

# WESSEX ADVANCED SWITCHING PRODUCTS LIMITED

## CONDITIONS OF SALE FOR GOODS AND SERVICES

### 1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:-

“the Buyer” means the person(s), firm or company who purchases the Goods from WASP;

“Buyer Background IPR” means any intellectual property rights in any specifications, designs or other documents provided by the Buyer for use in the manufacture of the Goods or the provision of the Services;

“Deliverables” means any documents, drawings, designs or other items to be delivered by WASP as part of the Services;

“Delivery Point” means the place where delivery of the Goods is to take place under clause 5 below;

“Foreground IPR” means any intellectual property rights in the Deliverables created by WASP in the course of providing the Services and, where the Goods are manufactured in accordance with Specifications provided by WASP, any intellectual property rights in the Products deriving from such specifications;

“Goods” means any goods agreed in the Contract to be supplied to the Buyer by WASP (including any part or parts of them);

“Special Conditions” means all specific conditions relating to the Goods or Services (including but not limited to descriptions and/or specifications, prices, place and time of delivery) contained in or referred to in WASP’s written order acknowledgment form. If there is a conflict between these Conditions and the Special Conditions then the Special Conditions shall prevail.

“WASP” means Wessex Advanced Switching Products Limited (WASP Number 03846820) whose registered office is C/O Rockwell Collins, 730 Wharfedale Road, Winnersh, Wokingham, England, RG41 5TP

“WASP Background IPR” means all intellectual property rights in the Goods, the Services or the Deliverables other than the Foreground IPR and the Buyer Background IPR;

“Contract” means any contract between WASP and the Buyer for the sale and purchase of the Goods or Services, incorporating these Conditions in accordance with clause 2.3 below;

1.2 Any reference in these Conditions to:-

1.2.1 a statute or provision of a statute shall, unless the context otherwise requires, be construed as a reference to that statute or provisions as amended or re-enacted or extended at the relevant time;

1.2.2 a clause shall (unless the contrary is expressly stipulated) be to a clause of these Conditions;

1.2.3 the masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2 ORDERS**

2.1 Subject to any variation under clause 2.4, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply).

2.2 Any quotation is issued by WASP on the basis that no contract will come into existence until WASP despatches an acceptance of the Buyer's order in the form of an order acknowledgement (an "Order Acknowledgement") to the Buyer.

2.3 WASP will be under no liability for any order received until the Order Acknowledgement is delivered to the Buyer or (if earlier) WASP delivers the Goods to the Buyer at which time a contract will be formed between WASP and the Buyer.

2.4 These Conditions apply to all of WASP's sales and a Contract may only be cancelled or varied with WASP's written consent and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director of WASP.

2.5 Any advice or recommendation given by WASP or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods or Services which is not confirmed by WASP in writing is followed or acted upon entirely at the Buyer's own risk, and accordingly WASP shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

## **3 PRICES**

3.1 Unless otherwise stated in the Special Conditions:

3.1.1 prices for the Goods and Services set out in the Special Conditions do not include value added tax;

3.1.2 prices for Goods include packaging, transport and the costs of insurance in transit where the Delivery Point is in the UK;

3.1.3 prices for Goods where the Delivery Point is outside the UK are ex Works (Incoterms 2010):-

3.1.4 prices do not include any special packing or alterations to the order required by the Buyer and agreed to by WASP;

3.1.5 prices for Services do not include any travel or accommodation costs incurred in performing the Services.

all of which amounts the Buyer will pay in addition when it is due to pay for the Goods or Services.

- 3.2 WASP shall have the right at any time to revise prices to take account of an increase in costs including (without limitation) costs of labour, materials, carriage or overheads.

#### **4 PAYMENT**

- 4.1 Payment shall be made in pounds sterling (unless WASP specifies otherwise in writing) within thirty (30) days of the date of WASP's invoice. The Buyer shall make no deduction of any type from such payments. Payments may be required in advance of delivery.
- 4.2 WASP reserves the right to invoice the Buyer for Goods delivered in instalments after each instalment has been delivered, and the provisions of these Conditions shall apply in full to such invoices as if such instalment was a separate contract.
- 4.3 The credit terms set out in Clause 4.1 may be withdrawn, whether or not there has been any default on the part of the Buyer.
- 4.4 Time for payment shall be of the essence and failure by the Buyer to pay in accordance with the provisions of this clause shall entitle WASP, without prejudice to its rights to damages, to suspend any outstanding deliveries or to cancel the Contract.
- 4.5 In addition to WASP's rights under clause 4.4, the Buyer shall be liable to pay interest (compounded monthly) on any amounts outstanding (both before and after judgment) at the rate of 4 per cent per annum above the Bank of Scotland base rate for the time being in force, accruing on a daily basis until payment is made.
- 4.6 All payments payable to WASP under the Contract shall become due immediately upon termination of the Contract despite any other provision.

#### **5 DELIVERY AND PASSING OF RISK**

- 5.1 Unless otherwise agreed in writing by WASP delivery of the Goods shall take place at WASP's place of business.
- 5.2 Any dates specified by WASP for delivery of the Goods or completion of performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
- 5.3 Subject to the other provisions of these Conditions, WASP will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or completion of performance of the Services (even if caused by WASP's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.4 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or WASP is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:-
- 5.4.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by WASP's negligence);
- 5.4.2 the Goods will be deemed to have been delivered; and

- 5.4.3 WASP may store the Goods until delivery in which case the Buyer will be liable for all related costs and expenses (including without limitation, storage and insurance).
- 5.5 The Buyer will provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 5.6 If WASP delivers to the Buyer a quantity of Goods of up to 5 per cent more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 5.7 WASP shall not be liable for:
  - 5.7.1 any non-delivery of a whole consignment of Goods (even if caused by WASP's negligence) unless written notice is given to WASP within 30 days of the date when such consignment would in the ordinary course of events have been received; and
  - 5.7.2 any shortfall in delivery of more than 5 per cent of a consignment of Goods (even if caused by WASP's negligence) unless written notice is given to WASP within 10 days of the date when such arrangement would in the ordinary course of events have been received.
- 5.8 Any liability of WASP for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **6 RISK AND TITLE**

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until WASP has received in full (in cash or cleared funds) all sums due to it in respect of:-
  - 6.2.1 the Goods; and
  - 6.2.2 all other sums which are or which become due to WASP from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:-
  - 6.3.1 hold the Goods on a fiduciary basis as WASP's bailee;
  - 6.3.2 store the Goods (at no cost to WASP) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as WASP's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in satisfactory condition insured on WASP's behalf for their full price against all risks to the reasonable satisfaction of WASP. On request the Buyer shall produce the policy of insurance to WASP; and

- 6.3.5 hold the proceeds of the insurance referred to in clause 6.3.4 on trust for WASP and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
  - 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to WASP on behalf of WASP and the Buyer shall account to WASP accordingly; and
  - 6.4.2 any such sale shall be a sale of WASP's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:-
  - 6.5.1 being an individual the Buyer:-
    - 6.5.1.1 has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors;
  - 6.5.2 being a body corporate:-
    - 6.5.2.1 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, the whole or any part of the assets of the Buyer and such attachment or process is not discharged within seven days;
    - 6.5.2.2 the Buyer suspends or threatens to suspend payment of its debts or is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or admits inability to pay its debts as they fall due or commences negotiations with all or any class of its creditors with a view to the general readjustment or rescheduling of all or any class of its indebtedness or proposes or enters into any assignment, composition or other arrangement for the benefit of its creditors generally or any class of creditors;
    - 6.5.2.3 a meeting of the Buyer is convened for the purpose of considering any resolution for (or to petition for) its winding up or its administration or any such resolution is passed, or any person presents a petition for the winding-up or for the administration of the Buyer or any order for the winding-up or administration of the Buyer is made or a Notice of Intention to Appoint an Administrator is filed at court or any other step (including petition, proposal or convening a meeting) is taken

with a view to rehabilitation, administration, liquidation, winding-up or dissolution of the Buyer or any other insolvency or moratorium proceedings involving the Buyer;

6.5.2.4 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or

6.5.2.5 the Buyer ceases to trade; or

6.5.2.6 the Buyer purports to encumber or in any way charge any of the Goods or commits a material breach of the Contract or any other contract between WASP and the Buyer.

6.6 WASP shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from WASP.

6.7 The Buyer grants WASP, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Ownership of the Foreground IPR in any Deliverables shall not pass to the Buyer in accordance with clause 11 until the Buyer has paid for the applicable Services in full.

## **7 FORCE MAJEURE**

7.1 WASP shall be under no liability for any delay or failure to perform in the event that the manufacture, supply or delivery of the Goods is prevented or delayed by any act or circumstances beyond WASP's reasonable control including but not limited to Act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for their performance of the Contract.

7.2 WASP shall notify the Buyer of any circumstance arising under clause 7.1 and if such circumstance prevails for more than 3 months then either party shall have the option by giving notice in writing to the other to bring the Contract to an end.

## **8 SPECIFICATIONS**

8.1 Published specifications, drawings, descriptions, photographs, measurements or capacities are approximate only and shall not form part of the Contract unless expressly referred to in the Contract as part of the Special Conditions. WASP reserves the right to make any changes in any specification referred to in the Contract which are required to conform with any applicable statutory or regulatory requirements or, where the Goods are to be supplied to WASP's specification, which do not materially affect their quality or performance. Any such specifications, drawings, descriptions, photographs or measurements are confidential to WASP and must not be disclosed to any third party.

8.2 If the Goods are to be manufactured or any process is to be applied to the Goods by WASP in accordance with a specification submitted by the Buyer, the Buyer shall indemnify WASP against all loss, damages, costs and expenses awarded against or incurred by WASP in connection with or paid or agreed to be paid by WASP in settlement of any claim of infringement of any patent, copyright, registered design,

design right, trade mark or other industrial or intellectual property rights of any other person which results from WASP's use of the Buyer's specification.

## **9 WARRANTY**

- 9.1 WASP warrants that (subject to the other provisions of these Conditions) Goods which are manufactured by WASP shall for a period of 12 months from the date of delivery:-
- 9.1.1 if manufactured in accordance with any agreed specifications provided by the Buyer or WASP, comply with and function in accordance with such Specifications; and
- 9.1.2 be free from material defects in materials and workmanship; providing written notification of any defect is given promptly to WASP after its discovery and in any event not later than the end of such 12 month period. Time shall be of the essence in respect of notification of all claims.
- 9.2 In respect of Goods not manufactured by WASP, WASP shall endeavour to assign for the benefit of the Buyer such rights (including guarantee or warranty rights) as WASP has against such manufacturer but shall not be liable for such Goods beyond this clause 9.2.
- 9.3 WASP reserves the right to require that all faulty Goods be returned to WASP. In that event WASP shall refund the cost of carriage by normal means on returned Goods and the repaired or replacement Goods will be delivered free of charge by WASP to the location of the faulty Goods. Where Goods are repaired or replaced under this clause they will be considered as having been delivered at the same time as the original Goods for the purposes of clause 9.1.
- 9.4 WASP warrants that the Services shall be provided:
- 9.4.1 with reasonable skill and care;
- 9.4.2 in accordance with any agreed specifications; and
- 9.4.3 subject to clause 9.4.2 in accordance with good industry practice.
- 9.5 WASP shall not be liable for a breach of any of the warranties in this clause 9 if:-
- 9.5.1 the Buyer makes any further use of defective Goods after giving notice of such defects; or
- 9.5.2 the defect arises because the Buyer failed to follow WASP's oral or written instructions as to the storage, installation, commissioning, use of the Goods or Deliverables, or, if there are none, good trade practices; or
- 9.5.3 the Buyer alters or repairs the Goods or Deliverables without the written consent of WASP.
- 9.6 WASP's sole liability for breach of this clause 9 shall be, in the case of defective Goods, at its option, to repair or replace the Goods or any part thereof or refund the price of such Goods at the pro rata contract rate and in the case of defective Services to re-perform the defective Services. WASP's liability under this clause 9 shall be in lieu of any warranty or condition express or implied, whether by statute or otherwise, including, but without limitation, any implied warranties as to satisfactory quality or fitness for purpose.

## **10 LIMITATION OF LIABILITY**

- 10.1 Subject to clause 9, the following provisions set out the entire financial liability of WASP (including any liability of the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions and any representation, statement or tortious act or omission, including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for condition implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of WASP for death or personal injury caused by WASP's negligence or fraudulent representation.

### **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 10.4 AND 10.5.**

- 10.4 Subject to Conditions 10.2 and 10.3:-
  - 10.4.1 WASP's total liability in contract, tort (including negligence or breach of statutory duty), mis representation or otherwise, arising out of or in connection with the performance or contemplated performance of this Contract shall be limited to the price payable by the Buyer in respect of this Contract; and
  - 10.4.2 WASP shall not be liable to the Buyer for:
    - 10.4.2.1 any indirect or consequential loss or damage; or
    - 10.4.2.2 for loss of profit, loss of business, depletion of goodwill.
- 10.5 If due to the Buyer's particular circumstances the limitation in clause 10.4 is unacceptable to the Buyer then the Buyer shall notify such circumstances to WASP who may then accept an extended liability to a level agreed in writing prior to the Contract being entered into, upon payment of the cost of a single insurance premium (if such an insurance policy is available).

## **11 INTELLECTUAL PROPERTY**

- 11.1 Nothing in the Contract shall confer any right or interest of the Buyer in WASP Background IPR.
- 11.2 The Buyer grants WASP a non-exclusive, royalty-free licence to use the Buyer Background IPR for the purpose of manufacturing the Goods or performing the Services in accordance with the Contract.
- 11.3 Subject to clause 6.8, ownership of the Foreground IPR shall vest automatically in the Buyer.
- 11.4 The Buyer warrants that any design or instructions furnished or given by him shall not and that WASP's use of the Buyer Background IPR in accordance with this agreement shall not cause WASP to infringe the intellectual property rights of any third party.
- 11.5 The Buyer shall fully indemnify WASP against any loss liability or cost (including legal costs) arising from, or incurred by reason of, any infringement or alleged infringement of



the intellectual property rights of any third party by reason of the manufacture or sale of the Goods to the Buyer by WASP or the performance of the Services by WASP.

**12 ACCESS**

Where WASP is to carry out work or operations upon the Buyer's premises or other premises at the direction of the Buyer, then the Buyer must ensure that:-

- 12.1 such premises and any machinery involved and all other arrangements affecting the work or operations are safe and ready by the time WASP is scheduled to enter upon such premises to commence such work or operations; and
- 12.2 there will be no delay to the works or operations caused directly or indirectly by such premises or such machinery or arrangements or the state and condition thereof, for which WASP is not responsible.

**13 TERMINATION**

13.1 WASP may terminate the Contract without liability to the Seller by giving notice to the Buyer at any time if:

- 13.1.1 the Buyer commits a material breach of any of the terms and conditions of the Contract; or
- 13.1.2 if any of the events referred to in clause 6.5 occurs in relation to the Buyer.

**14 CONFIDENTIALITY**

Any information which WASP discloses relating to the Goods or the Services, which is not in the public domain at the time of disclosure, shall be confidential and shall not be disclosed to any third party or used by the Buyer to enable the Buyer to manufacture the Goods or use the same as a springboard to develop the Buyer's own products.

**15 NOTICES**

- 15.1 All notices required to be served by one party upon the other shall be in writing and may be served on the other to an e-mail address or facsimile number notified for the purpose or at its address set out in the Special Conditions.
- 15.2 All such notices may be served by first class pre-paid letter, facsimile transfer or e-mail and (in the absence of proof of earlier receipt) shall be deemed to be served:-
  - 15.2.1 in the case of an inland letter 24 hours after proven despatch or posting;
  - 15.2.2 in the case of any airmail letter 72 hours after proven despatch or posting;
  - and
  - 15.2.3 in the case of facsimile transfer or e-mail at 9 a.m. on the business day of the recipient party next following its despatch and receipt by the transmitting party of machine confirmation of successful transmission to the recipient party's receiver number.

**16 WAIVER AND SEVERANCE**

16.1 Any indulgence granted by WASP to the Buyer and any failure by WASP to insist upon strict performance of these Conditions shall not be deemed a waiver of any of WASP's rights or remedies nor be deemed a waiver of any subsequent default by the Buyer.

16.2 The invalidity, illegality or unreasonableness in whole or in part of any of these Conditions shall not affect the validity of the remainder of such clause or the se Conditions.

**17 ASSIGNMENT**

No Contract is assignable by the Buyer without the written consent of WASP and each Contract is between WASP and the Buyer as principals but WASP may without consent assign or sub-contract all or any of its rights and obligations under a Contract.

**18 ENTIRE AGREEMENT**

18.1 The Contract contains the entire agreement between the parties relating to the subject matter of the Order Acknowledgement and shall supersede all other prior agreements, understandings, negotiations and discussions whether oral or written between the parties.

18.2 The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

**19 GOVERNING LAW AND JURISDICTION**

The interpretation and application of every Contract and any contractual or non-contractual dispute or claim arising out of it or in connection with it shall be in accordance with English Law and both parties agree to submit to the exclusive jurisdiction of the English Courts.

**20 THIRD PARTIES**

The parties to this Contract do not intend that any provisions of this Contract will be enforceable by virtue of the Contract's (Rights of Third Parties) Act 1999 by any person that is not a party to it.