

## 1. DEFINITIONS

The "Seller" means Wilde Analysis Limited.

The "Buyer" means the person who buys the Products or requests the supply of Services.

The "Contract" means the Contract on the conditions set out herein between the Seller and the Buyer for the sale and purchase of the Products or the supply of the Services.

The "Order" means an offer from the Buyer to buy the Products or Services described on the conditions set out herein.

The "Manufacturer" means a software developer or hardware Manufacturer.

The "Products" means the products or software which the Seller has agreed to supply.

The "Services" means those services which the Seller has agreed to supply, for example engineering consultancy and training services.

## 2. HEADINGS

The headings in these conditions are for guidance only.

## 3. INCORPORATION OF CONDITIONS

(A) The Seller is under no liability for any Order received until the Order is accepted by the Seller in writing.

(B) These conditions shall be deemed to be incorporated in all Contracts of the Seller to supply Products and/or Services and in the case of any inconsistency with any letter or form of Contract sent by the Buyer or any other communication between the Buyer and Seller the provision of these conditions shall prevail unless expressly varied in writing and signed on behalf of the Seller.

(C) The Sellers catalogue price list and other advertising matter shall not form part of any Contract between the Buyer or Seller.

(D) In certain cases, the Seller acts strictly for and on behalf of a Manufacturer in which case the Conditions of this Contract are to be construed accordingly.

(E) The Buyer shall be deemed to have accepted the Contract if no notification to the contrary is received by the Seller within seven days of the date of the Contract.

## 4. QUOTATIONS

Notwithstanding that the Seller may have given a detailed quotation no Order shall be binding on the Seller unless it has been acknowledged in writing by the Seller.

## 5. PRICES

(A) Prices at which Products or Services are invoiced are those specified on a Seller's quotation provided the Buyer places a purchase order within the time period stated on the quotation.

(B) All prices quoted are exclusive of V.A.T.

(C) Unless otherwise agreed prices for the Products or Services do not include:

(i) The cost of effecting delivery in accordance with clause 7 hereof.

(ii) Any special packing, alteration, installation or other special requests required by the Buyer.

(iii) Any fluctuations in price beyond the Sellers control.

(iv) Insurance.

(D) In consideration of the Services provided by the Seller the Buyer shall pay either a fixed fee which shall be agreed on a case by case basis and/or consultancy rates in accordance with the Sellers standard charge rates which shall with the Buyers agreement be revised periodically. Expenses will be charged at cost. In addition V.A.T. is payable at the current rate.

(E) In the event of the Buyer requiring technical revision to drawings the Buyer shall pay the Seller at the agreed rates for making such provisions.

**6. TERMS OF PAYMENT**

(A) The Seller's Terms of Payment are 30 days from the Seller's invoice date unless otherwise stated on the Seller's proposal or subsequently negotiated with the Buyer.

(B) A claim or counter claim or set-off shall not justify the Buyer withholding payment.

(C) The Seller shall be entitled to interest on invoiced sums outstanding beyond the agreed payment date as stated on the Seller's invoice at a rate of 5% above base rate as published by Barclays Bank Plc, to the date payment is received by the Seller.

(D) Failure by the Buyer to pay in accordance with the provisions of this clause shall entitle the Seller, without prejudice to its rights to damages, to suspend any outstanding deliveries or to cancel the Contract.

**7. DELIVERY**

(A) Any times quoted for delivery are estimates only and although the Seller will use all reasonable efforts to deliver the Products in accordance with the time specified, failure to comply with such time shall not constitute a breach of this Contract and time shall not be of the essence.

(B) Unless otherwise agreed in writing the Seller shall be entitled to make partial deliveries by instalments and the terms and conditions herein contained shall apply to each partial delivery. If the Buyer instructs the Seller to deliver any part of an Order the Seller reserves the right to revise any agreed price.

(C) The risk in the Products passes to the Buyer on delivery of the Products. Until ownership has passed to the Buyer pursuant to Clause 9, the Buyer shall keep the Products safe and insured against usual commercial risks and free from change, lien or other encumbrance and shall keep the Products easily identifiable.

(D) Where the Buyer notifies the Seller that it is unable to take delivery of the Products in accordance with the time stated in the Order acceptance or within 7 days of the Seller giving notice that the Products are ready for despatch, the Seller shall endeavour to store the Products and the Buyer shall reimburse the Seller for all costs and storage charges incurred by the Seller until the time of delivery.

(E) Where the products are handed to a carrier for

carriage to the Buyer or to a port for export any such carrier shall be deemed to be an agent of the Seller and not of the Buyer until the time of delivery.

(F) If the Buyer shall fail to give notice within 7 days, Products shall be deemed to be in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.

(G) Where the Products are to be delivered by instalments or against call-off and the Buyer either, (1) fails to accept any delivery when due or, in the case of call-offs, fails to accept outstanding deliveries within one month of the date of the Order acceptance or (2) defaults in making any payments when due, then, the Seller may cancel any or all subsequent deliveries and the Buyer shall compensate the Seller in full for any loss or expense arising from such cancellation and notwithstanding the Seller's duty to mitigate its loss shall compensate the Seller in full for the loss in respect of the Products ordered but not delivered.

**8. SELLERS RIGHTS**

The Seller shall be entitled:

(A) To withdraw or cancel a quotation at any time, without liability in respect of such cancellation, for any loss to the Buyer if circumstances arise which necessitate this.

(B) To refuse or delay the supply of Products or Services where the Buyer's credit or conduct of his account is unsatisfactory.

**9. PASSING OF THE TITLE AND RISK**

(A) Unless agreed to the contrary Products shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance, but the Products shall remain the property of the Seller until payment due under all Contracts between the Buyer and the Seller has been made in full and unconditionally.

While the ownership of the seller

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continues the Buyer shall:

(i) Keep the Products separate and identifiable from all other Products in his possession and shall take at his cost all the necessary measures for the protection of the Products including maintaining of adequate insurance.

(ii) Not dispose of the Products or any part of them to any other party whatsoever and shall keep the Products easily identifiable.

(B) If the Products shall become converted or incorporated with other products while still in the ownership of the Seller the Ownership in such other products shall vest in the Seller until payment of the Products is made.

(C) In the event of any resale by the Buyer of the Products or such last mentioned products the beneficial entitlement of the Seller shall attach to the proceeds of the sale or other disposition thereof so that such proceeds or any other claim thereof shall be held on trust for the Seller who will stand in a strictly fiduciary capacity in respect thereof.

(D) In the event of failure to pay the price in accordance with the contractual obligations, the Seller shall have the power to resale or retake possession of the Products after reasonable notice, and for that purpose to go upon any premises occupied by the Buyer, such power being additional to (and not in substitution for) another power of sale arising by operation of law or implication or otherwise.

### **10. DEFAULT OR INSOLVENCY OF THE BUYER**

(A) If any one of the events referred to below occur notice thereof is to be given immediately to the Seller by the Buyer. Furthermore, all Products which are the property of the Seller pursuant to the provisions of clause 9 and which are in the possession of the Buyer shall be delivered immediately to the Seller. Without prejudice to the Buyers duty to make delivery as aforesaid, the Seller upon receiving notice from whatever source of the happening of any one of the said events, shall also have the right during normal business hours to enter upon the said land or buildings of the Buyer to take possession of the Sellers Products.

The events referred to above are:

(i) Any notice to the Buyer that a receiver or manager to be or has been appointed.

(ii) Any notice to the Buyer that a petition to wind-up the Buyer is to be or has been presented or any notice of resolution to wind-up the Buyer (save for the purposes of the reconstruction of amalgamation).

(iii) A decision by the Buyer that the Buyer intends to take agreements to its Creditors.

(iv) Any act of bankruptcy.

(B) The Buyer shall not create or allow to be created any right in the Products in favour of any third party. If the Buyer breaches any of the provisions of this subparagraph the value and the outstanding amounts on the Order shall immediately and notwithstanding any contractual terms to the contrary become payable.

(C) Until payment specified in the sub-paragraph (A) hereof the Buyer will not dispose of the Products in question but will store the same taking the safeguard specified above.

### **11. CANCELLATION OF CONTRACT**

A Contract cannot be cancelled except with the Sellers consent and on terms which will indemnify the Seller against all reasonable loss.

### **12. SELLERS LIEN**

The Seller shall have a general as well as a particular lien on all goods, materials or other property of the Buyer in respect of any unpaid account of the Buyer (whether or not in relation to the Products, materials or other property of the Buyer).

### **13. WARRANTY**

(A) The Seller will endeavour to ensure that the Buyer receives the benefit of any guarantee or warranty which may have been given to the Seller by a Manufacturer of the Products or third party.

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(B) The Buyer is responsible for instructing itself on the terms of such guarantee or warranty and ensuring that any conditions are fully complied with.

(C) The Seller has no liability to the Buyer in respect of the Products supplied by the Seller which are manufactured by another party.

(D) The Buyer must ensure that the Products are serviced, maintained and used properly in accordance with the Seller's recommendation (and any guarantee or warranty) and are not fitted or used with any parts, accessories or ancillary equipment other than those recommended by the Seller or stated by the Seller to be suitable.

(E) No attempt must be made by the Buyer or any third party to remedy any defect or to dismantle or otherwise tamper in any way with the Products except in accordance with specific instructions, directions and/or requests of the Seller as this may invalidate the warranty.

### **14. LIMITATIONS OF LIABILITY**

(A) Liabilities for Products are strictly in accordance with the rights granted by an individual Manufacturer and the Seller can accept no liability thereof.

(B) In cases where the Seller is asked to recommend Products to meet the Buyers requirements the Seller does not warrant that purchase of the Products will satisfy the Buyers requirements. Recommendations of Products by the Seller are reasonable recommendations only and the Seller can accept no responsibility if any Products supplied fail to meet the Buyers requirements or to achieve performance.

(C) The Seller is not liable to the Buyer for losses or non-retrieval of data or programs from storage media or for consequential losses.

(D) Where the Seller obtains specialised Services such as advice on abnormal aspects of the Contract the Seller shall not be liable thereof.

(E) The Sellers liability for any act or omission is limited to the re-performance or rectification of the Services carried out by the Seller under this Contract.

(F) It is recommended that special insurance arrangements are made for any Services or Products for United States of America or Canada where U.S. jurisdiction may apply as these are excluded from the Seller's liability.

(G) The total liability of the Seller under this Contract shall not exceed the value of this Contract unless specific limits of liability have been agreed e.g. limits of liability for the provision of engineering consultancy services. In any event the Seller's overall limit of liability shall be subject to the terms and conditions of the Seller's Professional Indemnity and Public Liability Insurance Policies and to the amount paid out by such insurance policies.

### **15. END USER**

The Products sold by the Seller under this Contract or any copies or reproductions of any part of such Products made in any manner or form whatsoever are for the sole use of the Buyer and his employees and cannot be sold, hired or leased or licensed to, or used by any other person unless the Buyer obtains the prior written consent of the Seller.

### **16. FORCE MAJEURE**

The Seller shall not be liable for any delay in the supply of Services or failure of the Products to perform in the event that the supply of Services or manufacture, supply or delivery of the Products is prevented or delayed by an act or circumstances beyond the Sellers reasonable control including but not limited to act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure material required for the performance of the Contract.

### **17. WAIVER**

Any failure upon strict performance of these conditions shall not be deemed a waiver of any of the Sellers rights or remedies nor be deemed a waiver of any subsequent default by the Buyer.

## 18. SEVERANCE

The invalidity in whole or part of any clause in these conditions shall not effect the validity of the remainder of such clause or conditions.

## 19. ASSIGNMENT

This Contract is not assignable by the Buyer without the written consent of the Seller and is between the Seller and the Buyer as principals, but the Seller may without consent assign or subcontract all or any of its rights and obligations hereunder.

## 20. TERMINATION

If the Buyer becomes insolvent or in the opinion of the Seller is likely to go into bankruptcy, receivership or liquidation or makes default or commits a breach of this Contract, the Seller may forthwith on written notice to the Buyer terminate the Contract without incurring liability to the Buyer and without prejudice to the Sellers rights which may have occurred up to the date of termination.

## 21. GOVERNING LAW

The interpretation and application of the Contract shall be in accordance with English Law and both parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.

## 22. CONFIDENTIALITY

Both Parties agree that they will keep confidential information of the other party confidential and shall provide the same or greater level of care as they would with their own confidential information. Both parties agree not to divulge any confidential information of the other party to any third party other than their own authorised staff or representatives who have the same or equivalent conditions of confidentiality.

## 23. DURATION

This Contract shall continue until such time that the Seller has completed the supply of Services or delivery of Products.

## 24. COPYRIGHT

(A) Making duplicates of software must be strictly in accordance with the rights granted by an

individual Manufacturer. The Buyer must satisfy itself that it has the right to duplicate or copy software. The Seller makes no representation thereto.

(B) Subject to (A) above the copyright in all documents provided by the Seller in the performance of his Services shall remain vested with the Seller but the Buyer shall have a right to use such drawings and documents for any purpose directly related to such Services.

## 25. EXPORT

The Buyer agrees to abide by any UK or US export controls, including the US Government International Traffic in Arms Regulations (ITAR), Export Administration (EAR), or any other export laws and regulations as they may relate to this Contract. The Parties agree to obtain the proper export authorisations as they may be required by ITAR. The Buyer shall indemnify and hold the Seller harmless for all claims, demands, damages, costs, fines, penalties, legal fees and all other expenses arising from the failure of the Buyer to comply with this clause.

The Buyer agrees that the Products and Services will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that they will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended of likely to be used for such purposes; that the goods will not be re-exported or otherwise re-sold or transferred to a destination subject to UN, EU, US, or OSCE embargo where that act will be in breach of terms of that embargo; and that the goods, or replica of them, will not be used in any nuclear explosive activity of unsafeguarded nuclear fuel cycle.

OSCE is the Organization for Security and Co-operation in Europe

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**26. NOTICES**

Any notices or documents to be given under these conditions shall be given by sending the same in a pre-paid letter or by email or facsimile transmission to the address of the relevant party set out in the Contract or to such other address as such party may have notified to the other for the purposes hereof. Any notices sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered two working days after despatch and in proving despatch it shall be sufficient to show that the envelope containing such notice was probably addressed, stamped and posted. Any such notice sent by email or facsimile transmission shall be deemed to have been delivered on the next working day following its dispatch.