

XENNIA TECHNOLOGY LTD

Terms & Conditions of Procurement of Goods & Services



1. SCOPE

- 1.1. Xennia is prepared to procure Goods and/or Services from the Supplier subject to these Terms and Conditions which shall apply at all times unless otherwise agreed by Xennia in writing (the Supplier and Xennia shall be referred to collectively as the "Parties").
- 1.2. These Terms and Conditions shall prevail over any terms or conditions of the Supplier that purport to govern any Contract for the procurement of Goods and/or Services by Xennia and any such conditions of the Supplier are hereby excluded.

2. PROCUREMENT OF GOODS & SERVICES

- 2.1. Xennia may purchase Goods and/or procure Services from the Supplier by submitting a written purchase order, incorporating these Terms and Conditions, for a specific quantity or volume of Goods to be delivered on a specified delivery date, or for the specified Services to be performed over a specified timescale or by a specified date and at a specified location (an "Order").
- 2.2. Each Order shall be deemed to be a separate offer by Xennia to purchase Goods and/or procure Services subject to these Terms and Conditions, which the Supplier shall accept, except that if an Order exceeds the forecast for the appropriate period as provided by Xennia in accordance with condition 2.5, then the Supplier shall be free to accept or reject the part of the Order that relates to Goods in excess of the forecast. Orders shall be accepted in writing by the Supplier confirming the Goods ordered, quantity, price and delivery date, and shall in any case be deemed to be accepted unless the Supplier objects to the Order in writing within five (5) business days after receipt. A contract will be formed when an Order is accepted, or deemed to be accepted, for the procurement and supply of Goods on these Terms and Conditions (the "Contract"), such Contract to remain in force for the duration of the provision of Goods and/or Services and then terminate.
- 2.3. Any terms and conditions of the Supplier attached to, enclosed with or referred to in any offer, quotation, order acknowledgment or other document shall not govern the Contract.
- 2.4. An Order for both Goods and Services shall be deemed to be a separate contract for Goods and a separate contract for Services.
- 2.5. Xennia may deliver a forecast of its expected purchase requirements for Goods. All such forecasts are to be regarded as non-binding and do not constitute Orders, nor do they create or impose any purchase obligation on Xennia. If no forecast is given by Xennia for a period, it shall be regarded as a forecast of zero orders for that period.

3. PRODUCTION & DELIVERY

- 3.1. Where Xennia has provided a forecast of anticipated requirements for Goods in accordance with condition 2.5, the Supplier may maintain stocks of Goods in order to minimise the delivery lead time of the Goods, on the condition that Xennia shall not be subject to any liability for any un-ordered stock and that the existence of such stock shall not create or impose any purchase obligation upon Xennia.
- 3.2. The Supplier shall provide ninety (90) days' advance notice in writing to Xennia of any proposed change in its manufacturing processes or methods, materials, suppliers or equipment used in production of the Goods. No changes should be made to any of the same without prior written authorisation from Xennia. At Xennia's request, samples shall be provided to Xennia at Supplier's cost for testing to prove that any such changes do not affect Xennia's use of the Goods.
- 3.3. Delivery of Goods shall be made at Xennia's premises upon the date at which the Goods arrive at Xennia's premises and accordingly the terms of delivery for all

Goods delivered hereunder are Delivered Duty Paid (DDP Incoterms 2000) Xennia's premises (usually to be Letchworth, UK).

- 3.4. Any costs chargeable to Xennia not specified on Xennia's purchase order shall be notified to Xennia in writing in advance of delivery and noted separately on invoices sent to Xennia.
- 3.5. Timely delivery of Orders is critical to Xennia, and failure or delay in delivery will have a serious negative impact on Xennia's business. The Supplier shall therefore take all such steps as may reasonably be required, including but not limited to allocation of necessary management time, human and financial resources, to ensure delivery of all Goods that are the subject of Xennia's Order on the date specified in the Order (early delivery shall only be accepted if agreed in writing beforehand). If the Supplier is unable for any reason to fulfil any delivery of Goods on the specified date:
 - 3.5.1. Xennia shall be entitled to refuse to take delivery of the Goods specified in the Order;
 - 3.5.2. Xennia shall be entitled to obtain from any other Person ("Alternative Supplier") such quantity of the Goods as the Supplier is unable to supply in accordance with Xennia's Order;
 - 3.5.3. the Supplier shall immediately provide to Xennia at the Supplier's expense all necessary licences, information, training and assistance such that Xennia shall be able to enable manufacture by, and obtain the said Goods from, the Alternative Supplier; and
 - 3.5.4. Xennia may claim damages for any additional costs, loss or expenses incurred by Xennia which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

4. RISK & PROPERTY

- 4.1. Risk of damage to or loss of Goods shall pass to Xennia once they have been delivered to, and accepted at, Xennia's premises.
- 4.2. Title to Goods delivered shall pass to Xennia upon completion of delivery and payment in full of all amounts owed.

5. INSPECTION & RETURNS

- 5.1. All Goods sold by the Supplier to Xennia shall conform in all respects to the specifications in the Order,
- 5.2. Xennia shall, within thirty (30) business days of the arrival of each delivery of Goods at Xennia's premises, inspect the Goods for shortages, errors or non-conformities, with any such inspection not deemed to constitute acceptance of the Goods. Xennia will notify the Supplier in writing of any defect by reason of which Xennia alleges that the Goods delivered do not conform to the agreed specifications and which should be apparent on reasonable inspection.
- 5.3. Xennia is also entitled to inspect the Goods at the Supplier's facility during business hours upon provision of five (5) business days' written notice. Any inspection of Goods prior to delivery shall imply neither delivery of the Goods, nor acceptance of the Goods by Xennia.
- 5.4. Any non-conforming Goods discovered before delivery shall be corrected to Xennia's satisfaction at the Supplier's expense without delivery delay.
- 5.5. If Xennia rejects any delivery of Goods which are non-conforming, the Supplier shall, within seven (7) days of being requested to do so by Xennia, either:
 - 5.5.1. supply replacement Goods which conform to the agreed specifications, with any additional costs borne by the Supplier (the non-conforming Goods may, at the Supplier's request, be returned to the Supplier, at Supplier's expense, for repair or replacement); or
 - 5.5.2. notify Xennia in writing that it intends to re-work the delivered Goods such that the Goods conform to the agreed specifications, with any additional costs borne by the Supplier (the non-conforming Goods may, at

the Supplier's discretion, be reworked at Xennia's premises or returned to the Supplier at Supplier's expense for reworking); or

- 5.5.3. notify Xennia that it is unable to supply replacement Goods that conform to the agreed specifications, or re-work the supplied Goods to meet the agreed specifications, whereupon Xennia shall be entitled to obtain from any other supplier such quantity of conforming Goods as the Supplier has been unable to supply, with any additional costs borne by the Supplier (the non-conforming Goods should be returned to the Supplier, at Supplier's expense, relevant outstanding invoices cancelled and any previously paid monies refunded). In such a case, the Supplier shall immediately provide to Xennia at Supplier's cost all necessary licences, information, training and assistance such that Xennia shall be able to enable manufacture by, and obtain the said Goods from, another supplier.

- 5.6. Any non-conforming Goods returned to the Supplier shall be subject to an investigation as to the root cause of the non-conformance, with a report on the outcome of the investigation being made available to Xennia on Xennia's reasonable request.

6. PRICING, INVOICING & PAYMENTS

- 6.1. Subject to conditions herein, the price for Goods shall be the price specified in the accepted, or deemed accepted, Order.
- 6.2. Where the Supplier has quoted a price for Goods or Services, the price quoted shall be valid for a minimum of sixty (60) days.
- 6.3. The Supplier shall mail all invoices to the address specified on the purchase order and send a copy by email or fax as requested. The said invoices shall reference on each page, as appropriate, the following: purchase order number, part number, invoice number and invoice date. Invoices shall break out applicable component costs, including item prices, transport, insurance and applicable taxes.
- 6.4. Xennia shall pay sums shown to be due on each invoice within sixty (60) days from the date on which the invoice is received by Xennia.

7. WARRANTY

- 7.1. The Supplier warrants that (a) the Goods shall conform to the agreed specifications; and (b) the Goods will be free from any defects in design and manufacture for a period of twelve (12) months from the date of delivery.
- 7.2. The above warranties shall not apply where:
- 7.2.1. any such defect in the Goods arises from wear and tear under customary usage, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's written instructions, or misuse, alteration or repair of the Goods without the prior approval of the Supplier.
- 7.3. The Supplier warrants that Services shall be performed with reasonable care and skill and as described in the quotation, proposal, accepted Order or as otherwise agreed. Xennia shall notify the Supplier in writing of any failure in performance of the Services within thirty (30) days of becoming aware of such failure, and the Supplier shall at its own expense correct any failure so notified.

8. INDEMNIFICATION

- 8.1. The Supplier shall indemnify, defend and hold Xennia, and its customers, employees, officers, directors, successors and agents, harmless from and against any and all claims for costs, losses, damages, penalties, fines, judgments, liabilities or expenses (including reasonable legal fees) that arise from, or are attributable to:
- 8.1.1. death or personal injury, or damage to property caused, or alleged to have been caused, by a negligent act or omission;
- 8.1.2. fraud or fraudulent misrepresentation;
- 8.1.3. breach of obligations in law to provide Goods that are safe and fit for purpose; or

- 8.1.4. a breach of any of the provisions of the Contract or these Terms and Conditions; by the Supplier or any of its employees, officers, directors, successors, agents or subcontractors.

9. HEALTH, SAFETY & ENVIRONMENTAL LAWS

- 9.1. The Supplier shall furnish only Goods that comply with all relevant local and national laws, codes, and regulations relating to health, safety and environmental compliance. Where such information is applicable, COSHH and MSDS information shall be provided with the Goods.
- 9.2. The Supplier shall ensure that any sites, facilities or offices at which staff from Xennia are required to be present for delivery of Goods and/or provision of Services hereunder comply with all relevant local and national laws, codes, and regulations relating to health, safety and environmental compliance.

10. CONFIDENTIALITY

- 10.1. During the Contract, and for a period of five (5) years after termination of the Contract, the Supplier:
- 10.1.1. shall protect any confidential information concerning the technology, business, affairs, customers or suppliers of Xennia from disclosure to any third party; and
- 10.1.2. shall restrict access to such information to those employees and affiliates that have a need to know such information, and shall be responsible for ensuring the compliance of such employees and affiliates with these Terms and Conditions.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. The Supplier warrants that the Goods (as well as the intended use of those Goods as long as this has been notified to the Supplier in writing) provided to Xennia do not infringe another party's patent, copyright, trade secret, service mark, trade name, trademark, design right or other intellectual property or proprietary right worldwide and shall indemnify, defend and hold Xennia, and its customers, employees, officers, directors, successors and agents, harmless from any and all claims for costs, losses, damages, penalties, fines, judgments, liabilities or expenses (including reasonable legal fees) that arise from, or are attributable to, any such infringement.

12. NON-SOLICITATION

- 12.1. The Supplier undertakes that it shall not at any time during the Contract, or for a period of two (2) years after termination of the Contract:
- 12.1.1. solicit, whether directly or indirectly, any of Xennia's employees who are or have been engaged hereunder; or
- 12.1.2. contact, solicit or attempt to solicit business from, or supply Goods or products that are functionally similar to the Goods to, Xennia's existing customers.

13. GENERAL

- 13.1. The Supplier shall not assign, transfer, or delegate any of its rights, liabilities, duties or obligations hereunder or any purchase order issued hereunder, by operation of law or otherwise, without the express written approval of Xennia.
- 13.2. The Supplier acknowledges that it does not rely on any representation, warranty or other provision except as expressly provided in these Terms and Conditions and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.3. These Terms and Conditions are not subject to change by reason of any written or oral statements by the Supplier or by any terms stated in any quotation, order acknowledgment, invoice or other documentation unless signed by an authorised representative of both Parties and reflecting an intention to amend or modify a particular provision of these Terms and Conditions.

- 13.4. The Section headings contained in these Terms and Conditions are for reference purposes only and shall not affect in any way the meaning or interpretation of the Terms and Conditions or any provisions hereunder.
 - 13.5. If any provision of these Terms and Conditions is determined by a court to be invalid or unenforceable in whole or in part, the validity of the remainder of the Terms and Conditions shall remain in full force and effect.
 - 13.6. No failure or delay by Xennia in exercising any of its rights under these Terms and Conditions shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of these Terms and Conditions shall be deemed to be a waiver of any continuing or subsequent breach of the same or any other provision.
 - 13.7. No provision of these Terms and Conditions shall be enforceable by, nor provide any benefit to, any third party.
 - 13.8. These Terms and Conditions, and all purchase orders issued hereunder, shall be governed by, interpreted and construed, and performance hereunder shall be determined, in accordance with English Law and both Parties agree to submit irrevocably to the exclusive jurisdiction of the English Courts.
- 14.2.1. the Supplier shall be compensated solely for Goods delivered and any costs or expenses incurred prior to termination. Costs or expenses that are directly attributable to termination, but are incurred after termination shall be paid only if agreed to by Xennia in writing before such expenses are incurred;
 - 14.2.2. the Supplier shall immediately provide to Xennia at Supplier's cost all necessary licences, information, training and assistance such that Xennia shall be able to enable manufacture by, and obtain the Goods from, another supplier;
 - 14.2.3. all obligations of Xennia under these Terms and Conditions shall terminate; and
 - 14.2.4. termination shall not affect or prejudice any right to damages or other remedy which Xennia may have in respect of the event giving rise to the termination or any other right to damage or other remedy which Xennia may have in respect of any breach of these Terms and Conditions which existed at or before the date of termination.

14. TERMINATION

- 14.1. Xennia may terminate a Contract formed on these Terms and Conditions forthwith by giving written notice to the Supplier should the Supplier:
 - 14.1.1. become insolvent, enter into liquidation, make any arrangement with its creditors or make a general assignment for the benefit of creditors, or suffer or permit the appointment of a receiver, manager, administrative receiver or administrator over its assets or cease (or threaten to cease) to conduct business in the normal course, or suffer any analogous process under any act or law relating to insolvency or the protection of the rights of creditors;
 - 14.1.2. in Xennia's reasonable apprehension be about to suffer any of the events described above and is notified by Xennia in writing accordingly;
 - 14.1.3. commit a material breach of any of the provisions of these Terms and Conditions and, if the breach is capable of remedy, fail to remedy it within fourteen (14) days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 14.1.4. withdraw or cease to manufacture or support the Goods or any product or service integral to the Goods; or
 - 14.1.5. suffer a change in ownership or control, from a divestiture, spin-out, acquisition or other means.

14.2. Upon termination according to condition 14.1: