

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this condition apply in these conditions:
- 1.1.1. **Company:** The Cosworth group company identified in the Order or if not otherwise identified Cosworth Limited (Company No.05177945) whose registered office is at The Octagon, 44 St James Mill Road, Northampton, NN5 5RA;
 - 1.1.2. **Contract:** the Order and the Supplier's acceptance of the Order;
 - 1.1.3. **Goods:** any goods agreed in the Contract to be bought by the Company from the Supplier [and / or any Out-put Materials] (including any part or parts of them);
 - 1.1.4. **Intellectual Property Rights:** patents, trade marks, service marks, rights (registered or unregistered) in any designs applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how, secrets, formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the World and all rights under the licences and consents in respect of any rights and forms of protection mentioned in this definition.
 - 1.1.5. **Order:** the Company's written instruction to supply the Goods and / or Services, incorporating these conditions.
 - 1.1.6. **Out-put Materials:** all documents, products and materials developed or created by the Supplier in the performance of the Services in any form, including (without limitation) computer programmes, data, reports and specifications (including drafts);
 - 1.1.7. **Services:** any services agreed in the Contract to be carried out by the Supplier for the Company (including any part or parts of them);
 - 1.1.8. **Supplier:** the person, firm or company who accepts the Company's Order.
 - 1.1.9. **Warranty Period:** a period of 12 months (or such other period as the Company may specify in the Order from time to time) commencing on the date of deemed delivery of the Goods, or in the case of Services, the date on which the Supplier completes the Services.
- 1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3. A reference to one gender includes a reference to the other gender.
- 1.4. Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- 2.1. Subject to any variation under condition 2.5, these conditions together with any additional conditions contained in writing in the Company's Order are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2. For the avoidance of doubt in the event of any ambiguity or conflict arising between these conditions and the terms of any Order, the terms of the Order shall prevail as between the Company and the Supplier.
- 2.3. Each Order for Goods and / or Services by the Company from the Supplier shall be deemed to be an offer by the Company to buy Goods and / or Services subject to these conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.4. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5. These conditions apply to all of the Company's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

3. QUALITY AND DEFECTS

- 3.1. The Goods and / or Services shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or designs supplied or advised by the Company to the Supplier.
- 3.2. Unless otherwise agreed any Goods and / or Services supplied by the Supplier shall comply with and maintain any and all applicable British or International laws regulations and standards in force from time to time including (without limitation) those laws regulations and / or standards relating to consumer protection, the environment and health and safety.
- 3.3. The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 and / or the Supply of Goods and Services Act 1982.
- 3.4. At any time prior to delivery of the Goods to and / or performance of the Services for the Company the Company (or the Company's customer) shall have the right to inspect and test the Goods or Services and the Supplier's facilities at all times.
- 3.5. If the results of such inspection or testing cause the Company to be of the opinion that the Goods and / or Services do not conform or are unlikely to conform with the Order or to any specifications and/or designs supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.6. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and / or Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.7. Without prejudice to the generality of the foregoing the Supplier shall obtain and maintain in force at all times all necessary quality standards, licences and approvals in relation to the Goods and / or Services including (without limitation) any standards, licences and approvals required by the Company and notified to the Supplier in writing prior to the Contract. In the event that the Supplier ceases to hold any one or more quality standard, licence and / or approval, the Supplier shall as soon as reasonably practicable notify the Company of this in writing.
- 3.8. If any of the Goods and / or Services fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 13.

4. WARRANTIES AND LIABILITY

- 4.1. The Supplier warrants that (subject to the other provisions of these conditions) for the Warranty Period, the Goods shall:
 - 4.1.1. be of good quality;
 - 4.1.2. be fit for purpose;
 - 4.1.3. be fit for any particular purpose for which the Goods and / or Services are being bought if the Company has made known that purpose to the Supplier;
 - 4.1.4. conform to all applicable standards, approvals, specifications and regulations relating to the Goods from time to time including (but not limited to) those specified by the Company in the Order or those required by law.
- 4.2. The Supplier warrants that:
 - 4.2.1. it is reasonable for the Company to rely on the skill and judgement of the Supplier; and
 - 4.2.2. it will exercise reasonable skill and care in performance of its obligations under the Contract and in particular (without limitation) in performance of the Services;
 - 4.2.3. it shall and its agents, employees and sub-contractors shall at all times observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Company's premises (details of such rules, regulations and requirements as varied from time to time are available on the Company's website at www.cosworth.com);
 - 4.2.4. in the design, manufacture, supply and installation of the Goods, performance of the Services and provision of any related information or assistance, it will at all times and in all respects comply in with applicable British Standards, European Community regulations or other legal or statutory requirements (including without limitation all applicable rules, regulations and bye-laws) relating to

health, fire and safety for the type of Goods and / or Services so far as the same are applicable or in force in any country where the Goods are to be manufactured, distributed or sold and / or the Services are to be supplied;

4.2.5. unless otherwise agreed in writing by the Company all Goods and Services shall be supplied to the Company with all necessary safety guards, precautions and / or devices as may be required by law or other applicable rules and regulations in force from time to time;

4.2.6. all illustrations, instructions, performance details, examples of installations, methods of assembly and all other data and information provided by the Supplier in connection with the Goods and / or Services is complete and accurate in all respects.

4.3. Without prejudice to any other rights or remedies available to the Company in the event that the Supplier breaches any of the warranties in this condition 4 the Company shall be entitled to avail itself of any one or more of the remedies listed in condition 13.

4.4. Nothing contained in these conditions shall in anyway detract from the Supplier's obligations under common law or statute or any express warranties or conditions contained in the Order.

4.5. Without prejudice to any other rights and remedies available to the Company the Supplier shall at the Company's request assign to the Company the benefit of any warranty, guarantee or similar right which the Supplier has with any third party relating to the Goods and / or Services or part thereof.

5. INDEMNITY

5.1. The Supplier shall indemnify and keep indemnified the Company in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

5.1.1. defective workmanship, quality or materials;

5.1.2. an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and / or Services; and

5.1.3. any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and / or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

6. DELIVERY

6.1. Unless otherwise agreed in writing by the Company prior to delivery of the Goods, the Goods shall be delivered by the Supplier, carriage paid, to the Company's place of business or to such other address as is specified in the Order. The Supplier shall off-load the Goods at its own risk as directed by the Company.

6.2. The Supplier shall be liable for all loss and damage caused by its employees and / or agents in the off-loading of the Goods including (but not limited to) any losses relating to personal injury and / or damage to property. All carriers of the Goods shall be deemed to be agents of the Supplier and not of the Company.

6.3. Where the Supplier is located outside of the United Kingdom the Supplier shall be responsible for obtaining all import and export licences and shall be responsible for any and all losses arising from any delay or failure in obtaining such licences.

6.4. The date for delivery or performance shall be specified in the Order, or if no such date is specified then delivery or completion of the Services shall take place within [28] days of the Order.

6.5. The Supplier shall invoice the Company upon, but separately from, delivery of the Goods to the Company.

6.6. The Supplier shall comply with all reasonable requests for information from the Company as regards the Order and its delivery and / or (in the case of Services) its performance and without prejudice to any

rights or remedies available to the Company the Supplier shall notify the Company as soon as reasonably practicable in the event of any anticipated delays in the delivery and / or performance of the Order.

- 6.7. The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.8. Time for delivery and / or performance shall be of the essence.
- 6.9. Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 6.10. If the Goods are delivered before the due date the Company shall at its sole discretion be entitled to:
- 6.10.1. refuse to take delivery of the Order (or part thereof); or
- 6.10.2. take delivery of the Order and charge the Supplier for any costs relating to storage and or insurance of the Goods until the due date for delivery.
- 6.11. If the Goods are not delivered on and / or the Services are not performed by the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 6.11.1. cancel the Contract in whole or in part;
- 6.11.2. refuse to accept any subsequent delivery of the Goods or supply of the Services which the Supplier attempts to make;
- 6.11.3. recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods and / or Services in substitution from another supplier; and
- 6.11.4. claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on or perform the Services by the due date.
- 6.12. If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 6.13. Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 6.14. If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 6.15. The Company shall not be deemed to have accepted the Goods and / or Services until it has had [14] days to inspect them following delivery and / or performance. The Company shall also have the right to reject the Goods and / or Services as though they had not been accepted for [14] days after any latent defect in the Goods and / or Services has become apparent.

7. **RISK / PROPERTY**

- 7.1. The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.

8. **PRICE**

- 8.1. The price of the Goods and / or Services shall be stated in the Order and unless otherwise agreed in writing by the Company shall be inclusive of value added tax and all other charges including (but not limited to) the costs of delivery.
- 8.2. No variation in the price nor extra charges shall be accepted by the Company.
- 8.3. The supplier shall if registered for value added tax (or any equivalent tax in any other jurisdiction) issue an appropriate tax invoice to the Company in accordance with the relevant legislation and the Company shall not be required to pay for the Goods and / or Services until such invoice has been received.

9. PAYMENT

- 9.1. The Company shall pay the price of the Goods and / or Services within [60] days of the last working day of the month in which the invoice is received, but time for payment shall not be of the essence of the Contract.
- 9.2. Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.
- 9.3. No payment of (or on account of) the price shall constitute any admission by the Company as to the proper performance of the Seller's obligations under the Contract.

10. CONFIDENTIALITY / INTELLECTUAL PROPERTY

- 10.1. The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, Intellectual Property or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company, its agents, or its customers and any other confidential information concerning the Company's business or its products or the Company's customers or their products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- 10.2. The Supplier shall and shall procure that its employees agents and / or sub-contractors shall at all times ensure that all confidential information belonging to the Company, its agents or its customers is stored securely in such a manner so as to avoid any unauthorised access to the confidential information by any third party.
- 10.3. Each party and (where applicable) the Company's customers shall be the owner of all existing Intellectual Property Rights in existence at the date of the Contract in any material which it has created or the creation of which was undertaken by a third party which it commissioned to create that material.
- 10.4. The Supplier acknowledges that all Intellectual Property Rights in or resulting from any design or development work carried out by the Supplier at the request of the Company or arising from the performance of the Services under the Contract (including but not limited to Out-put Materials) shall exclusively vest in the Company (or its customers as the case may be) save to the extent that such material embodies the Intellectual Property Rights of the Supplier in existence at the date of the Contract.
- 10.5. The Supplier shall promptly, do or procure to be done all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to any Intellectual Property Rights specified in condition 10.4.
- 10.6. The Supplier shall grant to the Company and / or the Company's customers a perpetual, royalty free, worldwide, non-exclusive license to market, distribute, sell or otherwise use all Intellectual Property Rights belonging or otherwise licensed to the Supplier incorporated in or required for the use of the Goods and / or Services including (without limitation) use in relation to any marketing or promotional materials of the Company.
- 10.7. The Supplier shall not be permitted to use the name Cosworth Limited or any similar trading name of the Company or the Company's customers in connection with its business (including without limitation use on any marketing or promotional materials) unless such use is approved in writing in advance by the Company.
- 10.8. The Supplier shall not disclose the contents of an Order to any third party without the prior written approval of the Company.

11. THE COMPANY'S PROPERTY

- 11.1. Materials, equipment, tools, dies, moulds, patterns, gauges, samples or any Intellectual Property Rights in all drawings, specifications and data (including but not limited to all programmes and data in machine readable form) supplied by the Company to the Supplier or not so supplied but developed, acquired or used by the Supplier specifically in the manufacture of the Goods or performance of the Services ("**the Manufacturing Materials**") shall at all times be and remain the exclusive property of the Company (or the Company's customer as the case may be) but shall be held by the Supplier in safe custody at its own

risk, maintained and insured against all risks and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

- 11.2. For the avoidance of doubt, clause 10.1 shall apply in respect of all and any scrap and / or surplus Manufacturing Materials which result from the fulfilment of any Order.
- 11.3. Manufacturing Materials wasted or damaged as a result of the Supplier's bad workmanship or negligence shall at the request of the Company be replaced at the Supplier's expense.
- 11.4. The Supplier grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Manufacturing Materials are or may be stored in order to inspect them and / or to recover them.
- 11.5. The Supplier shall grant to the Company and / or the Company's customers a non-exclusive license to use and copy all drawings, circuit diagrams, cable layout, schedules, parts lists, operating and maintenance instructions or like documents belonging or otherwise licensed to the Supplier in connection with the Goods and or Services including (without limitation) the right to use such materials to produce or purchase any part or parts of the Goods for the purpose of repair or replacement.

12. TERMINATION

- 12.1. The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss and shall in any event not exceed the price of the Goods and / or Services under the Contract.
- 12.2. The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
 - 12.2.1. the Supplier commits a material breach of any of the terms and conditions of the Contract; or
 - 12.2.2. any distress, execution or other process is levied upon any of the assets of the Supplier; or
 - 12.2.3. the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
 - 12.2.4. the Supplier ceases or threatens to cease to carry on its business; or
 - 12.2.5. the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
 - 12.2.6. there shall be a change in control of the Supplier (for the purpose of this clause 'control' shall have the same meaning as in section 840 of the Taxes Act)
- 12.3. Upon termination howsoever arising the Supplier shall at its cost immediately return to the Company any and all Manufacturing Materials and / or Out-put Materials in its possession unless otherwise directed by the Company in writing.
- 12.4. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

13. REMEDIES

- 13.1. Without prejudice to any other right or remedy which the Company may have, if any Goods and / or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Company 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 and / or Services have been accepted by the Company:
- 13.1.1. to rescind the Order;
 - 13.1.2. to reject the Goods and / or Services (in whole or in part) and (where applicable) return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and / or Services so returned shall be paid forthwith by the Supplier;
 - 13.1.3. at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and / or Services or to supply replacement Goods and / or Services 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 or further performance of the Services but without any liability to the Company;
 - 13.1.5. to carry out at the Supplier's expense any work necessary to make the Goods and / or Services comply with the Contract; and
 - 13.1.6. to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

14. ASSIGNMENT / SUB-CONTRACTING

- 14.1. The Supplier shall not without the prior written consent of the Company sub-contract or assign all or any part of its obligations under the Contract.
- 14.2. Notwithstanding written consent from the Company in accordance with clause 14.1, the Supplier shall remain fully responsible for the Goods and / or Services at all times and shall ensure that any sub-contractor is competent and able to fulfil the Order in accordance with the terms of the Contract. Sub-contracting shall not affect any of the provisions of the Contract or the obligations of the Supplier, who shall remain liable and accountable at all times under the Contract.
- 14.3. The Company may assign the Contract or any part of it to any person, firm or company.

15. FORCE MAJEURE

The Company reserves the right to defer the date of delivery, performance or payment or to cancel the Contract or reduce the volume of the Goods and / or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16. GENERAL

- 16.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 16.5. Any notice required to be given pursuant to these conditions shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to, the address of the relevant party as set out in the conditions or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and the next working day after posting (if sent by post).
- 16.6. The Contract shall not operate to create an agency or partnership between the parties hereto and the Supplier shall not be entitled to hold itself out as an agent or representative of the Company and shall not have authority to act in the name or on behalf of or otherwise to bind the Company in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.7. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.8. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.