

Terms and Conditions of Trading

Please find following a copy of our standard Terms and Conditions of Trading.

It is, however, usual practise for us to agree to either the Council client's terms and conditions of trading or the terms and conditions of the Framework call-off contract.

Terms of Purchase

1. Application

The Buyer hereby orders and the supplier, by accepting the purchase order, agrees that it will supply the Goods specified overleaf upon and subject to these conditions which shall govern the Contract to the exclusion of any other terms and conditions. Any reference overleaf to the supplier's quotation, specification, and price list or like document shall be solely for the purpose of describing the Goods to be supplied and no terms and conditions endorsed upon, delivered with or referred to in such apply to the Contract.

2. Interpretation

2.1 In these Conditions:-

"Business Day" means any day other than a Saturday, Sunday or bank holiday;

"the Buyer" means Bartec Municipal Technologies Ltd of Barnsley, South Yorkshire S75 1JN and all its subsidiary and associated companies ;

"these Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

"the Contract" means the contract for the sale and purchase of the Goods constituted by the Seller's acceptance of the Order in accordance with these Conditions;

"the Delivery" means the address stated on the Order for delivery of the Address" Goods; "the Goods" means the goods (including any instalment of the goods or any part of them) described in the Order;

"the Order" means the Buyer's purchase order to which these Conditions are annexed;

"the Price" means the price of the Goods;

"the Seller" means the person so described in the Order;

“Specification” includes any plans, drawings, data or other information relating to the Goods; and

“Writing” includes facsimile, transmission, electronic mail and comparable means of communication.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

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

3. Basis of Purchase

3.1 The Order constitutes an offer by the Buyer to purchase the Goods subject to these Conditions.

3.2 The Supplier shall accept the Order placed by the Buyer and a binding contract for the supply of the Goods subject to these conditions, shall exist by whichever is the earlier of: -

3.2.1 the Supplier’s acceptance of the Order, in writing or orally, subject to these conditions; or

3.2.2 Delivery of Goods

3.3 Any typographical clerical or other accidental error or omission in the Order placed by the Buyer or in any drawings specifications, instructions, tools or other material supplied by the Buyer, shall be subject to correction without any liability on the part of the Buyer.

3.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

4. Specification

4.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

4.2 Any Specification or other material or data supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright,

design rights or any other intellectual property rights in such Specification, material or data, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification..

4.3 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4.4 The Seller shall not unreasonably refuse to take any steps necessary to comply with any request by the Buyer to inspect or test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and to provide the Buyer with any facilities reasonably required by the Buyer for inspection or testing.

4.5 If as a result of inspection or testing the Buyer is not satisfied that the goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

4.6 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

5. Price

5.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:-

5.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoices); and

5.1.2 Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

5.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

6. Payment

6.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods, as the case may be, and each invoice shall quote the number of the Order.

6.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods within 45 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods in question by the Buyer, but time for payment shall not be of the essence of the contract.

6.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller

7. Delivery

7.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

7.2 Where it is agreed in writing that the date of delivery of the Goods is to be specified by the Seller after the placing of the Order, the Seller shall give the Buyer reasonable notice in writing of the specified date

7.3 The time of delivery of the Goods is of the essence of the Contract.

7.4 A packing note clearly quoting the number of the Order must accompany each delivery or consignment of the goods.

7.5 If the goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

7.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery.

7.7 The Seller shall supply the Buyer in good time with any instructions or other information to enable the Buyer to accept delivery of the Goods.

7.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

7.9 If the Goods are not delivered on the due date then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has agreed to pay any part of the price in advance of delivery) to claim from the Seller by way of liquidated damages for delay 10 per cent of the Price for every week's delay, up to a maximum of 100 per cent of the price.

7.10 The Buyer shall not be deemed to have accepted the Goods until it has had 2 days to inspect them following delivery or collection as the case may be. The Buyer shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

8. Quality

8.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavor to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

8.2 The Seller warrants that (subject to the other provisions of these conditions) upon delivery [, and for a period of 12 months from the date of delivery,] the Goods shall:

8.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

8.2.2 be reasonably fit for purpose; and

8.2.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgment of the Seller.

8.3 The Seller shall not be liable for a breach of any of the warranties in condition 8.2 unless:

8.3.1 the Buyer gives written notice of the defect to the Seller, and, if the defect is as a result of damage in transit to the carrier, within 2 days of the time when the Buyer discovers the defect; and

8.3.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place there.

8.4 The Company shall not be liable for a breach of any of the warranties in condition 8.2 if:

8.4.1 the Buyer makes any further use of such Goods after giving such notice; or

8.4.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.

8.5 Subject to condition 8.3 and condition 8.4, if any of the Goods do not conform with any of the warranties in condition 8.2 the Seller shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller.

9. Risk and Property

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

9.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods has been agreed to be made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

9.3 Any copyrights, design rights or other intellectual property rights created by the Seller in performing the Contract shall belong to the Buyer absolutely and shall be used for the purpose only of performing the Contract and no other purpose without the prior written consent of the Buyer. At the Buyer's request and expense the Seller shall sign such documents as the Buyer may require to perfect the Buyer's title to such intellectual property rights.

10. Assignment

10.1 The Buyer may assign the Contract or any part of it to any person, firm or company.

10.2 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.

10.3 [The Buyer is a member of the group of companies whose holding company is Bartec Municipal Technologies Holdings Ltd, and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.]

11. Warranty

11.1 The Seller warrants to the Buyer that the Goods:-

11.1.1 will, both at the time of delivery and for a reasonable period of time thereafter, be of the best available design, quality, material and workmanship and conform in all respects with the Order and Specification supplied or advised by the Buyer to the Seller;

11.1.2 will be free from defects in design, material and workmanship;

11.1.3 will correspond with any relevant Specification or sample; and

11.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

12. Indemnity

12.1 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:- 12.1.1 breach of any warranty given by the Seller in relation to the Goods;

12.1.2 any claim that the Goods infringe, or that their importation, use or resale, infringes, the patent, copyright trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

12.1.3 any act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering or installing the Goods. 12.1.4 all claims by the customers of the Buyer (and their sub-buyers) arising out of any breach whatever by the Seller of this contract for sale.

13. Remedies

13.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

13.1.1 to rescind the Order;

13.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

13.1.3 at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

13.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

13.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

13.1.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

14. Termination

14.1 The Buyer shall be entitled to cancel the Contract in respect of all or part only of the Goods by giving notice in writing to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods in respect of which the Buyer has exercised its right of cancellation, less the Buyer's reasonable estimate of the Seller's net saving of cost arising from cancellation.

14.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:-

14.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company)

becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction; or

14.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or

14.2.3 the Seller ceases or threatens to cease, to carry on business; or

14.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

15. Force Majeure

15.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 15.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

15.2 Sub-clause 15.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

15.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

15.4 If and when the period of such incapacity exceeds 6 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

16. Communications

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

16.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or

16.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Seller set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Buyer.

16.2 Communications shall be deemed to have been received:

16.2.1 if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or

16.2.2 if delivered by hand, on the day of delivery; or

16.2.3 if sent by fax or electronic mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day. 16.3 Communications addressed to the Buyer shall be marked for the attention of Chris Sartin.

16.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

17. Waiver

No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

18. Severance

If any provisions of these Conditions are held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

19. Third Party Rights

A person who is not a party to the Contract shall have no rights under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. 20. Governing Law and Jurisdiction The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts

Terms of Sale

1. General

1.1 Contracts and orders are accepted by the Company only on the basis of the following terms and conditions. The acceptance by the Company of any order from the Client shall be deemed to incorporate these Terms of Trading to the exclusion of all other terms and conditions including any terms and conditions which the Client may purport to apply under any purchase order or similar document or variation contained in any order form or other document.

1.2 Any representation made by or on behalf of the Company shall not have any force or effect whatsoever unless expressly stated by the Company in writing.

1.3 No Contract shall exist between the Company and the Client until the Client has confirmed in writing acceptance of a proposal or quotation and has stated an order number.

1.4 Any order for the Deliverables shall be deemed to be an offer by the Client to purchase the Deliverables subject to these terms of sale and acceptance of delivery of the Deliverables shall be deemed conclusive evidence of the Client's acceptance of these terms.

1.5 No waiver by the Company of any breach of the Contract by the Client shall constitute a waiver of any subsequent breach of the same or any other provision.

1.6 Any clause or part of these terms of sale which is or may be void or unenforceable shall be treated as severable from the remainder and shall not affect any other provision to these terms.

2. Definitions and Interpretation

2.1 The 'Company' means Bartec Municipal Technologies Ltd and any associated or subsidiary company.

2.2 The 'Client' means the person or company who accepts a quotation of the Company for the sale of Deliverables, or whose order for the supply of Deliverables is accepted by the Company. The Client contracts with the Company as principal whether or not the Client in turn contracts as agent on behalf of its own client or customer.

2.3 'Deliverables' means any form of goods or services (including without limitation hardware, software, systems, installations, commissioning, support and training) which the Company is to supply in accordance with these Terms of Trading.

2.4 'Contract' means the contract between the Company and the Client for the sale and purchase of the Deliverables.

2.5 The headings to the clauses in this document are for convenience only and shall not affect their interpretation.

3. Validity

Quotations and proposals are valid for a period of 30 days from the date thereof, and are subject to the Company's written acceptance of a Contract. Until a Contract has been accepted the Company reserves the right to withdraw or modify any quotation or proposal either verbally or in writing and no liability whatsoever shall be incurred by such withdrawal or modification.

4. Variations

4.1 No variations in the Deliverables shall be made except by agreement in writing between the Company and the Client, but the Company will use all reasonable endeavours to negotiate with the Client any such variations as the Client may request.

4.2 The Company reserves the right to amend any design or to incorporate any modifications or improvements in the Deliverables as it may deem necessary.

4.3 In the event of variation or suspension of work by the Company on the Contract as a result of the Client's instructions or lack of instructions, the contract price shall be subject to variation accordingly.

5. Prices

All prices are exclusive of:

- (a) VAT, which shall be added to invoice at the rate applicable at point of dispatch.
- (b) Charges for packing, carriage, shipping and insurance, which charges shall be for the account of the Buyer.

6. Performance and Liability

6.1 The Company shall use all reasonable endeavours to adhere to the delivery schedule set out in the Contract. Such schedule is not however guaranteed nor deemed to be of the essence of the Contract. Except to the extent of any liquidated and ascertained damages agreed in writing between the parties, the Company shall not be liable for any delay in delivery, and the Company shall in no event be liable for any delay which is the result of any circumstance beyond its reasonable control. Where no date has been specified by the Client for the delivery of any Deliverables under the Contract, the Client shall give the Company all necessary instructions and authorities so that delivery may take place within 14 days after the Company has notified the Client that the Deliverables are ready for delivery.

6.2 The Company shall not in any circumstances be under liability for any loss of use, loss of profit or loss any contract or for any indirect or consequential loss or damage howsoever caused. Except in respect of death or personal injury resulting from the Company's negligence the Company's liability in respect of all causes of action arising in contract, tort or otherwise shall not exceed the price of the Deliverables.

6.3 It shall be the sole responsibility of the Client to ensure that the Deliverables comply with all the requirements whether statutory or otherwise of the location in which they are to be delivered or used. For the avoidance of doubt the Company gives no warranty in this respect.

7. Payments

7.1 Unless otherwise set out in the Contract, payment is due in full value within 30 days of the date of the invoice, and shall be made by cheque or by bank transfer to the account of the Company at a bank nominated in writing by the Company. All costs incurred in making the payment (including without limitation currency conversion charges and money transfer charges) are to be paid by the Client.

7.2 If payment of the invoice value or any part thereof is not made by the due date, the Company shall be entitled to charge interest on the outstanding amount at the rate of 2% per calendar month from the date payment became due until the Company receives payment in full.

8. Cancellation and Insolvency

8.1 The Company shall have the right to suspend or terminate the Contract and to cease deliveries thereunder, if the Client

(a) Commits any breach of the Contract which is incapable of remedy, or

(b) Fails to remedy a breach of the Contract, being capable of remedy, within 14 days of notice of the breach having been served, or

(c) Commits an act of bankruptcy, has a petition for winding up presented which is not discharged within 14 days (other than a members' voluntary winding up for the purpose of amalgamation or reconstruction), enters into any arrangement or composition with its creditors, or ceases or threatens to cease to carry on business.

(d) Or if the Company reasonably considers that any of the events above mentioned is about to occur in relation to the Client and notifies the Client accordingly.

(e) In the event of such suspension or termination of the Contract, payment in respect of any deliveries made shall immediately be due, notwithstanding anything to the contrary contained in the Contract.

(f) Cancellation of the Contract by the Client shall not be effective without the prior written consent of the Company. Upon any cancellation the Client shall pay to the Company such sum as is reasonable in respect of work done and materials ordered or supplied, and loss of profit.

9. Damage in Transit

If any shipment of Deliverables to the Client under a Contract is received damaged or deficient, it shall be signed for accordingly by the Client, who shall give notice to the delivering carrier and to the Company in writing within three days of receipt of the goods. No claim shall be entertained by the Company nor any responsibility whatsoever accepted for loss or damage unless the Client has strictly complied with these requirements.

10. Passing of Property

10.1 Title to the Deliverables shall remain with the Company until full payment for them and other payments due or overdue have been received by the Company.

10.2 If payment is not made for any Deliverables by the due date, the Company shall have the right at any time with or without prior notice to take repossession of the whole or any part of the Deliverables (and for the purpose to enter any premises occupied by the Client) without prejudice to any other remedies.

10.3 Until the Company is paid in full for the Deliverables the relationship of the Client to the Company shall be fiduciary in respect of the deliverables and if the same are sold by the client the Company shall have the right to trace the proceeds thereof according to the principles in re Hallett's Estate (1880 13 CLD 696).

11. Intellectual Property

11.1 The Company shall retain exclusive ownership of and reserve all copyright in all documents supplied or produced to the Client in connection with any quotation, proposal or Contract and it shall be a condition of such supply or production that the contents (in whole or in part) of such documents shall not be communicated directly or indirectly to any third party without the Company's prior written consent.

11.2 The Client shall not reproduce any part of the Deliverables for sale use.

11.3 The rights to all design and techniques embodied within the Deliverables shall remain permanently with the Company. Any invention, discovery or improvement, whether or not patentable, made by the Company, its servants or agents, in connection with the Contract shall belong wholly and exclusively to the Company.

12. Confidentiality

Both during and after termination of the Contract the Client shall each treat as confidential all ideas and information learned by the Client about the business of the Company in connection with discussion negotiation or execution of the Contract and shall not use the same for any purpose. The Client shall not use the Company's name for advertising or promotional purposes without obtaining the Company's prior written approval.

13. Warranty

13.1 The Company warrants that the Deliverables shall correspond with the Company's written specification therefor and that at the time of delivery and for a period of 12 months thereafter and shall be free from defects in design (other than design furnished or approved by or on behalf of the Client) materials and workmanship in manufacture. If any part of the Deliverables shall fail to comply with the warranty hereby given the Company shall without charge supply a replacement for the non-compliant part or parts, and compliance by the Company with this undertaking shall be the

full extent of the Company's liability and the sole remedy of the Client in respect any defect in the Deliverables.

13.2 No liability shall exist in respect of any defect arising out of normal wear and tear, or where the Deliverables have been used or stored or maintained by the Client with insufficient care or improperly, or not in accordance with the Company's instructions (whether verbal or written), or arising out of unauthorised alteration or servicing of the Deliverables, or arising from errors in any drawing design or specification supplied by the Client, and except where the Client is dealing as a consumer (as defined in UCTA/1977) all other representations, warranties, conditions or terms relating to fitness for purposes, merchantability or condition of the Deliverables and whether implied by statute or common law or otherwise are expressly excluded.

14. Restriction

The Client shall not, prior to completion of the work or within 12 months of the completion or termination of the Contract, enter into or offer to enter into an agreement or arrangement with any person who is or had been engaged on the work as an employee of the Company, whereunder such person would carry out any work on the Client's behalf similar to or arising out of work carried out under the Contract.

15. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the Laws of England and both parties agree to submit any dispute arising out of or in connection with the Contract to the exclusive jurisdiction of the Courts of law in England.