

VITEC S.A
99 rue Pierre Sépard
92320 CHATILLON
France
Terms and Conditions of Business

1. Definitions

- 1.1 In these conditions (the "Conditions") the following words have the following meaning;
- 1.1.1 "Buyer" means any person(s), firm or company who purchases the Goods and/or Services from the Seller;
- 1.1.2 "Confidential Information" means all information acquired from any source by the Buyer (and whether designated confidential or not), relating to the Seller, its projects, its business, finances, dealings, transactions and affairs and all designs, drawings, plans, working papers, patent documents, data, methods, processes, techniques, operating procedures, technology and know-how of any description relating to the Seller or its business;
- 1.1.3 "Goods" means any goods detailed in the order accepted by the Seller and as supplied to the Buyer by the Seller (including any part or parts of them);
- 1.1.4 "Intellectual Property Rights" means any and all intellectual property or industrial rights of any description anywhere in the world (whether registered, unregistered, registerable or not and any applications or rights to apply for registration of any of them) including without limitation any patents, trade marks, domain names, registered designs, copyright (including rights in computer software (including object and source code)), rights in the nature of copyright, database rights, semi-conductor topography rights, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know-how, trade secrets, confidential information and any analogous or similar right in any jurisdiction;
- 1.1.5 "Seller" means VITEC S.A (registered number SC255313) having its registered office at St Davids House, St Davids Drive, Dalgety Bay, Dunfermline, Fife, KY11 9NB; and
- 1.1.6 "Services" means any services detailed in the order accepted by the Seller as supplied to the Buyer by the Seller (including any part or parts of them).

2. Application of Terms

- 2.1 All contracts and transactions between the Seller and the Buyer, whether verbally or in writing, are, unless otherwise agreed in writing by the Seller, subject to these Conditions which are deemed to be incorporated in each contract between the Seller and the Buyer. These Conditions, any quotation given by the Seller and any purchase order accepted by the Seller shall constitute the whole agreement between the Seller and the Buyer (the "Agreement"). No addition to or variation of these Conditions shall be binding unless accepted in writing by the Seller.
- 2.2 In the case of any conflict between the terms of these Conditions and:
- 2.2.1 the terms of an accepted purchase order, the terms of these Conditions shall prevail; or
- 2.2.2 the terms of a quotation given by the Seller, the terms of such quotation shall prevail.
- 2.3 Each purchase order submitted by the Buyer shall be deemed to be an offer by the Buyer to purchase the Goods or Services subject to these Conditions. A binding contract for purchase of Goods or Services shall not come into existence between the Seller and the Buyer unless and until the Seller either (i) issues a written acknowledgement of the purchase order to the Buyer or (ii) delivers the ordered Goods to the Buyer or commences performance of the Services (whichever occurs earlier).
- ## 3. Delivery of Goods
- 3.1 The provisions of Clauses 3, 4 and 5 of these Conditions shall be applicable where the Agreement provides for the sale and supply of Goods.
- 3.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller for delivery on an ex works basis (as detailed in Incoterms 2010), and where the Seller agrees to deliver the Goods otherwise than at its place of business, the Buyer shall be liable to pay all charges for transport, packaging and insurance.
- 3.3 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time of delivery shall not be of the essence. If no dates are specified, the Seller shall endeavour to make the Goods ready for delivery within a reasonable time.
- 3.4 The Seller shall be entitled to deliver Goods to the Buyer by way of instalments and to issue invoices to the Buyer for any Goods which have been shipped.

- 3.5 Subject to the other provisions of these Conditions the Seller will not be liable for any direct, indirect or consequential loss or any loss of profits, loss of business, depletion of goodwill and like loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor will any delay entitle the Buyer to terminate or rescind the Agreement.
- 3.6 The Buyer will provide at its expense at the Sellers place of business, adequate and appropriate equipment and manual labour for loading the Goods.
- 3.7 If the Buyer cancels any purchase order in whole or in part, within 20 days of any delivery date confirmed by the Seller, the Buyer will be liable to pay to the Seller a cancellation charge of 10% of the value of the cancelled portion of the purchase order.
- 3.8 The Buyer may request delays to the confirmed delivery date by up to 30 days without charge, provided that such request is in writing and received by the Seller at least 5 days prior to the scheduled delivery date. If the delivery date is changed more than twice, this will be deemed to be an order cancellation and the Buyer will be liable to pay to the Seller a cancellation charge of 10% of the value of the Goods.
- 3.9 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 3.10 The Seller shall not be liable for any non-delivery of the Goods unless written notice is given to the Seller within 10 days of the date when the Goods would in the ordinary course of events have been received.
- 3.11 Any liability of the Seller 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* quotation rate against any invoice raised for such Goods.

4. Risk

Risk of damage to or loss of the Goods shall pass to the Buyer:

- 4.1 in the case of Goods to be delivered at the Seller's place of business, at the time when the Buyer collects the Goods from the Seller; or
- 4.2 in the case of Goods to be delivered otherwise than at the Seller's place of business, at the time of delivery.

5. Title

- 5.1 Title to the Goods shall not pass to the Buyer until the Seller has received in full (in cash or in cleared funds) all sums due in respect of:
- 5.1.1 the Goods; and
- 5.1.2 all other sums which are or which become due to the Seller from the Buyer on any account together with any interest charged by the Seller under these terms and conditions of sale.
- 5.2 Until such time as title to the Goods has passed to the Buyer:
- 5.2.1 the Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all any or part of the Goods in which title remains vested in the Seller and the Buyer hereby grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored to inspect them, and, when the Buyer's right to possession has terminated, to recover them; and
- 5.2.2 the Seller shall be entitled to seek a Court injunction to prevent the Buyer from selling, transferring or otherwise disposing of the Goods.
- 5.3 The Buyer's right to possession of the Goods shall terminate immediately if:
- 5.3.1 the Buyer 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 and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency or the Buyer or shall suffer any analogous event under any jurisdiction to which it is subject; or
- 5.3.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance any of his/its obligations under the Agreement or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 5.3.3 the Buyer encumbers or in any way charges any of the Goods.

6. Price

- 6.1 The price for the Goods and/or Services shall be the price set out in the Seller's current price list or as detailed in any quotation by the Seller.
- 6.2 The price for the Goods and/or Services shall be exclusive of all Value Added Tax or sales tax and all costs, including all charges in relation to loading, unloading, carriage, insurance, duties, public dues, levies of any kind, storage, freight or import duties, all of which amounts the Buyer will pay in addition when it is due to pay for the Goods and/or Services.
- 6.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's control (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

7. Terms of Payment

- 7.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer (i) for the price of the Goods on or at any time after the Goods have been shipped, notwithstanding that the Goods may not have been delivered at the date of invoice or (ii) for the Services at commencement of performance by the Seller of the Services.
- 7.2 Payment under an invoice shall fall due 30 days after the date of such invoice.
- 7.3 No payment shall be deemed to have been received until the Seller has received cleared funds.
- 7.4 All payments payable to the Seller under the Agreement shall become due immediately upon termination of the Agreement despite any other provision.
- 7.5 The Buyer shall make all payments due under the Agreement without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 7.6 If the Buyer fails to pay the Seller any sum due pursuant to the Agreement the Seller will be entitled to:
- 7.6.1 charge the Buyer interest on the amount unpaid from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the HSBC Bank, accruing on a daily basis until payment is made, whether or before any judgement; and
- 7.6.2 terminate the Agreement and/or suspend any further deliveries.

8. Licence

- 8.1 The Seller grants to the Buyer a non-exclusive licence to use the software component of the Goods or Services in conjunction with the Goods or Services and for no other purpose whatsoever.
- 8.2 Conditional upon a transferee accepting the Seller's end user licence agreement (as may be amended from time to time), the licence in respect of software component of any Goods or Services will transfer along with the Goods or Services in question to the transferee. The Buyer shall provide a copy of the Seller's end user licence agreement to any such transferee and shall not retain any unlicensed copies of such software following the transfer.
- 8.3 This licence shall not include a right to grant sub-licences.
- 8.4 NO WARRANTY IS GIVEN AND NO LIABILITY IS ACCEPTED BY THE SELLER IN RELATION TO THE SOFTWARE COMPONENT OF THE GOODS OR SERVICES AND DOCUMENTATION DESCRIBING SUCH SOFTWARE UNDER THESE CONDITIONS, OR THE USE TO WHICH IT MAY BE PUT BY THE BUYER INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED BY LAW ARE HEREBY EXCLUDED TO THE FULL EXTENT THAT IT IS LAWFUL TO DO SO.

9. Use of the Goods/Services in Life Support, Nuclear and certain other Applications

Goods sold and Services provided by the Seller are not designed, intended or authorised for use in life support, life sustaining, aeronautical, nuclear, or other applications in which the failure of such Goods and/or Services could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If the Buyer uses or sells the Goods and/or Services for use in any such applications the Buyer: (1) acknowledges that such use or sale is at the Buyer's sole risk; (2) agrees that the Seller is not liable, in whole or in part, for any claim or damage arising from such use; and (3) agrees to indemnify and keep indemnified the Seller against any costs, claims, demand, liabilities, expenses, damages or losses (including any direct loss or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) cause be the breach of this Clause 9 by the Buyer.

10. Export Control

The sale, resale, installation or other disposition of the Goods and any related technology or documentation are subject to the export control laws, regulations and orders of the United States, the contracting parties own respective country(ies), the European Union and may be subject to the export and/or import control laws and regulations of other countries. The Buyer agrees to comply with all such applicable laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Goods to any country to which such export or transmission is restricted or prohibited. The Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

11. Warranties

- 11.1 In relation to the sale and supply of Goods, the Seller warrants that (subject to any other provision of the Agreement) on delivery to the Buyer and for a period of 12 months thereafter, the Goods will conform in all substantial respects to the Seller's specifications for such Goods and will be free from material defects in materials, workmanship and design.
- 11.2 In relation to the provision of Services, the Seller warrants that (subject to any other provision of the Agreement) the Services will be performed in a good, safe and workmanlike manner and performance of the Services will conform in all substantial respects to the Seller's specification for such Services.
- 11.3 All other warranties as to quality, condition, description, compliance with sample or otherwise, including (but not limited to) the terms implied by section 13 to 15 of the Sales of Goods Act 1979 and by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded.
- 11.4 The Seller shall not be liable for breach of the warranties granted by this Clause 11 if the liability arises as a result of:
- 11.4.1 the improper or unlawful use, operation or neglect of the Goods and/or Services;
- 11.4.2 the modification of the software components of the Goods and/or Services or the merger of these (in whole or in part) with any other software;
- 11.4.3 the use of the Goods and/or Services in conjunction with equipment other than the equipment identified by the Seller as compatible for use with them; or
- 11.4.4 the failure by the Buyer or any customer of the Buyer to comply with any reasonable instruction relating to the installation or use of the Goods and/or Services issued by the Seller from time to time.
- 11.5 The Seller shall be under no liability under the warranties granted in this Clause 11 (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment.
- 11.6 Any representations concerning the Goods and/or Services made by the Seller's employees or agents are not to be relied upon by the Buyer unless confirmed in writing by the Seller. The Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

12. Returned Products Procedure

- 12.1 In the event that Goods or Services fail to conform to the warranties granted in Clause 11, then the Seller's liability shall be limited as follows:
- 12.1.1 in relation to the supply of Goods, the Seller's liability shall be limited to either (at the Seller's discretion):
- (i) a refund to the Buyer of the purchase price paid by the Buyer for such Goods; or
- (ii) the repair or replacement of such Goods,
- provided always that such Goods are returned to the Seller along with acceptable evidence of purchase and with transportation charges prepaid. The Seller's returned merchandise authorisation procedure (as the same may be amended from time to time) shall apply to all Goods returned; and

12.1.2 in relation to the supply of Services, the Seller's liability shall be limited to either (at the Seller's discretion);

- (i) a refund to the Buyer of the purchase price paid by the Buyer for the defective Services (or, where relevant, the portion of the Services carried out which is defective); or
- (ii) the repair or re-performance of the defective Services (or, where relevant, the portion of the Services carried out which is defective),

provided always that acceptable evidence of purchase of the Services is provided to the Seller.

12.2 Where Goods or Services are defective but not covered by the warranties granted in Clause 11 or by an outstanding Seller support contract, Seller shall, at the written request of the Buyer, provide a quote, including costs and timescale, to the Buyer for the repair and/or replacement of the Goods or repair and/or re-performance of the Services, as appropriate. The Seller shall not carry out any such work until a Purchase Order for the work has been entered into with the Buyer.

12.3 On completion of the steps set out in Clauses 12.1.1 and/or 12.1.2 above (as relevant), the rights and remedies of the Buyer for breach of the warranties set out in Clause 11 against the Seller shall be fully exhausted.

12.4 Notwithstanding any other term of these Conditions, the Seller shall have no liability and no warranty shall apply where the Goods or Services have become defective as a result of the Buyer or an end user failing to comply with:

- 12.4.1 these Conditions;
- 12.4.2 the Seller's end user licence agreement as provided by the Seller to the Buyer (as may be amended from time to time); or
- 12.4.3 any reasonable instruction relating to the installation or use of the Goods and/or Services issued by the Seller from time to time.

13. Limitation of liability

13.1 The Seller hereby expressly excludes:

- 13.1.1 any liability (in contract or delict or otherwise howsoever) for any special, indirect or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever arising out of or in connection with the Agreement; and
- 13.1.2 any liability (in contract or delict or otherwise howsoever) for any loss or damage, costs or expenses arising from any defects resulting from negligent or improper use, storage or handling of the Goods and/or Services or the treatment or use of the Goods and/or Services, in a manner other than that for which they were, to the Buyer's knowledge, manufactured, produced, assembled, provided or supplied.

13.2 Except as otherwise provided in these Conditions, the entire liability of the Seller under and in connection with the Agreement shall not exceed the price of the Goods or Services paid by the Buyer.

13.3 Nothing in these Conditions shall limit or exclude the liability of either party in respect of:

- 13.3.1 death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors (as applicable); or
- 13.3.2 fraud or fraudulent misrepresentation or wilful default.

14. Intellectual Property

14.1 The Buyer acknowledges that all rights, title and interest in and to all Intellectual Property Rights in respect of Goods and/or Services supplied by the Seller or related materials (including any information, drawings, plans, designs, inventions, computer programs, blueprints, circuits, diagrams, semiconductor topographies, models or memoranda produced by the Seller for the Buyer in respect of the supply of such Goods and/or Services) shall remain the property of and vested in the Seller. The Buyer acknowledges that the Seller shall remain the beneficial owner of those materials. The Buyer agrees to promptly and fully notify the Seller of:

- 14.2.1 any actual, threatened or suspected infringement of any such Intellectual Property Rights which comes to the Buyer's notice; and
- 14.2.2 any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods and/or provision of the Services infringes the rights of any person.

14.3 The Buyer agrees (at the Seller's request and expense) to do all such things as may be reasonably required to assist the Seller in taking or resisting any proceedings in relation to any infringement or claim referred to in Clause 14.2.

14.4 If a claim is made against the Buyer by a third party claiming that the Seller's Intellectual Property Rights infringes that third party's right, the Buyer shall immediately notify the Seller of any such claim and pass all details of such claim to the Seller. The Seller shall be entitled to take over the defence and control of the defence of such claim and of any proceedings following thereon in its own name or in the name of Buyer and at its own cost and expense, in which case the following shall apply:

14.4.1 the Buyer shall take no action whatsoever and shall make no response whatsoever to any such claim and shall take no steps in any proceedings following thereon, without the prior approval of the Seller, and without prejudice to the generality of the foregoing shall make no admission in respect of any such claim or offer or propose or enter into any compromise settlement;

14.4.2 the Buyer shall afford the Seller such assistance as may be reasonably necessary to enable the Seller to conduct such proceedings or defend such claim;

14.4.3 the Seller shall be entitled to defend or settle such claim in whatever way it, in its sole discretion, sees fit.

15. Confidential Information

15.1 The Buyer shall at all times hold the Confidential Information secret and confidential on behalf of and for the exclusive benefit of the Seller and shall not at any time unless the Seller otherwise decides, remove any material and media relating to the Confidential Information from the offices of the Seller or such other place or places as the Seller may from time to time decide as suitable for the storage or safe custody of them.

15.2 The Buyer shall not use, copy or divulge the Confidential Information to any third party except with the express written consent of the Seller, such consent not to be unreasonably withheld or delayed where the Buyer requires to divulge Confidential Information to a third party for the purpose of performing its obligations under the Agreement. Any such permitted disclosures shall in no way affect the ownership of such Confidential Information.

15.3 The Buyer shall on termination of the Agreement for any reason whatsoever (and notwithstanding any claim of whatever nature it may have against the Seller) immediately cease use of and deliver to the Seller all materials and media relating to the Confidential Information including all copies of all relevant documents whether in paper or electronic form in the possession of the Buyer and shall in addition comply with all reasonable requests of the Seller in connection with such Confidential Information.

16. Force Majeure

The Seller reserves the right to defer date of delivery of the Goods or performance of the Services or to terminate the Agreement or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller 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.

17. Business Ethics

The Buyer represents and warrants that neither it nor (where applicable) any other member of its group has previously and undertakes that it will not (and will procure that no other member of its group shall) engage in any form of bribery or corruption (either as a provider or recipient) or any practice which may contravene any relevant anti-bribery or anti-corruption law (including, without limitation, the UK Bribery Act 2010 or the US Foreign Corrupt Practices Act 1977).

18. Termination

18.1 Without prejudice to its other rights, either party may by giving written notice to the other elect to terminate the Agreement forthwith or, in the case of the Seller to suspend delivery of the Goods or performance of the Services, on the occurrence of any one of the following events:

- 18.1.1 If the other party repudiated or commits any material breach of the Agreement entitling the other party to treat the Agreement as repudiated;
- 18.1.2 if the other party is in breach of the Agreement and, where the breach is capable of remedy, the other party fails to remedy such breach within 20 days after service of a notice in writing from the party not in breach specifying the breach, and requiring it to be remedied;
- 18.1.3 if the other party fails to make any payment on the due date for such payment; or
- 18.1.4 if the other party becomes subject to any of the events detailed in Clauses 5.3.1 to 5.3.3.

19. Waiver/Severability

19.1 Any waiver of any breach of, or default under, the Agreement shall only be effective if made in writing and shall not be deemed to be a waiver of any subsequent breach or default of the Agreement.

19.2 Any failure or delay on the part of any party to exercise any right or remedy conferred under the Agreement or otherwise shall not in any circumstance operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude or restrict the further exercise of any such right or remedy.

- 19.3 If any provision of the Agreement is declared to be void or unenforceable by any judicial or administrative authority in any jurisdiction in which the Agreement is effective, such provision will be deemed to be severable and the parties shall each use their reasonable endeavours in good faith to modify the Agreement so that the intent of the Agreement can be legally carried out.

20. Notices

- 20.1 Any notice given under the Agreement shall be in writing and may be served by:
- 20.1.1 personal delivery, in which case it shall be deemed to have been received at the time of delivery;
 - 20.1.2 pre-paid recorded delivery or registered post, in which case it shall be deemed to have been received 72 hours after the date of posting; or
 - 20.1.3 by email in which case it shall be deemed to have been received at the time of sending to the email address provided by the party on whom the notice is being served for that purpose.

21. Assignment

- 21.1 The Buyer shall not assign transfer or sub-contract any of its rights or obligations under the Agreement or purport to do so unless it has obtained the prior written consent of the Seller.
- 21.2 The Seller may assign any of its rights or obligations under the Agreement.

22. Governing Law

The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement or any term of it (including non-contractual disputes or claims) shall be governed by the laws of France and the EU. The courts of France and the EU shall have exclusive jurisdiction to settle and disputes (including non-contractual disputes or claims), which may arise out of or in connection with the Agreement. The parties irrevocably agree to submit to that jurisdiction.