

PROTEC FIRE DETECTION PLC TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

1.1 Within these Terms and Conditions, the following expressions shall have the following meanings:

1.1.1	'Contract'	shall mean any Contract for the purchase of the Goods and/or Services by the Purchaser from the Vendor in accordance with these Terms and Conditions and shall incorporate the Order and Specifications, drawings or conditions referred to in these Terms and Conditions.
1.1.2	'Data Protection Laws'	the UK DP Laws Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
1.1.3	'Goods'	shall mean any goods specified or described in the Order and all parts or components including design thereof to be supplied by the Vendor.
1.1.4	'Order'	shall mean the order (including, without limitation, any design or subsequent amendment to the order), placed by the Purchaser with the Vendor for the supply of the Goods and/or Services as set out in the Purchaser's order form signed on behalf of the Purchaser.
1.1.5	'Intellectual Property'	patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
1.1.6	'Purchaser'	shall mean Protec Fire Detection PLC a company registered in England and Wales with company number 01170489.
1.1.7	'Services'	shall mean the services to be provided by the Vendor under the Contract as set out in the Order and the Specification (if any).
1.1.8	'Specification'	shall mean the technical description (if any), drawing sample or packaging of the Goods and/or Services contained or referred to in the Order.
1.1.9	'UK DP Laws'	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- 1.1.10 'Vendor' shall mean the person, firm or company with whom the Purchaser purchases Goods and/or Services.
- 1.1.11 'Working Day' shall mean a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

2. BASIS OF CONTRACT

- 2.1 The following are the Terms and Conditions upon which the Purchaser contracts with the Vendor for the purchase of all Goods and Services which it orders in an Order.
- 2.2 Unless otherwise expressly stated by the Purchaser in an Order, all Orders placed by the Purchaser shall be deemed to incorporate these Terms and Conditions and these Terms and Conditions shall be incorporated into the Contract to the exclusion of any other terms that the Vendor seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 There shall be no variation to these Terms and Conditions unless separately stated in writing by the Purchaser prior to formation of any Contract.
- 2.4 Without prejudice to the generality of the foregoing the Purchaser will not be bound by any standard or printed terms that conflict with these Terms and Conditions furnished by the Vendor in any of its documents including any quotation acceptance or confirmation of an Order unless the Vendor expressly states, in writing, separately from such document(s) that the Vendor intends such conflicting terms to apply to any Order and the Purchaser acknowledges and agrees in writing to be bound by such conflicting terms (such written acceptance to be signed by a director of the Purchaser).
- 2.5 Nothing in the Contract shall deprive the Purchaser from its rights under all applicable laws.

3. ORDER

- 3.1 The Order constitutes an offer by the Purchaser to purchase Goods and/or Services from the Vendor in accordance with these Terms and Conditions.
- 3.2 The Purchaser may cancel any Order, without incurring liability to the Vendor, unless the Order is accepted by the Vendor within ten Working Days of the date of the Order.
- 3.3 The Order shall be deemed accepted upon the earlier of:
- 3.3.1 the Vendor issuing written acceptance of the Order; and
 - 3.3.2 any act by the Vendor consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence.

4. INSPECTION

- 4.1 The Purchaser's representative and any representatives of the Purchaser's customer(s) and any Government department shall be entitled on the Purchaser's authority to inspect or test the Goods at any reasonable time at the premises of the Vendor at any stage of manufacture.
- 4.2 The Vendor shall give adequate notice of all tests conducted in respect of the Goods and/or Services and promptly furnish such test certificates as the Purchaser requires and evidence of all tests and examinations and research made in respect of the Goods and/or Services in compliance with applicable law.
- 4.3 No inspection or test or failure to inspect or test shall constitute acceptance of the Goods or affect any liability of the Vendor under the Contract.
- 4.4 The Purchaser requires the right of access which the Vendor grants by acceptance of the Order to any part of the Vendor's premises involved in fulfilling any Order to verify conformity of the Goods with the requirements of the Contract and any applicable law.
- 4.5 If following such inspection or testing the Purchaser considers that the Goods do not comply or are unlikely to comply with the Vendor's undertakings at clause 5.9 the Purchaser shall inform the Vendor and the Vendor shall immediately take such remedial action as is necessary to ensure compliance.

5. DELIVERY OF THE GOODS

- 5.1 The Vendor shall:
- 5.1.1 on dispatch of the Goods or performance of the Services send detailed advice notes to the Purchaser (which shall accompany the Goods and/or Services) and invoices in which Value Added Tax will be shown as a strictly net item.
 - 5.1.2 send by the tenth day of each month during the term of the Contract a statement of all invoices rendered by the Vendor during the previous month; and
 - 5.1.3 mark the Purchaser's Order numbers and any part numbers on all invoices, advice notes, statements, correspondence, packages and packing.
- 5.2 Without prejudice to any other rights and remedies that the Purchaser may have, the Purchaser may delay payment without loss of any prompt payment discount if the Vendor fails to comply with the provisions of this clause 5.
- 5.3 The time stipulated for delivery shall be of the essence to the Purchaser.
- 5.4 The Purchaser reserves the right to refuse delivery of any part of the Goods if they are supplied before the time specified, if such right is exercised all charges arising therefrom shall be the responsibility of the Vendor.
- 5.5 The Goods must be delivered:
- 5.5.1 on the date of delivery stipulated in the Order or otherwise agreed between the parties in writing;
 - 5.5.2 at the delivery location stipulated in the Order or otherwise agreed between the parties in writing ("Delivery Location");
 - 5.5.3 in good condition, packaging, carriage and insurance paid to the Delivery Location as instructed by the Purchaser in the Order. For the avoidance of doubt, the Vendor shall be responsible for insuring the Goods up to delivery.
- 5.6 Delivery of the Goods is to include off loading and placement of the Goods to the instructions of the Purchaser. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and the Purchaser notifying the Vendor that delivery has taken place.
- 5.7 The Vendor shall furnish such programmes of manufacture or completion as the Purchaser requires and shall promptly advise the Purchaser in writing if such programmes are or are likely to be delayed.
- 5.8 The Vendor shall be responsible for any expenses incurred to deliver any incorrectly delivered Goods to the Delivery Location or return any items delivered in excess of the quantity specified in the Order.
- 5.9 The Vendor shall ensure that the Goods shall:
- 5.9.1 correspond with their description and any applicable Specification;
 - 5.9.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Vendor or made known to the Vendor by the Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Vendor's skill and judgement;
 - 5.9.3 comply with the requirements of clause 14.3; and
 - 5.9.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 5.10 The Vendor shall not deliver the Goods in instalments without the Purchaser's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Vendor to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Purchaser to the remedies set out in clause 10.3.

6. SUPPLY OF THE SERVICES AND VENDOR OBLIGATIONS

- 6.1 The Vendor shall from date set out in the Order and for the duration of the Contract supply the Services to the Purchaser in accordance with the terms of the Contract.

- 6.2 The Vendor shall meet any performance dates for the Services specified in the Order or that the Purchaser notifies to the Vendor and time is of the essence in relation to any of those performance dates.
- 6.3 In performing the Services, the Vendor shall:
- 6.3.1 co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
 - 6.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Vendor's industry, profession or trade;
 - 6.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Vendor's obligations are fulfilled in accordance with the Contract;
 - 6.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that any deliverables referred to in the Order or Specification ("Deliverables") shall be fit for any purpose that the Purchaser expressly or impliedly makes known to the Vendor;
 - 6.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 6.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Purchaser, will be free from defects in workmanship, installation and design;
 - 6.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 6.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises;
 - 6.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Vendor ("Purchaser Materials") in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation;
 - 6.3.10 not do or omit to do anything which may cause the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Vendor acknowledges that the Purchaser may rely or act on the Services; and
 - 6.3.11 ensure that all employees, workers and contractors engaged by the Vendor in the supply of the supply of the Goods and/or Services have the right to work in the United Kingdom and, in particular, the Vendor shall comply with the Immigration Asylum and Nationality Act 2006, the Immigration Act 2016 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers.
- 6.4 Without prejudice to the forgoing, the Vendor shall, and shall use all reasonable endeavours to ensure that its employees, contractors and representatives shall:
- 6.4.1 comply with:
 - 6.4.1.1 all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 6.4.1.2 all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and The Ethical Trading Initiative Base Code; and
 - 6.4.1.3 all applicable anti-money laundering laws, statutes, regulations and codes from time to time in force including but not limited to the Proceeds of Crime Act 2002;
 - 6.4.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 6.4.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

- 6.4.4 not engage in any activity, practice or conduct that would constitute an offence under the Proceeds of Crime Act 2002 if such activity, practice or conduct were carried out in the UK.

7. PACKAGING OF THE GOODS

7.1 Unless otherwise agreed in writing:

- 7.1.1 All Goods must be securely and adequately packed free of charge and in such a manner as to reach the Purchaser in good condition free from damage or deterioration.
- 7.1.2 The Vendor shall fully and accurately describe the Goods in all tickets, labels, invoices, packing and delivery notes and in any description, which appears on any container or other matter covering, containing or protecting the Goods.
- 7.1.3 The Vendor shall submit with the Goods full instructions for use and clear warnings with respect to anything which may reasonably be done or omitted to be done in relation to the Goods or which could render them unsafe.
- 7.1.4 The Purchaser will not accept any charge in respect of packing cases and other packing materials and will not be responsible for safe keeping returning or for the cost of returning any such packing cases and materials.

8. NON-DELIVERY OF THE GOODS AND NON-PERFORMANCE OF THE SERVICES

- 8.1 If the Vendor does not deliver the Goods, or any part thereof, and/or perform the Services within the time specified in the Order the Purchaser shall be entitled to terminate the Contract, purchase other Goods and/or Services of the same or similar description to make good such default and recover from the Vendor the amount by which the cost of so purchasing other Goods and/or Services exceeds the price which would have been payable to the Vendor in respect of the Goods and/or Services replaced by such purchase without prejudice to any other remedy of the Purchaser for breach of Contract.

9. EXCESS OR SHORTFALL IN QUANTITIES

- 9.1 If the Vendor delivers any quantity of Goods that is not identical to the quantity of Goods ordered, the Purchaser may reject the Goods, or the excess Goods where the Vendor delivers more than the quantity of Goods ordered, and any rejected Goods shall be returnable at the Vendor's risk and expense. If the Vendor delivers less than the quantity of Goods ordered, and the Purchaser accepts the delivery, the Vendor shall make a pro rata adjustment to the invoice for the Goods.

10. PURCHASER'S REMEDIES

- 10.1 The Goods shall conform in every respect with the Specification and acceptance of the Goods shall be subject to the Purchaser's inspection and approval within a reasonable time after delivery.
- 10.2 The Purchaser reserves the right to reject any Goods which the Purchaser considers defective or inferior and/or do not comply with the requirements of the Contract.
- 10.3 If the Goods and/or the Services do not conform to the Contract in any respects or the Vendor fails to deliver the Goods by the applicable date or to perform the Services by the applicable date the Purchaser shall be entitled at its discretion and without prejudice to any other remedy to exercise any one or more of the following rights whether or not it has accepted the Goods:
- 10.3.1 reject the Goods in whole or in part;
- 10.3.2 terminate the Contract with immediate effect by giving notice to the Vendor;
- 10.3.3 permit the Vendor to replace, repair or reinstate the Goods and/or re-perform the Services so that they conform to the Contract; and
- 10.3.4 carry out or have carried out at the Vendor's expense such work as is necessary to make the Goods and/or the Services conform to the Contract;
- 10.3.5 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Vendor attempts to make;
- 10.3.6 to recover from the Vendor any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party;

- 10.3.7 to require a refund from the Vendor of sums paid in advance for the Services and/or Goods; and
- 10.3.8 to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Vendor's failure to meet such dates.
- 10.4 Where entitled to reject the Goods the Purchaser shall do so by written notice to the Vendor and the following shall apply:
 - 10.4.1 the Goods supplied shall be held at the risk of the Vendor and returnable at the expense of the Vendor to be removed by the Vendor forthwith;
 - 10.4.2 the Goods supplied shall not count as having been delivered unless the Purchaser elects to make the same fit for their purpose in which case the Vendor shall be charged with the cost thereof;
 - 10.4.3 if required by the Purchaser the Vendor shall replace such rejected Goods with Goods which conform to the Contract or return to the Purchaser all monies paid by the Purchaser in respect of such Goods; and
 - 10.4.4 any acceptance of such Goods or election by the Purchaser shall be without prejudice to any rights that the Purchaser may have against the Vendor.
- 10.5 If the Purchaser terminates the Contract the Vendor shall repay to the Purchaser all payments made by Purchaser under the Contract and if the Purchaser rejects any Goods the Vendor shall repay all payments already made for the rejected Goods.
- 10.6 Where upon termination of the Contract the Purchaser elects to keep or take any Goods it shall account to the Vendor for them at the lower of a proportion of their price or their value to the Purchaser (as determined by the Purchaser) but otherwise no compensation shall be payable to the Vendor on termination or rejection.
- 10.7 No failure or delay on the part of the Purchaser to exercise any of its rights in respect of any default under the Contract by the Vendor shall prejudice its rights in connection with the same or any subsequent default.
- 10.8 Without prejudice to the forgoing, the Purchaser shall have the right to terminate the Contract with immediate effect by giving written notice to the Vendor if the Vendor commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so.

11. TITLE TO GOODS

- 11.1 Title in all components and materials for the Goods and/or Services and any tools, documents and other materials (including, without limitation, drawings, designs, test certifications, certificates of quality, parts, lists and manuals) to be used exclusively in connection with the Goods and/or Services shall pass to the Purchaser as soon as they are created or obtained by the Vendor. The Vendor shall clearly mark and store all such items so that they can be identified as the property of the Purchaser at any time and comply with all instructions of the Purchaser with regard to them.
- 11.2 Title and risk in the Goods shall pass to the Purchaser when the Goods are delivered to the Purchaser at the Delivery Location on the date agreed with the Purchaser.

12. INTELLECTUAL PROPERTY AND RESTRICTION ON SALE

- 12.1 In the case of any Goods which have been designed or manufactured by the Vendor in accordance with drawings and/or Specifications or patterns supplied by the Purchaser, the Vendor agrees not to sell any such Goods to any third parties except against an Order from the Purchaser with the permission of the Purchaser in writing.
- 12.2 The Vendor further undertakes not to manufacture quantities in excess of the Order for the purpose of sale.
- 12.3 All materials including without limitation any equipment, tools, drawings, designs, data, patterns, gauges, samples and Specifications made available by the Purchaser in connection with the Contract and all Intellectual Property subsisting in such materials shall be and remain the exclusive property of the Purchaser and Vendor shall:
 - 12.3.1 keep those materials in good order and condition and be responsible for any loss or damage to them;

12.3.2 use those materials only for the purpose of the Contract; and

12.3.3 return those materials carriage paid to the Purchaser upon the Purchaser's request at any time or if no request is made upon completion of the Contract.

12.4 The parties acknowledge and agree that any and all Intellectual Property subsisting in any Goods that are to be provided by the Vendor and all other materials, designs, data, software, drawings and other documents prepared in connection with the Order or the Contract or supplied to the Purchaser ("Contract Materials") and all materials embodying these Intellectual Property shall automatically vest in the Purchaser immediately upon creation. Insofar as such Intellectual Property does not vest automatically in the Purchaser by operation of law or under the Contract, the Vendor shall, at its own expense, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents in the form determined by the Purchaser and perform such acts as may be required by the Purchaser for the purpose of giving full effect to this clause 12.4 and to assign all Intellectual Property subsisting in the Goods and the Contract Materials to the Purchaser.

12.5 The Vendor shall be responsible for any errors or omissions in any drawings, calculations or particulars supplied by it whether or not such information has been approved by the Purchaser.

13. TERMINATION & INSOLVENCY

13.1 If the Vendor defaults in any of its obligations under the Contract or becomes insolvent, becomes unable to pay its debts, enters into administration or liquidation, has a receiver appointed of its business or is compulsorily or voluntarily wound up or if the Purchaser reasonably believes that any of such or similar events may occur, the Purchaser shall be entitled at its discretion without prejudice to any other of its rights or remedies:

13.1.1 to suspend the performance of or terminate the Contract;

13.1.2 in the event of termination to keep or take possession of any Goods or of any items belonging to the Purchaser and to enter any premises of the Vendor for that purpose; and

13.1.3 to give such receiver, liquidator, administrator or other person the opportunity of carrying out the Contract subject to them providing a guarantee satisfactory to the Purchaser for the due and faithful performance of the Contract.

14. INDEMNITY

14.1 In addition to all warranties and conditions implied by law, the Vendor guarantees the fitness for purpose for which the Goods are intended and shall indemnify the Purchaser against all claims, costs, expense, loss or damage whether or not consequential which the Purchaser may suffer, howsoever arising, from the Vendor's breach of any of its obligations under the Contract.

14.2 The Vendor shall indemnify the Purchaser against any loss, damage or injury suffered by the Purchaser, howsoever caused from and against any claim in respect of loss, damage or injury made against the Purchaser by third parties and any costs and expenses arising in connection therewith which result whether directly or indirectly from a defect in the Goods or their material, workmanship, design or any other failure of the Vendor to comply with the Terms of the Contract or from the Vendor's performance of the Contract (whether negligent or otherwise).

14.3 The Vendor hereby warrants that the Goods when delivered shall be in all respects in accordance with the Contract and free from any defect whatsoever. Without prejudice to such other rights as the Purchaser may have by law, statute or otherwise in respect of any such defect in the event of any defect due to faulty workmanship, material or design appearing in the Goods within twelve months from the date on which the Goods are accepted by the Purchaser or by the Purchaser's customer, whichever shall be later, the Vendor shall forthwith, on receipt of notice of such defect from the Purchaser, and at its own cost and expense, carry out such repairs and supply and fit such replacement parts as are necessary to remedy such defect, provided that the Purchaser may at its option itself repair or replace the defective Goods and charge the Vendor with the cost thereof.

14.4 All replacement Goods or parts supplied by the Vendor in accordance with the provisions of clause 14.3 hereof shall be subject to repair or replacement in accordance with clause 14.3 hereof for a period of twelve months from the date of which such replacement Goods or parts are supplied and fitted (as the case may be).

- 14.5 The Purchaser reserves the right to assign the benefit of the warranties contained in the Terms and Conditions and all its rights thereunder to any customer of the Purchaser to whom the Goods are sold or transferred by the Purchaser whether or not incorporated into any component unit or building.
- 14.6 Without prejudice to the forgoing, the Vendor shall indemnify and hold harmless the Purchaser against any loss, legal costs (calculated on a full indemnity basis) and other professional costs and expenses, damage or injury to the Purchaser, any claims in respect of loss, damage or injury made against the Purchaser by third parties and any costs and expenses arising in connection with them with result from the Vendor's failure to comply with the Contract (whether negligent or otherwise) and in particular resulting from any defect in the Goods or their materials, constructions, workmanship or design (to the extent that the Vendor is responsible for design).
- 15. INFRINGEMENT OF INTELLECTUAL PROPERTY**
- 15.1 The Vendor represents and warrants that the supply or use of the Goods and/or Services (with the exception of any Goods and/or Services supplied in accordance with a Specification) will not infringe the Intellectual Property of any third party and agrees to indemnify the Purchaser against all actions, legal costs (calculated on a full indemnity basis) and other professional costs and expenses, costs, claims, demands and expenses arising out of or resulting from any actual or alleged infringement and agrees and undertakes at the Vendor's own expense to defend or assist in the defence of any action which may be brought in respect of any such actual or alleged infringement.
- 16. SPECIAL CONDITIONS**
- 16.1 In the event that the Goods are ordered for any use or subsequent sale where the Purchaser may be contractually bound to any of its customers' terms and conditions, which may be inspected on request at the Head Office of the Purchaser, the Vendor shall be deemed to have accepted such terms and conditions and agrees to comply with them insofar as they relate to the Goods.
- 17. PUBLICITY AND CONFIDENTIALITY**
- 17.1 The Order and all details appearing thereon the Contract and its subject matter shall be treated as confidential between the Purchaser and the Vendor, and shall not be disclosed to any third party, nor used for publicity/promotional purposes without the consent of the Purchaser in writing.
- 17.2 Each party undertakes that it shall not at any time during the Contract and for a period of twelve (12) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.3.
- 17.3 Each party may disclose the other party's confidential information:
- 17.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 17.2; and
- 17.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.4 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 18. QUALITY ASSURANCE**
- 18.1 The Vendor is required to operate a quality management system, such as ISO 9001, that the Purchaser (at its sole discretion) considers appropriate ("Quality Management System") and provide suitable evidence to the Purchaser of its validity. The Vendor shall provide evidence of Quality Management System certification when requested, or shall allow the Purchaser to audit the Quality Management System of the Vendor where no such certification can be provided.
- 18.2 The Vendor undertakes that the Goods are safe and without risk to health when properly used and comply in all respects with all relevant statutes, regulations, bylaws and standards in force at the date of delivery including without prejudice to the generality of the foregoing the Factories Act 1961, the Health and Safety at Work etc. Act 1974, the Supply of Goods and Services Act 1982, the Consumer Protection Act 1987, the Sale of Goods Act 1979 and the Sale and Supply of Goods Act 1994.

- 18.3 The Vendor shall supply in respect of the Goods such information about the use of them as complies with the Health and Safety at Work etc. Act 1974 and proper evidence of all tests and examinations and research made in compliance with the provisions of that Act.
- 18.4 The Vendor warrants that the Contract and the Goods comply in all respects with all applicable law in England and Wales.
- 18.5 In the case of Goods that are to be shipped overseas, the Vendor shall, in addition, ensure compliance with all applicable law in the country of destination.

19. DATA PROTECTION

- 19.1 Both parties will comply with all applicable requirements of all Data Protection Laws. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws. In this clause 19, Applicable Laws means (for so long as and to the extent that they apply to the Vendor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Laws and any other law that applies in the UK. Personal data has the meaning given in the Data Protection Laws.
- 19.2 The parties acknowledge that the Purchaser may, during the term of the Contract, share with the Vendor certain personal data regarding the Purchaser's employees, officers, customers, agents or consultants for the purpose of allowing the Vendor to perform its obligations and/or exercise its rights under the Contract. The parties acknowledge that for the purposes of the Data Protection Laws, the Purchaser is the controller and the Vendor is the processor of such personal data.
- 19.3 Without prejudice to the generality of clause 19.1, the Vendor shall, in relation to any personal data processed in connection with the performance by the Vendor of its obligations and/or the exercise the Vendor's rights under the Contract:
- 19.3.1 process that personal data only on the documented written instructions of the Purchaser unless the Vendor is required by Applicable Laws to otherwise process that personal data. Where the Vendor is relying on Applicable Laws as the basis for processing personal data, the Vendor shall notify the Purchaser of this unless those Applicable Laws prohibit the Vendor from so notifying the Purchaser;
 - 19.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 19.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 19.3.4 not transfer any personal data outside of the United Kingdom unless the following conditions are fulfilled:
 - 19.3.4.1 the Purchaser provides its prior written consent to such transfer;
 - 19.3.4.2 the Vendor has provided appropriate safeguards in relation to the transfer;
 - 19.3.4.3 the data subject (as defined in the Data Protection Laws) has enforceable rights and effective legal remedies;
 - 19.3.4.4 the Vendor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and
 - 19.3.4.5 the Vendor complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of the personal data;

- 19.3.5 assist the Purchaser, at the Vendor's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 19.3.6 notify the Purchaser immediately on becoming aware of a personal data breach;
- 19.3.7 at the written direction of the Purchaser, delete or return personal data and copies thereof to the Purchaser on termination of the Contract unless required by Applicable Law to store the personal data; and
- 19.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and inform the Purchaser if, in the opinion of the Vendor, an instruction infringes the Data Protection Laws.
- 19.4 The Vendor shall not appoint any third-party processors of personal data without the prior written consent of the Purchaser.

20. EXPORT CONTROL AND CUSTOMS

- 20.1 The vendor shall inform us in its business documents, or by other means of communication as specified by us, about any applicable requirements or restrictions for the (re-) export of the items (goods, software and technology) under applicable export control and customs regulations, as well as under the export control and customs regulations of the country of origin of the items.

The vendor shall send the following information on items subject to (re-) export license requirements or restrictions to ExportControl@protec.co.uk in no less than ten (10) working days prior to the first delivery:

- Material number,
- Product description,
- All applicable export list numbers including the Export Control Classification Number pursuant to the U.S. Commerce Control List (ECCN),
- Country of origin of the items under commercial policy (non-preferential origin),
- HS Code of the items.

The vendor warrants that this information is complete and accurate and shall inform the Purchaser without delay in case of any changes of export license requirements or export list numbers, including ECCN, for its items due to amendments of technical parameters, amendments of export control or customs laws or official directives. The vendor shall provide the ECCN (including EAR99) to the Purchaser for all items subject to U.S. export controls.

- 20.2 The vendor is obliged to implement supply chain security measures in accordance with the WCO SAFE Framework and, where applicable, support us in obtaining and maintaining Authorized Economic Operator (AEO) status. The vendor shall provide appropriate evidence, e.g. authorizations or declarations such as security declarations, declarations within the scope of C-TPAT or similar programs. We or our nominated representative shall have the right, upon reasonable prior notice and during normal business hours, to verify such documentation at the vendor's premises.
- 20.3 The vendor hereby confirms that the goods supplied by the vendor do not originate in Russia or (as applicable) do not incorporate inputs originating in Russia which are listed in Annex XVII stipulated in Article 3g paragraph 1. d) of the Council Regulation (EU) 833/2014, in Art. 14a paragraph 2 of Swiss regulation 946.231.176.72; in UK Regulation 46IA and 46IB, and Schedule 3B) of The Russia (Sanctions) (EU Exit) Regulations 2019; in the Norwegian directive and Section 17e. (d) Prohibition related to iron and steel products as listed in Annex XVII).
- 20.4 For all deliveries crossing customs borders, the vendor shall provide complete and accurate documentation including, but not limited to, a commercial invoice and delivery note, together with all information necessary for a correct and timely import customs declaration. Any delay, penalty, or cost arising from non-compliance shall be borne by the vendor.
- 20.5 Unless otherwise agreed in writing, any cross-border transfer of software, technology, or digital data (e.g. cartographic data) shall occur solely by secure electronic means (e.g., encrypted email or secure download). This does not apply to "embedded software", defined as software that is physically and permanently integrated into hardware components.

- 20.6 Without prejudice to any other rights, we shall have the right to suspend performance or terminate the contract without notice and without liability in the event that the Vendor fails to comply with any of its obligations under clauses 20.1–20.5 on more than two occasions, or materially breaches such obligations in a way that endangers our compliance with export control laws.
- 20.7 The vendor warrants that it is not, and shall not become, a party listed on any government-issued restricted or denied party list, including but not limited to the U.S. Treasury Department's Specially Designated Nationals (SDN) List, the EU Consolidated Financial Sanctions List, or the UK Consolidated List. The vendor further warrants that it shall not transfer any item subject to this contract to any restricted end-user, end-use, or destination in violation of applicable sanctions or embargoes.
- 20.8 The vendor shall indemnify and hold harmless the Purchaser from and against any and all claims, damages, penalties, fines, or costs (including legal fees) arising out of or related to any breach of its obligations under this Clause 20, including inaccurate export control classification, documentation errors, or violation of sanctions or export laws.

21. COMPLIANCE, SOCIAL RESPONSIBILITY AND SUSTAINABILITY

- 21.1 In its trade dealings with us, the vendor undertakes not to offer or give, or request or accept, any incentive in breach of applicable anti-corruption legislation, neither in its business affairs nor when dealing with public officials.
- 21.2 In its trade dealings with us, the vendor undertakes not to make any agreements with other undertakings or to participate in concerted practices which have as their object or effect the prevention, restriction or distortion of competition under applicable antitrust regulations.
- 21.3 The vendor guarantees payment of fair wages and equal remuneration for work of equal value without distinction of any kind, and to comply with the applicable laws governing the general minimum wage; the vendor shall commit its sub-suppliers accordingly. On request, the vendor shall prove compliance with the foregoing guarantee. In the event of a breach of the foregoing guarantee to comply with the applicable laws governing the general minimum wage, the vendor shall indemnify us and hold us harmless from all third party claims and is obliged to reimburse any fines imposed on us in this context.
- 21.4 The vendor shall comply with the applicable statutory provisions and regulations governing the environmental protection, health and safety at work, treatment of employees and the protection of human rights. Further, the vendor shall observe the requirements of the Code of Conduct for Business Partners (see under <https://www.protec.co.uk/wp-content/uploads/2023/02/Code-of-Conduct-for-Business-Partners.pdf>) and the Principles of the Global Compact initiative of the United Nations (www.unglobalcompact.org) and procure for its sub-suppliers to act in accordance with the same. These essentially concern the protection of universal human rights, elimination of forced labour and abolition of child labour, elimination of discrimination in respect of employment and occupation, and environmental responsibility.
- 21.5 The vendor shall respond to inquiries to compliance, social responsibility and sustainability in the supply chain within reasonable time and in line with stipulated formalities. In the event of a suspected violation of the obligations under clauses 21.1 to 21.4, the vendor shall promptly investigate any potential violations and inform us of investigative measures undertaken, and, where warranted, notify us of the affected suppliers. If the suspicion proves to be warranted, the vendor must inform us within a reasonable period of time of the measures undertaken internally within its organization in order to prevent future violations. If the vendor fails to comply with these obligations within a reasonable period of time, we reserve the right to rescind from contracts with the vendor or terminate them with immediate effect.
- 21.6 In the event of severe violations of the law by the vendor and in the event of violations of clauses 21.1 to 21.4, we reserve the right to rescind from existing contracts or terminate them without notice.

22. ASSIGNMENT

- 22.1 The Vendor shall not assign or sub-contract the Contract in whole or in part without the written consent of the Purchaser and it shall be a condition of any such consent to any sub-contracting of the Contract that the Vendor shall:
- 22.1.1 ensure and be responsible for the compliance of any sub-contractor with the terms of the Contract;
 - 22.1.2 include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Purchaser; and

- 22.1.3 promptly furnish the Purchaser with copies of any sub-contract upon the Purchaser's request at any time.

23. PAYMENT

- 23.1 Unless otherwise agreed by the parties in writing, payment for the Goods and/or Services will be made within 60 days of the date on which the Vendor issues an undisputed invoice for the Goods and/or Services. The Vendor shall be entitled to raise an invoice for the Goods and/or Services following delivery of the Goods or performance of the Services (as the case may be).
- 23.2 All invoices for the Goods and/or Services must be rendered to the Purchaser's Head Office address as shown on the Order, detailing the full Order reference number.
- 23.3 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 1% a year above the Bank of England's base rate from time to time. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the date on which the dispute is resolved until payment.

24. PRICES

- 24.1 The prices stated in the Order are firm and not subject to variation unless otherwise agreed by the parties in writing.
- 24.2 Where prior agreement has been made by the parties in writing to allow certain price adjustment each application for a change in price shall be brought to the attention of the Purchaser in writing immediately and if these are deemed by the Purchaser to be excessive the Purchaser shall have the right to cancel the Order or any part thereof by giving written notice to the Vendor.

25. INSURANCE

- 25.1 The Vendor shall insure with a reputable insurance provider in respect of damage and/or injury to persons and/or property occasioned by negligence of the Vendor or on the part of its servants or agents or occasioned as a result of the Goods being unfit for their purpose, defective, unsafe or deemed to be unsafe of in amount of not less than £5,000,000.00 in respect of each occurrence or as otherwise agreed in writing by the Purchaser with the Vendor and will keep such insurance in force and produce at any time on demand the policy or policies of such insurance and a receipt for the current premium and will indemnify and keep indemnified the Purchaser from and against all liabilities suffered by the Purchaser as a result of any breach by the Vendor of this clause 25.
- 25.2 The Vendor shall provide all facilities, assistance and advice required by the Purchaser or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Vendor's performance or purported performance of or failure to perform the Contract.

26. LIABILITY

- 26.1 Nothing in these Terms and Conditions and/or the Contract limits any liability:
- 26.1.1 for death or personal injury caused by negligence;
 - 26.1.2 for fraud or fraudulent misrepresentation; or
 - 26.1.3 which cannot legally be limited.
- 26.2 Subject to clause 26.1, the Purchaser shall not be liable to the Vendor, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise for any:
- 26.2.1 loss of profits;
 - 26.2.2 loss of sales or business;
 - 26.2.3 loss of agreements or contracts;
 - 26.2.4 loss of anticipated savings;

- 26.2.5 loss of use or corruption of software, data or information;
- 26.2.6 loss of or damage to goodwill; or
- 26.2.7 indirect or consequential loss,

suffered by the Vendor that arises under or in connection with the Contract.

- 26.3 Subject to clause 26.1, the Purchaser's total liability to the Vendor under the Contract shall not exceed an amount equal to 100% of the sums paid by the Purchaser to the Vendor under the Contract in the period of 12 months preceding the date on which the breach occurred.

27. BREAK

- 27.1 The Purchaser reserves the right to cancel the Order for any reason, without incurring any liability to the Vendor except where provided for in clause 27.2, by giving written notice to the Vendor, providing that such notice is given before the agreed date of delivery of the Goods or the agreed date of performance of the Services (as the case may be).
- 27.2 The Purchaser may at its absolute discretion consider that cancellation of an Order may cause actual loss and expense to the Vendor and therefore, providing that the Vendor can establish to the satisfaction of the Purchaser that it has suffered such loss and expense and that the Vendor has used all reasonable endeavours to mitigate such loss and expense, the Purchaser will compensate the Vendor for such loss and expense subject to such indemnity not exceeding 25% of the Order value of the actual Goods cancelled. Such indemnity shall constitute the Purchaser's whole liability upon cancellation.

28. GENERAL

- 28.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 28.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 28.3 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 28.4 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Vendor's quotation, the Order or Vendor's written acceptance of the Order (as the case may be).
- 28.5 Any notice shall be deemed to have been received:
 - 28.5.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 28.5.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
 - 28.5.3 if sent by email, at the time of transmission, or, if transmission is on or after 5pm, on the following Working Day.
- 28.6 Clause 28.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 28.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. AMENDMENT TO SPECIFICATION

- 29.1 The Vendor shall not alter or amend in any way the size of the Goods, the scope of the Services or the Specification without the prior approval of the Purchaser in writing and all dimensions furnished in any way to the Purchaser shall be deemed to be certified and accurate.

30. OBSOLESCENCE AND SPARE PARTS

- 30.1 It shall be the Vendor's responsibility to notify the Purchaser if the Goods or part thereof are scheduled to become obsolete within 12 months of the date of delivery of such Goods to the Purchaser.
- 30.2 Notwithstanding any such obsolescence the Vendor warrants and undertakes to provide at a fair and market standard price to be agreed between the Vendor and the Purchaser from time to time, spare parts for any Goods for a period of 5 years, or such length of period as may be prescribed by any proper Government or other authority, commencing on the date of delivery of such Goods.

31. FORCE MAJEURE

- 31.1 The Purchaser shall not be in breach of Contract in the event of any delay or hindrance in performance or any non-performance of any of its obligations under the Contract and shall not be liable for any loss or damage caused thereby where the same is occasioned by any cause whatsoever that is beyond the Purchaser's reasonable control including, but not limited to, any Act of God, war, civil disturbance, requisitioning Government or Parliamentary, restrictive prohibitions or enactments of any kind, pandemics, epidemics, import or export regulations, embargoes, exchange control regulations, strike, lockout, trade dispute (whether involving its own employees or those of any other person) breakdown of machinery, fire or accident shipwreck, unavailability of vessels or transport ("Force Majeure Events").
- 31.2 Should any Force Majeure Event occur the Purchaser may terminate or suspend (for up to six months) the Contract without incurring any liability for any loss or damage thereby occasioned.

32. MEDIATION

- 32.1 If any dispute arises in connection with the Contract, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute, referring the dispute to mediation.
- 32.2 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.
- 32.3 Unless otherwise agreed, the mediation will start not later than 30 days after the date of the ADR notice. With the exception of court proceedings for urgent interlocutory and/or injunctive relief, no party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

33. SET OFF

- 33.1 The Purchaser shall be entitled to deduct all costs from any amounts owing to the Vendor which may have resulted from default or non delivery by the Vendor.

34. PROPER LAW AND JURISDICTION

- 34.1 The Contract to include, without limitation, its subject matter, legality and enforceability, shall be governed by and construed in accordance with the laws of England and Wales and, subject to clause 32, the Purchaser and Vendor submit to the exclusive jurisdiction of the courts of England and Wales.