

days of final delivery of the Goods or Services, whichever is later.

- 3.4. Without prejudice to any other right or remedy, Damovo reserves the right to set off any amount owing at any time from the Supplier to Damovo against any amount payable by Damovo to the Supplier under the Order.

- 3.5. Failure to invoice Damovo for the sums specified in the Order within 6 months of delivery of the Goods or Services will mean the obligation to pay the Supplier pursuant to the Order will cease.

4. CANCELLATION AND DELIVERY

- 4.1. Damovo may at any time up to 5 business days prior to the due date for delivery, by notice in writing to the Supplier, vary the scheduling of deliveries on the Order, the delivery location or wholly or partly cancel the Order. In the event of any cancellation or variation to an Order by Damovo in accordance with this Condition 4.1, Damovo will not be liable for any costs, charges or losses incurred by the Supplier.
- 4.2. Delivery of all Goods shall be made to the place of delivery requested in the relevant Order on a DDP basis (as such term is defined in the Incoterms 2000 publication published by the International Chamber of Commerce).
- 4.3. The Supplier shall be responsible at its own expense for (a) arranging suitable carriage for Goods ordered by Damovo hereunder through a reputable and market competitive firm of carriers and (b) for appropriately insuring the Goods during their carriage and until risk passes to Damovo pursuant to Condition 5.
- 4.4. The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place on such other date as may be agreed between the parties.
- 4.5. The Supplier may not supply Damovo with the Goods specified in the Order in instalments unless specified in the Order.
- 4.6. Time for delivery shall be of the essence.
- 4.7. If the Goods delivered to Damovo are in excess of the quantities ordered Damovo 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.

5. RISK

The title to and risk in the Goods (except for title to software) shall pass on delivery to Damovo's premises once inspected and signed for by an authorised employee of Damovo, provided that the foregoing shall not affect the Supplier's responsibility for loss or damage arising from the acts or omissions of its employees, agents or sub-contractors. In the event that Damovo does not inspect and sign for the Goods within 5 days of delivery, title and risk shall be deemed to have passed to Damovo.

6. WARRANTIES

- 6.1. The Supplier warrants that all Goods, including software:
- 6.1.1. will conform to their published specification current at the time of the Order;
- 6.1.2. will be fit for the purpose for which such goods are commonly bought and for any specific purpose made known to the Supplier by Damovo;
- 6.1.3. will be free from any defect which impairs their ability to function and operate;
- 6.1.4. will be free from defects in materials and workmanship; and
- 6.1.5. will comply with all rules, regulations and other laws applicable to the country of manufacture and/or delivery, including but not limited to all relevant environmental and waste laws.

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- 6.2. The Supplier warrants that it has the necessary rights and consents to supply any of the Goods and/or Services supplied pursuant to the Order.
- 6.3. In the event that any Goods and/or Services supplied do not conform to any of the foregoing warranties, Damovo shall notify the Supplier and the Supplier shall, at its own cost, repair, restore or replace such Goods and/or Services within 7 days of receipt of such notification or by such other time as may be agreed in writing between the parties and shall otherwise keep Damovo harmless from any cost incurred by Damovo as a result of a breach of any such warranty.
- 6.4. All Services shall be provided in a timely manner with all reasonable skill, care and attention in accordance with best industry practice by personnel with suitable qualifications, experience and expertise.
- 6.5. Damovo may assign its rights under this Condition 6 to any of its customers.
- 6.6. The Supplier shall indemnify and keep fully indemnified Damovo and its customers, employees, agents and subcontractors against all claims, liabilities, losses, damages, costs and expenses (including legal fees and costs) suffered by them or any of their customers as a result of or in connection with a breach of the warranties contained in this Condition 6.
- 6.7. The Supplier shall maintain in force with a reputable insurance company adequate insurance to cover its potential liabilities under these Conditions and shall upon request by Damovo produce evidence of maintenance of such insurance and payment of all relevant premiums.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The Supplier warrants that it is the owner or lawful licensee of all IPR in the Goods (including the software) supplied or to be supplied hereunder and that it is legally entitled to supply the Goods and Services to Damovo for the purposes described by Damovo in accordance with these Conditions.
- 7.2. The Supplier shall indemnify and keep fully indemnified Damovo and its employees, agents and sub-contractors against any claims, liabilities, costs, expenses, damages or losses (including legal fees and costs) suffered by them or any of their customers arising out of or relating to a claim from any third party that the Goods or holding, using, selling, importing or exporting them or their branding or the Services, infringe any IPR of any third party or that otherwise the exercise of Damovo's rights hereunder infringes any IPR of any third party.
- 7.3. If an allegation of infringement of the type referred to in Condition 7.2 is made and notified to the Supplier, the Supplier shall at its own expense forthwith procure for Damovo, and its customers a licence to enable them to use the Goods and/or Services in accordance with their rights under the Conditions.

8. CONFIDENTIALITY

- 8.1. The Supplier shall keep in strict confidence all information relating to Damovo's business, customers, clients, products, finances, technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to the Supplier by Damovo or its agents and the terms of the Order, and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to Damovo and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- 8.2. The foregoing obligations of Condition 8.1 shall not apply to any information which is or becomes generally available to the public through no act or default of the Supplier or its agents or employees.

9. MATERIALS

The Supplier shall provide to Damovo (on first delivery of all Goods and on delivery of any modified, improved or upgraded Goods) instructions, operating manuals, user documentation and all other relevant documentation and materials relating to those Goods supplied hereunder and Damovo shall be entitled to copy and provide such to its customers with the Goods. All such documentation shall be in English and shall be accurate and kept up to date in particular in respect of any modifications to the Goods.

10. TERMINATION

- 10.1. Damovo shall have the right at any time by giving notice in writing to the Supplier to terminate the Order forthwith if:
 - 10.1.1. the Supplier shall fail to observe and perform the terms and conditions of the Order and/or of these Conditions; or
 - 10.1.2. the Supplier shall cease or threaten to cease to carry on business; or
 - 10.1.3. if the Supplier is unable to pay its debts as and when they fall due, if a resolution is passed, or an order made for the winding up of the Supplier (other than voluntary liquidation for the purposes of a reconstruction) or if the Supplier compounds or makes any voluntary arrangement with its creditors, or otherwise has a receiver, administrative receiver, administrator or other similar officer or encumbrancer appointed to it or over all or any part of its assets or the Supplier takes or suffers any similar action in consequence of debt.
- 10.2. If any Goods and/or Services are not delivered on the due date then, without prejudice to any other rights which Damovo may have, Damovo reserves the right to do any or all of the following:
 - 10.2.1. cancel the Order in whole or in part;
 - 10.2.2. refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 10.2.3. recover from the Supplier any expenditure reasonably incurred by Damovo in obtaining goods in substitution from another supplier;
 - 10.2.4. claim damages for any additional costs, loss or expenses incurred by Damovo which are in any way attributable to the Supplier's failure to deliver the Goods and/or Services on the due date.
- 10.3. Damovo may terminate the provision of any Services on 30 days written notice to the Supplier.
- 10.4. The termination of the Order, howsoever arising, will be without prejudice to the rights and duties of the parties which have accrued prior to termination or the rights of customers to continue using Goods supplied by Damovo to them. The Conditions which expressly or implicitly have effect after termination will continue to be enforceable notwithstanding termination.

11. ASSIGNMENT

- 11.1. The Supplier shall not be entitled to assign the Order, or any part of it, without the prior written consent of Damovo.
- 11.2. Damovo may assign its rights and obligations under the Order or any part of it:-
 - 11.2.1. to any Associated Company which acts as a global purchasing or procurement company for it and its Associated Companies;
 - 11.2.2. to a purchaser of the whole, or substantially the whole, of its business; or
 - 11.2.3. to an Associated Company of Damovo provided that such Associated Company shall reassign to Damovo on ceasing to be an Associated Company of Damovo.

12. BRAND/TRADE MARKS

Each party acknowledges that the other party retains ownership of all its trade marks, names, brands and logos, and the other party gains no rights to such or to use such except as expressly permitted hereunder or as is reasonably necessary to enable it to perform its obligations hereunder. Damovo shall be entitled to use the Supplier's trade marks and brands to advertise and promote the Goods.

13. FORCE MAJEURE

Damovo shall have no liability for failure to comply with any of its obligations hereunder if that failure is as a result of war, hostilities, Act of God, fire, flood, industrial unrest, civil disturbance, the act of any local or national government or authority, shortage or unavailability of raw materials, equipment, labour or fuel, failure of manufacturers, or any other cause beyond the control of Damovo.

14. NOTICES

14.1. Any notice required to be given under the terms of these Conditions shall (unless otherwise provided) be in writing and shall be delivered by hand or sent by prepaid recorded delivery or registered post to the address of each party stated on the Order or to such other address as the parties may notify to each other in writing. Notices shall be deemed to have been received:-

14.1.1. in the case of delivery by hand prior to 5pm on a business day, when delivered and in any other case on the business day following the day of delivery; or

14.1.2. in the case of first class prepaid, recorded delivery or registered post, on the second business day following the day of posting.

15. GENERAL

15.1. If any provision of the Order or these Conditions is rendered void by legislation or declared void by court decree or order or is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, the remaining provisions shall be severable and shall not thereby be altered and shall remain in full force and effect.

15.2. A failure to exercise or delay in exercising any right or remedy provided by these Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No purported waiver of rights or remedies hereunder shall be effective unless in writing signed by the party whose waiver it purports to be.

15.3. Subject to Conditions 15.3.1 and 15.3.2, no person who is not a party to the Order may enforce any term of it. Conditions 15.3.1 and 15.3.2 set out the basis on which the Contracts (Rights of Third Parties) Act 1999 shall apply to the Order and these Conditions:

15.3.1. the Order shall be enforceable by any Associated Company of Damovo.

15.3.2. the Order and these Conditions may be varied or rescinded by written agreement between the parties and the consent of any person who is not a party to the Order shall not be required for any such variation or rescission.

15.4. The Order and these Conditions shall be governed by and construed in accordance with the laws of England and all disputes shall be subject to the non-exclusive jurisdiction of the English courts.