

1. INTERPRETATION

In these Conditions, unless the context requires otherwise, the following definitions and rules of interpretation shall apply:

1.1 The following words shall have the following meanings:

Additional Terms: any terms varying or adding to the Conditions that are included within the Order or otherwise agreed in writing;

Search: William G Search Limited, a company registered in England and Wales (CRN: 407145) whose registered office is at Market Works, Whitehall Road, Leeds LS12 6EP;

Contract: any contract, made in accordance with and subject to these Conditions and the Additional Terms, between Search and the Seller for the purchase of Goods and/or Services or hire of Goods by Search from the Seller;

Goods: any goods Search agrees in a Contract to buy or hire from the Seller (including any part of them);

Good Industry Practice: the degree of skill, care, prudence, foresight and operating practice which would reasonably be expected from time to time of a skilled and experienced person and/or organisation (engaged in the same or similar type of business as the Seller) under the same or similar circumstances;

Order: Search's written instructions to the Seller, incorporating the Conditions, to supply Goods and/or Services to Search;

Seller: the person, company or other type of organisation that enters into a Contract, in accordance with and subject to the Conditions, to supply or hire Goods to Search and/or to provide Services to Search; and

Services: any services the Seller agrees in a Contract to supply to Search.

1.2 References to the masculine include the feminine and the neuter, and the singular include the plural and, in each case, vice versa. Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.

1.3 Headings do not affect the interpretation of the Conditions.

2. APPLICATION OF TERMS

2.1 The Conditions shall apply to all Contracts and, subject to any variation under Condition 2.2, the Conditions are the only terms and conditions on which Search is prepared to deal with the Seller.

2.2 Any variation to these Conditions shall have no effect and shall not form part of the Contract unless expressly agreed in writing by Search.

2.3 The Conditions shall govern any and all Contracts with the Seller to the entire exclusion of all other terms and conditions, except in relation to any Seller obligations, guarantees and/or warranties in any standard manufacturer or Seller warranty which are in addition to the standards and requirements set out in the Conditions and which are customarily granted or passed on by the Seller to its customers.

2.4 Subject to Condition 2.2, no terms or conditions of the Seller endorsed upon, or delivered with, or contained in, the Seller's quotation, acknowledgement or acceptance of an Order, delivery note or other document shall form part of the Contract and the Seller waives any rights which it otherwise might have to rely on such terms and conditions.

2.5 Each quotation for the Goods and/or Services from the Seller will be deemed to be an offer by the Seller to supply the Goods and/or Services to Search on these Conditions. Each quotation will remain open for 120 days from its date.

2.6 No offer received by Search from the Seller shall be deemed accepted by Search and no binding contract will come into existence unless and until an Order to buy Goods and/or Services or hire Goods from the Seller, which will be subject to the Conditions, is issued by Search. No binding contract shall come into existence until Search issues an Order.

3. DELIVERY

3.1 Unless otherwise agreed in writing, the Goods shall be delivered, with carriage paid, to Search's place of business or to the place of delivery specified in the Order or as otherwise notified by Search in writing prior to delivery of the Goods. The Seller shall off-load and where required assemble the Goods at its own risk as directed by Search. The Services (if any) shall be provided/delivered at the place of delivery specified in the Order or as otherwise notified by Search in writing prior to provision/delivery of the Services. The date for delivery shall be specified in the Order but if no such date is specified then delivery shall take place within 28 days of the Order.

3.2 Unless agreed otherwise in writing, the Seller shall be entitled to invoice Search for Goods upon, but separately from, delivery of the Goods to Search and the Seller shall be entitled to invoice Search for Services upon satisfactory performance of the Services.

3.3 Unless otherwise stipulated by Search in the Order, deliveries shall only be accepted by Search in normal business hours. The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents, and, in the case of part delivery, the outstanding balance remaining to be delivered. Time for delivery shall be of the essence.

3.4 The Seller shall notify Search in writing as soon as possible if it will be unable to deliver the Goods and/or Services by the date referred to in Condition 3.1.

3.5 If the Goods and/or Services are not delivered on the agreed date then, without prejudice to any other rights which Search may have under the Contract or otherwise, Search reserves the right to:

- (a) cancel the Contract in whole or in part;
- (b) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make;
- (c) recover from the Seller any expenditure reasonably incurred by Search in obtaining the Goods and/or Services in substitution from another supplier; and
- (d) claim damages for any additional costs, loss or expenses incurred by Search which are in any way attributable to the Seller's failure to deliver the Goods and/or Services on the due date.

3.6 Where Search agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract. Failure by the Seller to deliver any one instalment shall entitle Search at its option, but without prejudice to any other rights which Search may have under the Contract or otherwise, to treat the whole Contract as repudiated. If the Goods are delivered to Search in excess of the quantities ordered Search shall not be bound to pay for the excess and any excess shall be and remain at the Seller's risk and returnable at the Seller's expense.

3.7 The Company shall not be deemed to have accepted the Goods until it has had 14 days to inspect them following delivery or installation/commissioning (if applicable), whichever shall be the later of the two, and shall not be deemed to have accepted the Services until it has provided written confirmation to the Seller that the Services have been performed to the standards required. The Company shall also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

3.8 The Goods shall remain at the risk of the Seller until delivery to Search is complete (including off-loading and stacking). Ownership of the Goods shall pass to Search on delivery.

4. PRICE

4.1 The price of the Goods and/or Services shall be stated in the Order and, unless otherwise agreed in writing by Search, shall be exclusive of value added tax but inclusive of all other charges.

4.2 Unless otherwise agreed in writing, no variation in the price or extra charges shall be accepted by Search.

5. PAYMENT

5.1 Unless agreed otherwise by Search in writing, Search shall pay the price of the Goods and/or Services within 60 days of the end of the month following receipt of a valid invoice. Time for payment shall not be of the essence.

5.2 Without prejudice to any other right or remedy, Search reserves the right to set off any amount owing at any time from the Seller to Search against any amount payable by Search to the Seller under the Contract.

5.3 If any sum under the Contract is not paid when due, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment in full, at 3% per annum over Barclays Bank base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

6. QUALITY AND DEFECTS

6.1 The Goods and Services shall conform in all respects with the Order and the specifications supplied or advised by Search to the Seller. The Goods shall be of the best available design, of the best quality, material and workmanship and be free from faults or defects. The Services shall be supplied with reasonable skill and care and in accordance with Good Industry Practice.

6.2 The Seller will comply and will ensure that its agents, employees and/or sub-contractors comply with all applicable laws, standards, regulations, health and safety rules and/or other legal requirements relating to the Goods and/or Services and will obtain and maintain all necessary licences, consents and authorisations required to supply the Goods and/or Services.

6.3 Search's rights under the Conditions are in addition to the statutory conditions implied in favour of Search by the Sale of Goods Act 1979 and the Sale and Supply of Goods and Services Act 1982 ("the Acts"). The Seller is responsible for identifying the purposes the Goods will be used for by Search.

6.4 At any time prior to or on delivery of the Goods and/or Services to Search, Search shall have the right to inspect and test the Goods and/or Services. If, as a result, Search considers that the Goods and/or Services do not conform with the standards set out in Condition 6.1 or under the Acts, Search shall inform the Seller who shall immediately take such action as is necessary to ensure conformity and, in addition, Search shall have the right to require and witness further testing and inspection.

6.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and/or Services and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

6.6 If any of the Goods and/or Services fail to comply with the provisions set out in Condition 6 Search shall be entitled to avail itself of any one or more remedies listed in Condition 11.

7. INDEMNITY

7.1 The Seller shall be liable to pay Search (on written demand) for, and indemnify Search (and keep Search indemnified) in full against all direct and indirect loss (both of which terms include, without limitation, loss of profit,

- loss of business, loss of reputation, loss of opportunity, depletion of goodwill and like loss) losses, damages, injury, costs and expenses (including reasonably incurred legal and other professional fees and expenses on an indemnity basis) awarded against or incurred or paid by Search as a result of or in connection with:
- (a) defective workmanship, quality of materials or incorrect materials supplied or damage to Search's property;
 - (b) any actual or alleged infringement, wherever it may arise, of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
 - (c) any claim made against Search in respect of any liability, loss, damage, injury, cost or expense sustained by Search's employees or agents or by 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 Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.
- 8. CONFIDENTIALITY**
- 8.1 Except as permitted or required by law, the Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions or processes which are of a confidential nature and have been disclosed to the Seller by Search or its employees or agents and any other confidential information concerning Search's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential information to employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to Search and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.
- 9. THE COMPANY'S PROPERTY**
- 9.1 Materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data or any other property supplied by Search to the Seller under the Contract shall at all times be and remain the exclusive property of Search and shall be held by the Seller in safe custody at its own risk and maintained and kept in good repair and condition by the Seller until promptly returned to Search by the Seller on termination or completion of the Contract and shall not be used or disposed of other than as authorised by Search in writing.
- 10. TERMINATION**
- 10.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice, whereupon all work on the Contract shall be discontinued and Search shall pay the Seller fair and reasonable compensation for work-in-progress at the date of termination, provided that such compensation shall not include any pure economic loss, loss of profit, opportunity or business or any indirect or consequential loss.
- 10.2 The Company shall have the right at any time by giving the Seller written notice to terminate the Contract forthwith if the:
- (a) Seller commits a material breach of any of the terms of the Contract; or
 - (b) Seller allows or suffers any distress, execution or other process levied upon any of the assets of the Seller; or
 - (c) Seller goes bankrupt or enters into liquidation whether compulsory or voluntary (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation) or if an administrator or receiver is appointed (or notice of a proposed appointment is provided or documents are filed with the court for the appointment of an administrator) over the whole or any part of the Seller's business or assets, or if the Seller makes any arrangement or composition (whether formal or informal) with its creditors generally or otherwise, or a winding-up resolution or petition is passed or presented to a court (respectively), or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller, or any similar occurrence to the above events occurs in any other jurisdiction, or Search reasonably believes there is a real risk of any of the above events occurring; or
 - (d) Seller ceases or threatens to cease to carry on its business; or
 - (e) financial position of the Seller deteriorates to such an extent that in the opinion of Search the capability of the Seller to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (f) any event occurs or proceeding is taken, with respect to the Seller, in any jurisdiction to which it is subject that has a similar or equivalent effect to any of the events listed in Condition 10.2(b) to (e); or
 - (g) Search reasonably anticipates that any of the events listed in Condition 10.2(b) to (e) is about to occur.
- 10.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Search accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 10.4 If the Seller fails to promptly return Search's property in accordance with Condition 9, Search may access and enter the Seller's premises, or any other premises owned or controlled by the Seller, to take possession of its property. Where Search's property is not at such premises, the Seller will procure the right for Search to access and enter the premises where its property is located and take possession of the same. Until Search's property is returned to, or repossessed by, Search the Seller shall be solely responsible for its safe keeping.
- 11. REMEDIES**
- 11.1 If any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract, Search shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by Search:
- (a) to rescind the Contract;
 - (b) to cancel any or all remaining instalments or stages of the Contract;
 - (c) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
 - (d) to refuse to accept any further deliveries of the Goods or supply of Services which the Seller attempts to make (without any liability to the Seller);
 - (e) to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods and/or Services or (where applicable) to supply replacement Goods and/or carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - (f) to carry out or arrange for a third party to carry out, at the Seller's expense, any work necessary to make the Goods and/or Services comply with the Contract;
 - (g) to recover from the Seller any additional reasonable expenditure incurred by Search in obtaining the Goods and/or Services in substitution from a third party;
 - (h) to claim such damages as may have been sustained in consequence of the Seller's breach of the Contract.
- 12. FORCE MAJEURE**
- 12.1 Search reserves the right to defer the date of delivery or payment, or to cancel the Contract, or reduce the volume of the Goods and/or Services ordered, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (except in relation to Search's workforce), or restraints or delays affecting suppliers or carriers or inability or delay in obtaining supplies of adequate or suitable goods and/or materials.
- 13. GENERAL**
- 13.1 Each right or remedy of Search under the Contract is without prejudice to any other right or remedy of Search whether under the Contract or otherwise.
- 13.2 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of Search. The Company may assign the Contract or any part of it to any person, firm or company.
- 13.3 If any provision of the Contract is found by any court or a similar body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. In the event that such court or similar body of competent jurisdiction decides that such Condition is not severable, the parties agree to substitute the relevant Condition with a valid, enforceable and legal provision which achieves, to the greatest extent possible, the same effect as the original Condition would have.
- 13.4 Failure or delay by Search in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Search of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach of default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 All notices sent by the Seller to Search must be sent to Search at its registered address (as detailed in Condition 1) or by email (conditions@wgsearch.co.uk) or facsimile or as otherwise agreed by Search. Search may send notices to the Seller at the email or postal address, or by facsimile to the number, provided by the Seller to Search.
- 13.7 All communications between the parties about the Contract, including any notices to be sent or received under the Contract, must be in writing. Notices shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email or facsimile.
- 13.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.