

standard terms and conditions of purchase



1 definitions

- 1.1 In these terms and conditions the following expressions shall have the following meanings unless inconsistent with the context:-
- ▶ **confidential information** means any information relating to Incommunities' business regardless of whether or not it relates to the provision of the contract
 - ▶ **contract** means the agreement between Incommunities and the supplier which incorporates these terms and conditions and the requirements set out in the purchase order
 - ▶ **goods** means any good agreed in the contract to be bought by Incommunities from the supplier
 - ▶ **Incommunities** means Incommunities Group Ltd, or any subsidiary of Incommunities Group Ltd, and whose registered number is 04221767.
 - ▶ **Intellectual Property Rights** means all intellectual property rights (including without limitation patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same
 - ▶ **legislation** means all laws, statutory instruments and regulations in force from time to time in the United Kingdom
 - ▶ **purchase order** means Incommunities' written instructions to the supplier to supply goods and/or services incorporating these terms and conditions
 - ▶ **services** means the services, duties and responsibilities to be provided, performed and observed by the supplier pursuant to the contract
 - ▶ **supplier** means the person, firm or company to whom the purchase order is addressed
- 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 Condition headings do not affect the interpretation of these terms and conditions and are contained for identification purposes only.

- 1.4 References to the singular include the plural and vice versa and references to one gender include the neuter and vice versa.

2. application of terms and conditions

- 2.1 Subject to any variation under condition 2.4, these terms and conditions are the sole conditions upon which Incommunities will enter into any contract with the supplier for any goods and/or services, taking precedence to any other terms and conditions presented by the supplier, and will be to the entire exclusion of all other terms, conditions or representations.
- 2.2 The acceptance of a purchase order and the supply of goods and/or services to Incommunities by the supplier shall be conclusive evidence of the acceptance of these terms and conditions by the supplier.
- 2.3 Any specifications, drawings and the like relating to the goods and/or services to be supplied or executed against a purchase order are expressly incorporated into and form part of these terms and conditions and the supplier shall supply the goods and/or services fully in compliance with any such specifications, drawings and the like.
- 2.4 These terms and conditions apply to all Incommunities purchases and any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of both parties.

3 prices

- 3.1 The price of the goods and/or services shall be stated in the purchase order and shall, unless otherwise agreed in writing by Incommunities, be exclusive of value added tax but inclusive of all other charges including any disbursements.

4 deliveries

- 4.1 Unless expressly agreed in writing otherwise, where any times for the supply of goods and/or services or the completion of works have been specified, time shall be of the essence.
 - 4.2 If there is, or is likely to be, any delay or likely delay in completing a purchase order the supplier shall, immediately after becoming aware or should reasonably have become aware, give written notice to Incommunities advising Incommunities of any actual or anticipated delay and details of any alternative delivery dates proposed. Upon receipt of such notice Incommunities may, at its sole discretion, grant in writing an extension of the period of time stated in the relevant purchase order.
 - 4.3 Delivery notes must be supplied with every delivery against a purchase order. Every delivery note and all correspondence must quote Incommunities' purchase order number and must provide the full contact name, address and telephone number of the supplier.
 - 4.4 It is the supplier's responsibility to ensure that goods are delivered to the delivery point specified in the purchase order.
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- 4.5 Unless expressly agreed in writing otherwise, deliveries will only be accepted during 'working days' in office hours (between Mondays to Thursdays 9.00am – 5.00pm and Friday 9.00am – 4.30pm, excluding bank holidays).

5 acceptance of goods/services

- 5.1 An authorised representative of Incommunities must sign for goods delivered and/or services provided and such signature shall confirm delivery only and shall not under any circumstances be deemed as acceptance of the quality or quantity of the goods delivered and/or services provided. This clause 5.1 shall take precedence over any clause contained in the supplier's delivery note which states that any such signature confirms that any goods and/or services have been received in a specific condition and/or quantity.
- 5.2 Incommunities reserves the right to reject any goods and/or services which it deems, at its sole discretion, are of inferior quality or defective. Incommunities will notify the supplier in writing of such rejection and the supplier must remove and/or replace or rectify any such rejected goods and/or services in accordance with Incommunities notice at the supplier's expense. Rejected goods and/or services will remain the property of the supplier at all times.
- 5.3 The acknowledgement of delivery by Incommunities will not limit or exclude the liability of the supplier in any way in relation to the goods and/or services.
- 5.4 The supplier is responsible for the provision of all equipment required for the processing (if necessary), loading, delivery and offloading of the goods and/or services.
- 5.5 Incommunities shall provide only such facilities and equipment as are described in the purchase order and the supplier shall be solely responsible for all other equipment, goods and materials necessary for the proper performance of any obligation contained within the purchase order.

6 services

The supplier shall provide the services using only appropriately qualified persons acting with due skill and care. Services shall be at all times completed with due diligence, with due skill and care and in a good and workmanlike manner and strictly in compliance with any agreed specifications, drawings and the like.

7 goods

- 7.1 Subject to clause 5.2, title in any goods shall not pass to Incommunities until such time as the supplier has delivered the goods to Incommunities, including any offloading and stacking, and Incommunities has confirmed acceptance of the goods to the supplier.
- 7.2 All goods supplied by the supplier shall be of satisfactory quality and be fit for purpose, such satisfaction and fitness for purpose to be at the sole discretion of Incommunities.
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- 7.3 The supplier will replace any defective goods and shall bear any reasonable costs and expenses incurred by Incommunities as a consequence of such defects (whether direct or indirect). Incommunities shall take reasonable but commercial prudent steps to mitigate the amount and cost of such expenses.
- 7.4 The supplier shall provide Incommunities with full and unencumbered title to the goods and such title shall pass to Incommunities on the date of acknowledgement of delivery relating to such goods and such title shall be free from any charge, lien, pledge or encumbrance of any nature either in favour of the supplier or any other party.

8 payment

- 8.1 Incommunities will not make any payment to the supplier unless the supplier is in receipt of an official purchase order.
- 8.2 If appropriate, separate invoices must be rendered for each part delivery against a purchase order. The purchase order number must be correctly quoted on all invoices. Incommunities is registered for VAT (reg. No. 806369616) and requires tax invoices from all VAT registered suppliers showing the VAT rate, the amount of VAT charged and the supplier's VAT registration number.
- 8.3 If Incommunities disputes the accuracy or any part of the invoice it shall notify the supplier within 30 days of receipt from the supplier and the supplier should provide a revised invoice to Incommunities rectifying such dispute or inaccuracy.
- 8.4 Subject to compliance by the supplier with these terms and conditions, and unless otherwise agreed in writing, Incommunities will make payment for goods and/or services within 30 days of receipt from the supplier of a valid invoice correct in all material aspects.
- 8.5 Unless agreed otherwise, Incommunities shall make all payments via a BACS transfer. The supplier shall provide Incommunities with details of the account into which such payment is to be made as soon as possible and in any case no later than 10 working days prior to payment becoming due.
- 8.6 Payment by Incommunities shall be without prejudice to any claims or rights which Incommunities may have against the supplier and shall not constitute any admission by Incommunities as to the performance by the supplier of its obligations hereunder.

9 liability and indemnity

- 9.1 The supplier shall indemnify and keep Incommunities indemnified in full against any and all direct, indirect or consequential losses or claims (including without limitation, loss of profit, loss of business, damage to property, depletion of goodwill and the like), damages, injury, costs and expenses (including, but not limited to, legal and other professional fees and expenses) or any other liability that may arise as a result of or in connection with:-
- i) defective workmanship, quality or materials;
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- ii) any act, omission or negligence by the supplier
- iii) any claim made against Incommunities in respect of any liability, loss, damage, injury, cost or expense sustained by Incommunities' its' employees, agents, 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 delivery or provision of the goods and/or services.

9.2 Nothing in this agreement limits either party's liability in relation to death or personal injury.

9.3 **Insurance**

The supplier undertakes to:-

- i) take out and maintain, at its own cost, public liability insurance for the amount of £5,000,000 (five million pounds) in respect of any one occurrence or series of occurrences arising out of one event.
- ii) take out and maintain, at its own cost, employee liability insurance for the amount of £5,000,000 (five million pounds) in respect of any one occurrence or series of occurrences arising out of one event.
- iii) take out and maintain, at its own cost, professional indemnity insurance (and where appropriate product liability insurance) for the amount of £5,000,000 (five million pounds) in respect of any one occurrence or series of occurrences arising out of one event to ensure that its activities under the contract are insured and remain insured for a period of six (6) years from completion of the contract.

9.4 The provisions of this condition 9 shall survive the termination of the contract for any reason.

10 confidentiality and data protection

10.1 The supplier agrees to keep all confidential information and information which is created or arises by virtue of the contract confidential and shall not disclose such confidential information to any third party unless agreed in writing by Incommunities.

10.2 The supplier must not use the confidential information for any purpose other than the provision of the goods and/or services.

10.3 The supplier agrees to abide by the requirements of the Data Protection Act 1998 (as amended) and keep Incommunities indemnified in relation to any breaches thereof.

10.4 If the supplier receives a subject access request which requires disclosure of any information provided by Incommunities, or relates to the confidential information,

the supplier will notify Incommunities immediately and will obtain Incommunities consent before disclosing any such information.

11 Incommunities property

- 11.1 Copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by Incommunities to the supplier shall at all times be and remain the exclusive property of Incommunities.
- 11.2 The supplier shall at all times hold all of Incommunities intellectual property in safe custody at its own risk and shall not do anything which may put such rights at any risk.
- 11.3 The parties agree that any intellectual property rights that may arise through the provision of the goods and/or services shall be the property of Incommunities. If any court or tribunal or other competent jurisdiction rules or orders that such intellectual property shall be vested in the supplier, the supplier agrees to transfer, at its own cost, all rights in such property to Incommunities.
- 11.4 The supplier agrees to indemnify Incommunities against any and all actions and costs incurred in relation to any alleged breach of intellectual property rights that may arise in connection with the provision of the goods and/or services.
- 11.5 This clause 11 shall survive termination of this contract for any reason.

12 termination

- 12.1 Incommunities shall have the right at any time by giving notice in writing to the supplier to terminate the contract forthwith in the event of the supplier:-
- i) becoming bankrupt; or
 - ii) failing to discharge any debts in a timely manner; or
 - iii) making any composition or arrangement with its creditors; or
 - iv) making a proposal in respect of its company for a voluntary arrangement for a composition of debts or a scheme of arrangement to be approved (in accordance with the Companies Act or Insolvency Act); or
 - v) having an application made under the Insolvency Act (or any amendment or succession thereof) in respect of its company to the court for the appointment of an administrator, or have a winding up order made, or (except for the purposes of amalgamation or reconstruction) have a resolution for voluntary winding up passed, or have a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or have an administrative receiver as defined in the Insolvency Act appointed, or have possession taken by or on behalf of the holders of any debenture secured by a floating charge.
- 12.2 Incommunities may forthwith terminate the contract by notice if the supplier commits a material breach of the contract.
- 12.3 Incommunities may forthwith terminate the contract by notice if the supplier commits any breach of the contract and fails to remedy such breach within 14 days of being given written notice to do so by Incommunities.
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- 12.4 Termination of the contract shall not prejudice or affect any right or remedy which has accrued or shall accrue thereafter to Incommunities and any provision which is expressed to survive the contract shall remain in full force and effect.
- 12.5 In the event of Incommunities terminating the appointment of the supplier under this clause 12, Incommunities shall be under no obligation to make further or additional payments to the supplier and Incommunities shall not be liable to the supplier for any loss of profits, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.

13 supplier responsibility and insurances

- 13.1 The quantity, type and price of the goods, plus any particular requirements in relation to the goods, shall be as set out in the purchase order.
- 13.2 The supplier warrants that:-
- i) the goods will correspond to the type, quantities, descriptions and particular requirements (if any) contained in the purchase order (or any specification or catalogue provided by the supplier) and shall be fit for the purpose of their intended use and to the extent that such description is incomplete or insufficient the supplier warrants that the goods will comply with all applicable European standards and warrants that in procuring, processing (if necessary), loading, delivery and offloading the goods it will exercise all reasonable skill, care and diligence to be expected of an experienced supplier of such materials
 - ii) the sale of the goods and/or the supply of the services and Incommunities' use of them will not breach any intellectual property rights of any third party and the supplier shall indemnify Incommunities against any loss in relation to any such breach of intellectual property rights
 - iii) that the goods and the supplier's actions in performing the contract will comply with all relevant legislation; and
- 13.3 The supplier shall provide to Incommunities prior to delivery, full information in respect of any substances to be supplied which are subject to the Control of Substances Hazardous to health Regulations 2002, and Incommunities shall be under no obligation to make any payment to the supplier in relation to the goods if (where applicable) such information has not been supplied in accordance with this clause 21.3.
- 13.4 The supplier shall keep a complete and up to date point in time record of the goods supplied further to the contract and all other materials supplied to Incommunities pursuant to other contracts and will provide this information to Incommunities within three (3) working days of such a request from Incommunities.

14 health and safety

- 14.1 The supplier agrees that it (and its employees, agents or any other person purporting to act on its behalf) will at all times comply with all health and safety legislation in force from time to time.
- 14.2 The supplier must, when on Incommunities' premises or carrying out work for and on behalf of Incommunities, comply with Incommunities' health, safety and supplier's code of practice at work and any other relevant policy or procedure. The policies and procedures are available for inspection from an authorised representative of Incommunities upon demand.

15 law and disputes

- 15.1 The validity, construction and performance of the contract shall be governed by English law and all disputes, claims or proceedings between the parties relating to the contract shall be subject to the exclusive jurisdiction of the English courts to which the parties hereto irrevocably submit.
- 15.2 Where applicable, where any dispute or difference between the parties may arise, the parties may elect to adjudicate in accordance with the provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (the Scheme). The specified nominating body to select adjudicators shall be the Royal Institution of Chartered Surveyors. Paragraph 21 of the Scheme shall be deleted and substituted with '*The parties shall comply forthwith with any decision of the adjudicator, and shall submit to summary judgment and enforcement in respect of all other decisions, in each case, without any defence, set-off counterclaim, abatement or deduction*'.

16 assignment and sub-contracting

- 16.1 The supplier shall not assign, transfer, novate, sub-contract or in any other manner transfer to any third party the benefit of the contract (or any part thereof) without the prior written consent of Incommunities.
- 16.2 Incommunities shall be able to assign the contract (or any part thereof) or any benefit or interest in the contract to any company within the Incommunities Group without the consent of the supplier.
- 16.3 Any consent provided by Incommunities pursuant to this clause 13 shall not relieve the supplier from any liability or obligation under the contract. Without prejudice to the generality of the foregoing the supplier shall ensure that sub-contractors comply with the contract and it will be responsible for the acts, defaults and neglects of any supplier or sub-contractor, its agents, servants or workmen.

17 set off

- 17.1 Incommunities shall have a right of set-off in relation to any payments due to the supplier by Incommunities, or any company within the Incommunities Group, whether or not such payment relates to this contract or any other contract.
- 17.2 The supplier shall have no right of set-off in relation to any payments due to Incommunities.
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18 waiver

No failure to exercise or delay in exercising any right, power or remedy under or in connection with the contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

19 notices

All notices shall be in writing and shall be validly served if delivered personally or sent by recorded delivery to the names and addresses of the parties set out in the purchase order.

20 force majeure

Neither party shall be liable for any delay in performing obligations or for failure to perform obligations if the delay or failure results from any delay or failure caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable, including but not limited to the following: Act of God, governmental act, act of terrorism, fire, war, explosion, accident, industrial dispute, impossibility of obtaining materials, or any other such circumstances beyond the party's reasonable control.

21 miscellaneous

- 21.1 If any provision of this contract or any part of any such provision is held to be invalid or unenforceable, such provision or part (as the case may be) shall be ineffective only to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable or otherwise prejudicing or affecting the remainder of such provision or any other provision of this contract.
- 21.2 The provisions of this contract supersede all communications, negotiations, representations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of this contract. Any terms contained in the suppliers terms and conditions, invoices, acknowledgements or other forms that are inconsistent with or different from the terms of this contract shall be void and of no effect.
- 21.3 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 21.4 A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract. This clause does not affect any right or remedy of any person which exists or is available other than pursuant to this Act.