

**ULTRA SONAR SYSTEMS LIMITED**  
**STANDARD TERMS & CONDITIONS OF PURCHASE**

**1 Definitions**

The following definitions shall have the following meanings within the context of these terms and conditions:

- a) Order shall mean this Purchase Order for the Goods identified herein
- b) Buyer shall mean Ultra Sonar Systems Limited
- c) Supplier shall mean the company identified on the front of the Order
- d) Goods shall mean the equipment, software and/or services the Supplier is required to delivery/complete as identified on the front of the Order
- e) Parties shall mean the Buyer and the Supplier, and Party shall either mean the Buyer or the Supplier depending on the context

**2 Acceptance of Order**

- 2.1 The commencement date of this Order is the date as specified on the front of the Order.
- 2.2 By undertaking any activity in respect of this Order, the Supplier acknowledges and accepts the requirements and terms stated herein without exception.
- 2.3 Any acknowledgement of this Order issued by the Supplier to the Buyer which identifies the Supplier's terms and conditions of sale are considered null and void, and as such an acknowledgement will constitute Order acceptance in accordance with Clause 2.2.

**3 Price**

- 3.1 In consideration for the Supplier providing the Goods identified in this Order, the Buyer hereby agrees to pay the Supplier the monies identified for the Goods as specified on the front of this Order. Such payment will be in full and final settlement for the Supplier discharging its obligations under this Order.
- 3.2 The prices identified within this Order are in Pounds Sterling (unless otherwise stated on the Order) and are considered firm and non variable throughout the duration of the Order.
- 3.3 The prices are inclusive of any local or national taxes, tooling, compliance with CE marking requirements, packaging to avoid damage or deterioration during shipment, and shipping/unloading costs to the Buyer's premises. UK VAT is excluded. Any tooling purchased by the Supplier and funded by this Order shall become the property of the Buyer and shall be delivered to the Buyer upon completion of the Order (unless otherwise agreed).
- 3.4 In the event this Order is in fulfilment of a requirement for the UK Ministry of Defence:
  - 3.4.1 and the Goods are being imported into the UK, then the Supplier shall immediately inform the Buyer to determine whether import duty can be waived. If this duty can be waived but has been included within the prices for the Goods, then the Buyer shall be entitled to receive a reduction in the price equivalent to the value of the import duty.
  - 3.4.2 and the value of the Order is in excess of £25,000 (twenty five thousand pounds) and has not been determined by competition, then the following provisions from the UK Government's GC Stores manual will apply; SC43, SC48, SC51 or SC52.

**4 Payment**

- 4.1 The Supplier shall only be entitled to claim payment for the Goods once they have been accepted by the Buyer, unless otherwise identified on the front of the Order.
- 4.2 Upon acceptance of the Goods by the Buyer, the Supplier shall submit a commercially formatted invoice identifying the Goods for which payment is being claimed, marked "ATTN: Bought Ledger". UK VAT shall be separately identified along with the Supplier's EU VAT number on all invoices. The invoice must clearly identify the Order number, the Goods requiring payment and a copy of any acceptance certificate or Certificate of Conformity (the originals must accompany the Goods when delivered/completed).
- 4.3 The Buyer shall have 45 (forty five) calendar days (unless otherwise stated on the Order) in which to reimburse the Supplier for the invoice received in accordance with clause 4.1. Payment to the Supplier shall either be via a cheque or electronic bank transfer, whichever is the preferred method of the Buyer.
- 4.4 The Buyer shall duly notify the Supplier within a reasonable timeframe if the invoice submitted under clause 4.1 will be rejected and provide reasons for such rejection.

**5 Title & Risk**

- 5.1 Title to the Goods shall transfer to the Buyer upon evidence that an entitlement to pay exists, which is constituted as being acceptance of the Goods in accordance with Condition 7.

- 5.2 Risk in the Goods shall not transfer to the Buyer until the Goods have been delivered/completed and accepted by the Buyer unless contradicted by any INCOTERMS. Risk shall revert back to the Supplier if the Goods are rejected under Condition 7.
- 5.3 In the event that this Order is to fulfil a requirement of the UK Ministry of Defence, then the provisions of DEFCON 649 Vesting, shall apply and take precedence over any other provision stated in this Condition 5.

## **6 Quality & Warranty**

- 6.1 The Supplier confirms that the Goods specified in this Order conform in all respects to any identified specifications identified herein, and that any material supplied in respect of the Goods are new and of current manufacture (unless otherwise stated in the Order). Any Goods containing software shall contain all of the features and facilities identified in the Order and be defect free.
- 6.2 If within 12 (twelve) calendar months (or other time as mutually agreed upon) from the point of delivery or acceptance whichever is the later, the Goods are discovered to contain faults, design errors or have otherwise been constructed poorly so as to adversely affect the performance or usage of the Goods, then the Supplier shall at no cost to the Buyer rectify/repair or replace the faulty Goods. In such instances the Supplier shall be liable for all costs associated with the corrective action, transportation, and any dismantling and re-assembly costs. The balance of the warranty period shall apply to the corrected Goods.

## **7 Acceptance & Rejection**

- 7.1 Unless otherwise stated in the Order, the Supplier shall ensure that Goods (equipment and software only) are supplied with an original Certificate of Conformity and packing note, or that the completion of any service Goods are signified by the Buyer signing an appropriate acceptance certificate.
- 7.2 Unless already identified in the Order, the Supplier shall agree with the Buyer in advance of delivering/completing the Goods the method and process of the Buyer accepting the Goods.
- 7.3 In the event the Buyer rejects the Goods, then the Supplier at no additional cost to the Buyer shall either repair/replace or otherwise correct the Goods so that they conform with the requirements of the Order. The Supplier shall be liable for all return shipment costs in such instances of rejection. If the Supplier fails to collect any rejected Goods, then the Buyer shall be entitled to charge the Supplier any costs it incurs for the removing such rejected Goods.

## **8 Delivery**

- 8.1 Timely delivery of the Goods in accordance with the dates identified within this Order is deemed essential. The Supplier shall not deliver the Goods earlier than the specified dates unless otherwise agreed in writing with the Buyer.
- 8.2 The Parties agree that it will be impossible to accurately quantify any financial loss or damage the Buyer will incur if the Supplier fails to deliver the Goods in accordance with the dates as specified in the Order, and therefore the Supplier agrees to reimburse the Buyer liquidated damages for such delivery delays.
- 8.3 Such liquidated damages shall be calculated at 1 % (one percent) of the Order value per week or part week of the Goods in delay, up to a maximum of 10% (ten percent) of the Order value. Such amounts owed to the Buyer shall be deducted by the Buyer from the associated Supplier's invoice(s). The payment of liquidated damages shall be without prejudice to any other rights the Buyer has under this Order or common law.

## **9 Importation of Goods**

- 9.1 Prior to accepting this Order the Supplier shall inform the Buyer as to whether there are any end use restrictions relating to the Goods including any intellectual property rights issues. Otherwise, the Supplier hereby confirms that they have obtained all necessary Gov't. and other approvals to export the manufactured materials/equipment and/or software into the UK, which then may or may not be incorporated into other equipment's by the Buyer and re-sold to 3<sup>rd</sup> parties including those outside the UK.

## **10 Counterfeit**

- 10.1 The Supplier shall ensure that Counterfeit Supplies are not delivered to the Purchaser. In fulfilling its obligations under the Order, the Supplier shall only purchase products to be delivered or incorporated as Supplies to the Purchaser directly from the OCM or OEM. Supplies shall not be acquired from an Independent Distributor without written consent from the Purchaser.
- 10.2 The Supplier shall as soon as practicable notify the Purchaser if the Supplier becomes aware or suspects that it has acquired Counterfeit Supplies. When requested by the Purchaser, the Supplier shall provide documentation that authenticates traceability of the affected Supplies to the OCM or OEM.
- 10.3 In the event that Supplies delivered under the Order constitute or include Counterfeit Supplies, the Supplier shall, at its expense promptly replace such Counterfeit Supplies with genuine Supplies conforming to the requirements of the Order. Notwithstanding any other provision in the Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Supplies, including without limitation the Purchaser's costs of removing Counterfeit Supplies, of reinserting replacement Supplies and of any testing necessitated by the reinstallation of Supplies after Counterfeit Supplies have been exchanged.

## **11 IPR & Copyright**

- 11.1 Where the Goods involve any design or development activity which is funded as part of the Order, then unless the Supplier provides a list to the Buyer within 7 (seven) calendar days of receiving this Order identifying any pre-existing rights in that design and development activity, all intellectual property rights to said design and development activity shall vest with the Buyer. The assignment of the same shall be automatic upon completion of the Order.
- 11.2 The Buyer shall have copyright in any documentation generated under this Order irrespective of whether such documentation forms part of the Goods or not.
- 11.3 The Supplier shall indemnify the Buyer against any and all costs associated with any claim for infringement of intellectual property rights by a 3<sup>rd</sup> party as a result of awarding this Order, accepting the Goods, or using the Goods in the prescribed manner. The Supplier shall immediately take responsibility in defending and resolving any such infringement claim so as to allow the Buyer continued use of the Goods.
- 11.4 Unless the Supplier can resolve any infringement claim without affecting the delivery dates as stated in the Order, then the Buyer reserves the right to terminate the Order in accordance with Condition 11.

## **12 Supplier Default**

- 12.1 In the event the Supplier fails to discharge any of its obligations identified in this Order, such a failure shall be deemed a material breach of the Order and subject to the following provisions.
- 12.2 The Buyer shall duly notify the Supplier in writing of the material breach, and the Supplier shall have 30 (thirty) calendar days in which to correct the breach to the satisfaction of the Buyer. Failure by the Supplier to satisfactorily correct the breach shall entitle the Buyer to terminate the Order immediately for default.
- 12.3 In the event of Supplier default, the Buyer shall only be obliged to reimburse the Supplier for monies relating to Goods which have been accepted by the Buyer in accordance with Condition 7.
- 12.4 In the event the Buyer's re-procurement costs for the defaulted Goods exceed the price that would have been payable to the Supplier had it not defaulted, then the Buyer shall be entitled to reclaim such costs from the Supplier by the most expedient means possible.

## **13 Termination**

- 13.1 The Buyer retains the right to terminate the Order or part thereof for its convenience at anytime by providing the Supplier with 30 (thirty) calendar days written notice.
- 13.2 Upon receiving such termination notice, the Supplier shall cease all work immediately as detailed in the notice. The Buyer's liability in such instances shall be limited to actual costs incurred by the Supplier up to the end of the notice period, plus a reasonable level of profit which will be mutually agreed.
- 13.3 The Supplier shall forward its cost claim in respect of clause 12.2 with reasonable supporting rationale as requested by the Buyer and certified by an independent Chartered Accountant as true and correct. Submission of the claim and rationale shall in no way prejudice the Buyer's right to negotiate a settlement figure with the Supplier. In no event shall the termination costs exceed the price that would have been payable to the Supplier for the terminated Goods.

## **14 Liability and Indemnities**

- 14.1 Except in the case of death or personal injury caused by the Supplier's negligence, the Supplier's liability under or in connection with this Order whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall not exceed the sum of £2,000,000 (two million pounds).
- 14.2 Neither Party shall be entitled to claim from the other any indirect costs or consequential losses including without limitation any economic loss, loss of profit, production, business, or revenue etc., howsoever caused.

## **15 Amendments**

- 15.1 The Buyer has the right to vary this Order from time to time. However, no amendments to this Order should be accepted by the Supplier or be binding on the Buyer unless they are authorised in written by the Buyer, and issued in the form of an Order amendment from the Buyer's Purchasing Department. Any information issued or provided to the Supplier by the Buyer's Technical Department above the Specification/Scope of Work should be considered as guidance information only and not as instructions to vary or alter the Order.

## **16 Buyer Information and Equipment**

- 16.1 Any information, data, software, equipment, samples, models etc. provided by the Buyer to the Supplier to aid fulfilment of this Order shall remain the property of the Buyer. The Supplier shall not be entitled to copy, modified, re-engineer or otherwise re-distribute such information etc. except for backup purposes. The Buyer provides no warranty as to the accuracy of the information or fitness for purpose of the equipment etc. supplied under Condition.

## **17 Obsolescence**

17.1 For a period of 24 (twenty four) months from completion of this Order, the Supplier is obliged to notify the Buyer within a reasonable notice period but not less than 30 (thirty) calendar days, if the Goods or any part thereof will become or is likely to become obsolete. In such instances of obsolescence, the Supplier shall identify to the Buyer what options are available to overcome such obsolescence. Management of this provision shall be at no cost to the Buyer.

## **18 Confidentiality**

18.1 All information relating to this Order shall be considered as confidential between the Parties. Except for the Buyer being able pass such information across to its customer; it shall not be disclosed to any 3<sup>rd</sup> party without the prior written consent of the other Party. Information relating to this Order shall only be released to the personnel of each Party on a need to know basis.

## **19 Assignment and Agency or Partnership**

19.1 Except for its normal course of business, the Supplier shall neither assign nor transfer its rights or obligations under this Order to a 3<sup>rd</sup> party without the prior written consent of the Buyer.

19.2 Nothing contained within this Order shall constitute or imply any partnership, joint venture, agency or other relationship between the Parties other than the contractual relationship expressly provided for in this Order.

## **20 Rights of 3<sup>rd</sup> Parties**

20.1 The provisions of the Contracts (Rights of 3<sup>rd</sup> Parties) Act 1999 are specifically excluded from this Order. This Order is mutually exclusive between the Parties unless otherwise identified in any Special Conditions.

## **21 Law, Jurisdiction, Disputes and Waiver**

21.1 This Order has been construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts. These conditions do not derogate and are in addition to the Buyer's rights under statute and common law.

21.2 Any dispute arising under this Order shall in the first instance be resolved using a method of internal management escalation. If after 30 (thirty) calendar days (unless otherwise mutually agreed) the dispute remains unresolved, then the Parties agree to refer the matter for resolution in accordance with the Arbitration Act 1996 or for non-UK Suppliers via the International Chamber of Commerce. The decision arising from such arbitration shall be final and binding. The Parties agree to equally share the costs of such arbitration irrespective of the decision.

21.3 Any failure by the Buyer to invoke at any time the provisions of this Order, shall not be considered as a waiver or relinquishment of the Buyer's right to invoke those provisions in the future, and the Supplier shall continue to discharge its obligations under those provisions.

## **22 Preventing Modern Slavery**

22.1 The Supplier confirms that it is aware of its obligations under the Modern Slavery Act legislation and has taken reasonable steps to ensure that there is no Forced Labour (as defined by the International Labour Organisation) or human trafficking used in the Supplier's business or that of its supply chain. The Supplier also confirms it has put in place all necessary processes, procedures, investigations, and compliance validation systems to ensure that it remains satisfied that no Forced Labour or human trafficking will be used in the Supplier's business or that of its supply chain.

## **23 Special Conditions**

23.1 In the event the Buyer is required or deems it necessary to flow down any Special Conditions, then these will be identified on the front of the Order.

## **24 Order of Precedence**

24.1 In the event of any conflict between these Standard Conditions of Purchase and any other document referenced within this Order, then the order of precedence is as follows:

- a) Any Special Conditions
- b) These Standard Conditions of Purchase
- c) The Specification/Scope of Work
- d) Any other document