

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

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FIRED UP TECHNOLOGIES LIMITED

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The customer's attention is drawn in particular to the provision of clause 9.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.2.

Contract: the contract between the Supplier and the Customer for the provision of services and/or the sale of Goods in accordance with these Conditions.

Customer: the person or firm who purchases any Goods or Services from the Supplier.

Force Majeure Event: has the meaning given in clause 10.

Goods and Services: the goods and services (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification: any specification for Goods or Services, including any documentation drawn up by the Supplier.

Supplier: (SUPPLIER) (registered in England and Wales with company number (Number)).

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase either Services or Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come in to existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's documentation, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Services or Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. GOODS

- 3.1 The Supplier reserves the right to amend the specification for the supply of Goods and Services if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Supplier shall ensure that:
 - (a) The Goods or Services will be delivered to the location specified in the Order or such other location as the parties may agree.

- 4.2 Any dates quoted for supply of the Services or Goods are approximate only, and the time is not of the essence. The Supplier shall not be liable for any delay in delivery of the Services and Goods that is caused by a Force Majeure Event or by the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Supplier shall not be liable for any delay or loss or damage caused by a third party Supplier or Courier.
- 4.3 If the Supplier fails to provide the Goods and Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Goods and Services of similar description in the cheapest market available, less the price of the Goods and Services. The Supplier shall have no liability for any failure to deliver the Goods and Services to such extent that such failure is caused by a Force Majeure Event, or the Customer's failure to provide the Supplier with adequate instructions or any other instructions that are relevant to the supply of Goods and/or Services. The Supplier shall not be liable for any delay or loss or damage caused by a third party Supplier or Courier.

5. QUALITY

- 5.1 The Supplier warrants that on delivery and/or completion of the work and for a period of 12 months from the date when the work is completed, that the work shall be free from material defects in design, material and workmanship and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Supplier. In the event that the manufacturer's warranty applies to a faulty product, this will be covered under the terms of the warranty. Removal and reinstallation of the product will be charged as an extra item.

6. PRICE AND PAYMENT

- 6.1 The price of the Services and Goods shall be the price set out in the Order or if no prices quoted, the price set out in the published price list enforced as at the date of the Order.
- 6.2 The price of the Goods and Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Services.
- 6.3 The Supplier may invoice the Customer for the Goods or Services on or at any time after the completion of the work and/or delivery of the Goods. In the event that a stage payment has been agreed, then all payments must be made in accordance with those stage payments. In the event that any stage payment is not paid on its

due date, then the Supplier may cease any further work and seek payment of all sums due at the time when the breach occurs.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) The Customer resells their Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.1.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relation to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- (f) in the event that equipment is installed and Deemed to form part of the fabric of the building, then the Supplier shall not be responsible for any damage for removal or reinstallation.

8. TERMINATION AND SUSPENSION

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of clause 8.1 the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer.
- (c) (being a Company) a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a Company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed an administrator is appointed over the Customer.
- (e) (being a Company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed in administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets.
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attached or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 13 days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an affect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(i), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITED LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory

duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed (percentage) of the price of the Goods.

10. FORCE MAJERURE

The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over a deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

11.3 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right

or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.4 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.5 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party as its registered office (if it is a Company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.5(a) if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.6 **Third Parties.** A person who is not a part to the Contract shall not have any rights to enforce its terms.

11.7 **Governing Law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

11.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).