

SpaceKraft Terms & Conditions of Purchase (October 2015)

Please read these Conditions carefully before accepting any Purchase Order for Products or Services from SpaceKraft. You agree to be bound by these Conditions upon acceptance of the Purchase Order.

1. DEFINITIONS

- 1.1 "Products" - the products supplied to SpaceKraft as set out on the Purchase Order and in accordance with the product specification, pricing, lead time and scheduling (if any). The expression includes parts of Products.
- 1.2 "Purchase Order" - these terms and conditions together with all details of the Products and Services.
- 1.3 "Services" - the services to be provided by Vendor further described in clause 13.
- 1.4 "Vendor" - the natural or legal person supplying Products and/or Services to SpaceKraft under this Purchase Order.

2. PRICING AND PAYMENT

- 2.1 "Prices" for Products and Services under this Purchase Order (if separately priced) are described on the Purchase Order.
- 2.2 Vendor represents that the Prices are the lowest prices charged from time to time to any other customer of Vendor purchasing the same or lesser quantities of Products and/or Services under similar terms and conditions. If after the pricing of this Purchase Order but before delivery Vendor offers Products and/or Services to any other customer on more favourable terms, conditions and prices than to SpaceKraft the following shall apply; if accepted by SpaceKraft, such terms, conditions and/or prices shall be incorporated into this Purchase Order and shall apply to all Products and Services purchased by SpaceKraft under this Purchase Order.
- 2.3 Vendor shall issue invoices no earlier than the Delivery Date of the Products or Services. Payment will be made within sixty (60) days (or such other period as notified by SpaceKraft to the Vendor) of receipt of proper invoices. Payment shall not constitute acceptance of non-conforming Products/Services.

3. TAXES AND DUTIES

Prices are exclusive of Value Added Tax which will be added to Vendor's invoices by Vendor at the ruling rate at time of delivery of the Products/Services.

4. ORDERS

These terms and conditions as added to or amended by any provision on the face of this Purchase Order shall apply unless agreed otherwise in writing. The terms and conditions of this Purchase Order and any changes agreed in writing shall prevail over any inconsistent terms and conditions contained in any Vendor acknowledgement invoice or other document.

5. SCHEDULING

- 5.1 The "Delivery Date" means, unless otherwise agreed in writing, the delivery date set out on the Purchase Order for the Products and/or Services to be delivered.

5.2 Unless otherwise agreed, the Delivery Date shall be consistent with Vendor's normal lead times for the quantity of Products ordered. Vendor shall use its best endeavours to achieve the Delivery Date and will, except in extreme cases, not exceed any maximum lead time which may be specified.

5.3 If SpaceKraft requests delivery with less than the normal lead time specified by Vendor to meet a special requirement, including the replacement of Products lost or damaged in shipment, Vendor will use its reasonable efforts to expedite delivery provided however that SpaceKraft shall not pay any additional charges or costs for expediting the delivery unless such charges or costs have been previously accepted in writing by SpaceKraft.

6. RE-SCHEDULING

SpaceKraft may without charge re-schedule delivery of any order by written notice to the Vendor at any time.

7. PRODUCT CHANGES

Vendor shall submit to SpaceKraft details of all Product changes that affect form, fitness, function, maintainability, reliability or appearance at least ninety (90) days before such changes are implemented. SpaceKraft may, at its option, decline to have such changes incorporated into the Products and the proposed changes shall not be incorporated into the Products unless and until such changes have been accepted in writing by SpaceKraft.

8. DELIVERY

8.1 Time of delivery is of the essence of this Purchase Order and the delivery schedule is set out on the Purchase Order. The Vendor shall notify SpaceKraft in writing forthwith if at any time Vendor believes that delivery will be delayed for any reason. However, delivery up to three (3) days earlier than scheduled is acceptable.

8.2 Vendor shall notify SpaceKraft in writing forthwith if at any time Vendor believes that delivery will be delayed for any reason.

8.2 SpaceKraft shall monitor delivery performance on a regular basis. In the event of persistent late or incomplete delivery the Vendor shall be in breach of Clause 8.1 and SpaceKraft shall, at its absolute discretion either: (1) cancel all purchases of such Products that are the subject of existing Purchase Orders without any liability and immediately remove the relevant Product from its catalogues and not subsequently purchase such Product from the Vendor; or (2) charge the Vendor a sum set by SpaceKraft (acting reasonably) per day of delay or part delivery as liquidated damages, which the Vendor acknowledges and agrees is a genuine pre-estimate of SpaceKraft's loss caused by such delay or part delivery.

9. PACKAGING AND DOCUMENTATION

9.1 Products shall be packaged in accordance with the Product specification attached if any and in such a way as to ensure that the Products arrive undamaged and to ensure subsequent safe protection of Products in storage at no additional cost to SpaceKraft.

9.2 Vendor shall include with each delivery a list of contents including serial numbers, to allow for review of contents upon receipt.

9.3 Advice notes must be sent on the date of despatch of the Products and invoices shall be issued no earlier than the Delivery Date. In the event that an invoice is issued earlier than the Delivery Date then it shall not be deemed received by SpaceKraft until the Delivery Date.

9.4 Invoices shall not be passed for payment unless the order number is clearly quoted on invoices, advice notes and on the packaging and unless all Products as scheduled have been delivered.

10. ACCEPTANCE

- 10.1 SpaceKraft reserves the right to inspect the Products on or immediately after delivery and within a reasonable time after delivery to reject deliveries or any part of any delivery which does not conform as to quantity, quality and description with the particulars of the Purchase Order or of any Product or Services specification.
- 10.2 Where Products have been developed, modified, enhanced or altered in any way to suit the requirements of SpaceKraft, the parties shall agree acceptance tests and a timetable for acceptance ("Acceptance Criteria). Any such Products delivered shall be deemed to have been accepted by SpaceKraft when the relevant Acceptance Criteria have been satisfied.
- 10.3 Any Products rejected under sub-clause 10.1 and 10.2 above shall (1) be collected by the Vendor from SpaceKraft at the Vendor's cost and expense in a prompt and timely manner and, in any event, by no later than a date reasonably agreed by SpaceKraft and the Vendor ("Cut-Off Date") and (2) shall promptly be replaced by the Vendor at its expense and this Clause 10 shall apply to any such replacements as if they were the Products originally delivered. In the event that the Vendor fails to collect the Products by the Cut-Off Date, SpaceKraft shall have the right to dispose of the Products at its absolute discretion without liability and to use any proceeds to offset any disposal costs.

11. RISK AND TITLE

- 11.1 Vendor shall deliver the Products at its risk to the premises scheduled by SpaceKraft on the Purchase Order or as otherwise stated by SpaceKraft (e.g., where a Product consists of tooling equipment SpaceKraft may require the Product to remain on premises owned or controlled by the Vendor). Risk in all Products shall remain with the Vendor:
- (a) at all times in respect of any Product that is not delivered to premises owned or controlled by SpaceKraft; and
 - (b) in respect of Products to be delivered to premises owned or controlled by SpaceKraft, until such time as the Products have been safely delivered to those premises and SpaceKraft has signed a delivery note acknowledging safe receipt.
- 11.2 Where the Vendor is responsible for risk in any Product and any such Product becomes damaged, lost or stolen, the Vendor shall forthwith notify SpaceKraft of the same and, at SpaceKraft's absolute discretion and free of charge, either replace such Product or refund any monies paid by SpaceKraft in respect of any such Product. The Vendor shall also be liable for any direct or indirect losses, damages and/or liabilities (including loss of business and loss of profit) arising as a result of any such loss, theft or damage.
- 11.3 Title to any Product shall pass to SpaceKraft upon payment for the Product (whether or not delivered to premises owned or controlled by SpaceKraft). SpaceKraft shall be entitled at any time and without notice to enter onto any premises at which any Product in respect of which title has passed to SpaceKraft in order to retake possession of such Product.
- 11.4 The Vendor shall forthwith mark any Product that has become the property of SpaceKraft if instructed to do so by SpaceKraft at any time (e.g., to identify that SpaceKraft is the owner of such Product).

12. TOOLS AND EQUIPMENT

- 12.1 Tools, equipment software documentation or other materials which may be supplied by SpaceKraft to Vendor for the purposes of assisting Vendor in the performance of this Purchase Order whether separately listed or not, shall be made available pursuant to the terms and conditions of the SpaceKraft's loan agreement which is available upon request and shall be used by Vendor solely in its performance of its obligations hereunder.
- 12.2 For the avoidance of doubt it is confirmed that SpaceKraft (or a third party) owns all intellectual property rights in all items of any sort provided to Vendor under the Purchase Order.

- 12.3 All Intellectual Property Rights created or invented (including but not limited to inventions processes and programs) whether patentable or not, know-how, designs, trade marks, drawings and copyright in documents of any description as a result of or in the performance of this Purchase Order shall be the exclusive property of SpaceKraft from the date of creation and the Vendor shall to the extent that it is necessary promptly execute any document properly required to vest any such intellectual property legally in SpaceKraft and SpaceKraft shall bear the costs thereof.

13. SERVICES

As a part of this Purchase Order, Vendor agrees to provide technical support, documentation, training, maintenance and any other services (whether in relation to a Product or on a stand alone basis) on the terms (including price) set out on the Purchase Order. Any accommodation, subsistence, travelling and other expenses incurred by or on behalf of Vendor in providing the Services shall be borne by the Vendor. Unless otherwise specified on the Purchase Order, Vendor agrees to provide spare parts and maintenance services for each Product for a period of not less than five (5) years from the date of the last delivery of such Product hereunder. Each repair carried out by Vendor will have an equivalent warranty to that in clause 19 in respect of the type of fault or component repaired or replaced by Vendor. The warranty will extend to other faults in any Product which arise directly from Vendor's failure to repair the Product.

14. SOFTWARE

- 14.1 Notwithstanding clause 19(f) where Products constitute software unless Vendor specifies otherwise, Vendor shall be deemed to be supplying the said software to SpaceKraft to distribute under licence to SpaceKraft's customers on SpaceKraft's then current standard terms and conditions of software licence.
- 14.2 Where Vendor releases a new version of the said software at a time when SpaceKraft holds an inventory of the previous version Vendor shall if requested by SpaceKraft grant SpaceKraft a full refund for the previous version of the Product held as inventory and accept its return.

15. HEALTH AND SAFETY

Vendor's attention is drawn to the obligations imposed by the Health and Safety at Work Act 1974 upon designers, manufacturers, importers and suppliers of articles and substances for use at work and on those who install or erect articles for use at work. Vendor shall be responsible for complying with those obligations in relation to the Products and Services and will indemnify SpaceKraft against all costs, expenses and liabilities caused by its failure to do so.

16. CONFIDENTIAL INFORMATION

Vendor agrees to maintain in confidence all information whether oral, written or otherwise which SpaceKraft has divulged or may divulge to Vendor or may be acquired by the vendor including any specification. Vendor shall only disclose the said information to employees who "need to know" and shall not disclose the said information to third parties. Vendor shall use the said information only for the purposes of this Purchase Order. The Vendor shall take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations endure beyond any termination of employment with the Vendor. The provisions of this clause do not apply to information which is or comes into the public domain otherwise than by breach of the terms of this clause. Upon request by SpaceKraft Vendor shall return all drawings, software or other written materials issued by SpaceKraft together with all copies of the same made by Vendor. Nothing in this Purchase Order shall be construed as granting or conferring any rights by licence or otherwise in any of the said information except for the limited purpose of Vendor's performance hereunder. This clause shall survive termination of this Purchase Order.

17. DATA PROTECTION

- 17.1 In this Purchase Order, the terms data controller, data processor, personal data, sensitive personal data and processing shall be as defined in the European Data Protection Directive 95/46/EC and "Data" shall mean the personal data and sensitive personal data provided to Vendor in connection with the Service. "Data Protection Law" means applicable data protection legislation implementing the European Data Protection Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof.
- 17.2 Vendor acknowledges that it is a data processor and that SpaceKraft is a data controller.
- 17.3 Vendor shall:
- (a) use the Data only on SpaceKraft's instructions as set out or referred to in this Purchase Order to provide the Service;
 - (b) provide appropriate technical and organisational measures to protect the security of the Data, in particular against unauthorised or unlawful access or processing, alteration, accidental loss or destruction of or damage to the Data; and
 - (c) take all reasonable steps to ensure the reliability of any of its staff who have access to Data processed in connection with the Service.
- 17.4 The parties acknowledge that Vendor's provision of the Service may require the transfer of Data to Vendor's sub-contractors ("Recipients") outside the European Economic Area in countries which have not been approved by the European Commission as having adequate protections in place for the purpose of the transfer of personal data. Vendor will be permitted to transfer Data to such Recipients provided that Vendor shall have entered into an agreement with the relevant Recipient based upon standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area and which agreement shall include security obligations on the Recipient which are no less onerous than those contained in this Purchase Order.
- 17.5 The parties also acknowledge that Vendor may also use services and/or products from other third parties in order to provide the Service and that, in doing so, Vendor may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities. If Vendor becomes aware of any such third party wishing to transfer Data outside the European Economic Area, Vendor shall request that the third party enters into an agreement of the sort noted in Clause 17.4 above.
- 17.6 Vendor agrees to comply with its obligations under Data Protection Law in relation to its collection, processing and provision of Data in connection with the Service.
- 17.7 Vendor shall indemnify and keep SpaceKraft indemnified against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Clause 17 by Vendor and/or its employees, agents and/or sub-contractors.

18. INSURANCE

- 18.1 Vendor shall maintain insurance policies, including Public Liability Insurance, Product Liability insurance, Employer's Liability Insurance and Professional Liability Insurance with a reputable insurance company which policies shall contain as a minimum protection for SpaceKraft, its sub-contractors, agents employees and customers from claims for damages for personal injury, including accidental or wrongful death, and property damage which may arise from use, installation or operations to be performed in connection with Vendor's Products and/or the Services. A limit of liability provided by each such policy shall be no less than one million pounds sterling per occurrence.
- 18.2 If requested, Vendor shall furnish to SpaceKraft within ten (10) days of request a certificate of insurance to cover the obligations set out in Clause 18.1 above. Such certificate(s) must contain a provision for notification to SpaceKraft thirty (30) days in advance of any material change in coverage or cancellation.

19. WARRANTY

19.1 Vendor warrants to SpaceKraft that:

- a) It has the right to enter into this Purchase Order and that Vendor's performance shall not violate the terms of any other licence contract or other obligation to which Vendor is a party.
- b) The Products shall be new, conform to the relevant specification and be free from defects in workmanship and materials if properly used in accordance with procedures described in any documentation supplied by the Vendor for a period which expires thirty six (36) months after delivery to SpaceKraft's customers. Upon written notice from SpaceKraft of a Product (or part) that fails to meet the foregoing warranty, Vendor shall forthwith at its expense, repair or replace such Product(s).
- c) Where Products constitute software, sub-clause (b) above shall not apply and the Products are warranted instead to conform substantially to their published functional specification if properly used in accordance with procedures described in any documentation supplied by the Vendor for a period expiring ninety (90) days from the date of installation by SpaceKraft's customer. During such period the Vendor shall, at its own expense and at SpaceKraft's option correct any non conforming software or replace the software or grant SpaceKraft a full refund. This warranty is subject to the following conditions:
 - i) Damage resulting from or aggravated by negligence or misuse by SpaceKraft or its customer is excluded from this warranty.
 - ii) Any unauthorised modification of the software shall void this warranty.
 - iii) Only SpaceKraft shall request the warranty service.
- d) All Products delivered to SpaceKraft shall comply with the applicable British Standards and European Standards as required by SpaceKraft. Vendor shall obtain and maintain at its own expense all applicable listings, certificates and approvals in the Vendor's own name.
- e) It shall use all reasonable skill and care in carrying out the Services. Upon written notice from SpaceKraft of Services (or part) that are not in conformance with the foregoing warranty the Vendor shall promptly at its expense re-perform the Services to the required standard of performance.
- f) It has and shall pass to SpaceKraft good title for the Products free and clear of all liens and encumbrances.
- g) The Products do not infringe any patent, copyright, or design right or otherwise violate the intellectual property rights of any third party.
- h) No claim or action is pending or threatened against Vendor, or to Vendor's knowledge against any licensor or supplier of Vendor that would adversely affect the right of SpaceKraft or any customer of SpaceKraft to use the Products for their intended use.
- i) All Products delivered to SpaceKraft shall comply with the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 and Statutory Instrument 2005 No.2748 (The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2005).

20. INDEMNITY

20.1 Vendor shall indemnify and hold SpaceKraft, SpaceKraft's subsidiaries, distributors, agents and customers harmless from all costs, expenses and liability arising out of any claim or action based on actual or alleged infringement by a Product of any patent, copyright, design right, trade secret or other proprietary interest. SpaceKraft shall give Vendor prompt notice of any claim or action and shall provide reasonable assistance to Vendor at Vendor's request and expense in defending such action or claim. If an injunction is granted or in Vendor's reasonable opinion is likely to be granted which prohibits the use or sale of a Product by reason of any matter covered in this clause, then Vendor shall at its expense either:-

- a) procure for SpaceKraft and its customers (whether direct or indirect) the right to continue using the Products; or

- b) modify the products so that they become non-infringing (providing the modified Products continue to conform with the relevant Specification); or
 - c) substitute equivalent non-infringing products; or
 - d) if none of a) - c) are reasonably available, SpaceKraft may return the Products to the Vendor and Vendor shall refund the Price of such products to SpaceKraft.
- 20.2 Notwithstanding the foregoing, Vendor shall have no liability to SpaceKraft for actual or claimed infringement arising out of:
 - a) compliance with detailed designs, plans or specifications furnished by SpaceKraft unless such infringements arise independently out of such designs, plans or specifications;
 - b) use of the Product in combination with other equipment or software not reasonably contemplated by Vendor;
 - c) use of the Products in any process not reasonably contemplated by the Vendor.
- 20.3 Vendor acknowledges that the Specification does not excuse Vendor from performing its obligations hereunder. The terms and conditions of this Clause shall survive the expiration or termination of this Purchase Order for any reason whatsoever.

21. RIGHT TO PERFORM

If at any time or times Vendor fails to perform fully any of its obligations under this Purchase Order, SpaceKraft may, at its option, and without any obligation to do so perform Vendor's obligations or have such obligations performed by a third party provided that SpaceKraft shall have given Vendor fourteen (14) days' notice of any such failure, and if the failure is remediable, Vendor shall not have commenced continuing and effective steps to remedy said failure within the said fourteen (14) days. In such event, SpaceKraft shall have the right to offset its costs for performance from any amounts due to Vendor whether under this Purchase Order or otherwise. Such right of offset shall be in addition to and not in lieu of any other rights or remedies SpaceKraft may have under this Purchase Order or at law or equity.

22. TERMINATION

- 22.1 Either party may, without prejudice to any other remedies it may have, terminate this Purchase Order forthwith at any time by giving notice in writing to the other party:-
 - a) if the other party commits any material breach of this Purchase Order provided that if the breach is one which can be effectively remedied then said notice of termination shall not be effective to terminate this Purchase Order unless the party in breach fails within thirty (30) days of the date of such notice to remedy the breach complained of; or
 - b) if the other party ceases to carry on business or a substantial part thereof, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction or compounds with its creditors generally or has a receiver or manager appointed over all or any part of its assets or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due.
- 22.2 Upon expiration or termination of this Purchase Order for any reason Vendor shall promptly re-deliver to SpaceKraft all tools, equipment, software, documentation and other materials furnished to Vendor by SpaceKraft hereunder and all copies thereof made by Vendor. Vendor's obligations under sections 13, 16, 18 and 20 hereof shall survive expiration or termination of this Purchase Order regardless of the manner of termination.

23. NOTICES

All notices to be given under this Purchase Order shall be in writing and shall be sent to the respective addresses of Vendor and SpaceKraft set out in each Purchase Order or the registered office of the company to be served. In the case of SpaceKraft notices shall be addressed for the attention of the Purchasing Manager.

24. ANTI-BRIBERY

Vendor shall ensure that Vendor and all of its staff, agents, contractors and any other party performing its obligations or exercising Vendor's rights under or in connection with this Purchase Order and/or any other agreement that it may have with SpaceKraft, complies at all times with all applicable anti-bribery and/or corruption laws, regulations and codes of conduct in all jurisdictions. Vendor shall, whenever requested by SpaceKraft, provide evidence of the measures, steps and processes that it takes to ensure compliance with the provisions of this Clause and the relevant laws, regulations and codes of conduct.

25. FORCE MAJEURE

Should any event occur whether at SpaceKraft's premises or elsewhere which is beyond the control of SpaceKraft, such as by way of example, industrial action or dispute (including strike or lock out), shortage of materials, act of God, war, fire, flood, drought, breakdown of machinery, as a result of which the performance of any Purchase Order is prevented or delayed then, without prejudice to its rights in the event of a breach of contract by the Vendor, SpaceKraft reserves the right to cancel delivery or other performance of SpaceKraft's obligations under any contract in whole or in part and in the event of SpaceKraft exercising such rights SpaceKraft's liability will be limited to the repayment to the Vendor (without interest) of any part of the purchase or contract price or charge relating to Products and/or Services already received by SpaceKraft.

26. MISCELLANEOUS

- 26.1 This Purchase Order is not assignable and is not to be sub-contracted in whole or part by the Vendor without the prior written consent of SpaceKraft. Any such attempt at assignment shall be void.
- 26.2 This Purchase Order can only be modified by written agreement signed by duly authorised representatives of both parties.
- 26.3 The parties hereto agree that the terms, conditions and prices contained herein shall prevail notwithstanding any conflicting or additional terms on any orders or other notification submitted by Vendor.
- 26.4 No failure to exercise and no delay in exercising on the part of either party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude further exercise of any other right or the same right or the exercise of any other right or the same right hereunder.
- 26.5 The invalidity or unenforceability for any reason of any part of these terms and conditions shall not prejudice the continuation in force of the remainder of the terms and conditions.
- 26.6 Vendor acknowledges that he has read these terms and conditions and understands and agrees to be bound by them. Vendor further agrees that this Purchase Order is a complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Purchase Order.
- 26.7 Nothing in this Agreement shall make either party the agent or partner of the other or give either party the power to bind the other.
- 26.8 Nothing in this Purchase Order shall confer on any third party any right or benefit under the provisions of the Contracts (Rights of Third Parties) Act 1999.

27. GOVERNING LAW AND JURISDICTION

These Conditions shall be governed by and construed in all respects in accordance with the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the English Courts.