

1 INTERPRETATION

1.1 In these Conditions:

“Services”	Means all specified services or deliverables that the Supplier is to provide in accordance with these Conditions.
“Order”	Means any Purchase Order to the Supplier to supply the Buyer with the Services or Deliverables.
“Buyer”	Means Clarke Telecom Ltd
“Contract”	Means the contract for the purchase of the Services or Deliverables.
“Writing”	Includes facsimile and electronic transmission and comparable means of communication.
‘Supplier’	Shall mean the Person, Firm or Company to whom the Purchase Order is issued.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 THE ORDER

2.1 These Conditions shall apply to all Orders for the supply of services or deliverables unless otherwise agreed between Clarke Telecom and the Supplier and will supersede all previous communications or agreements between the Supplier and Clarke Telecom whether oral or written relating to any services or deliverables.

2.2 The Order constitutes an offer by Clarke Telecom to purchase the services or deliverables referred to therein on the terms of the Contract. The Buyer will not accept responsibility for any services or deliverables unless supplied in accordance with an issued Order duly issued on behalf of the Buyer.

2.3 The acceptance in Writing of the order or any other conduct which is consistent with acceptance of the Order by the Supplier shall constitute acceptance by the Supplier of the Order and all of the terms of the Contract.

2.4 No variation to the terms of the Contract shall be binding unless agreed in Writing between the authorised representatives of Clarke Telecom and the Supplier. The Supplier shall not unreasonably withhold its consent to a variation proposed by Clarke Telecom.

2.5 No indulgence shown by either party shall prevent that party subsequently insisting upon its rights and remedies and no waiver by Clarke Telecom of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

2.6 Clarke Telecom shall have the right to delegate any of its rights or powers under the Contract by written notice to the Supplier.

2.7 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

2.8 The supplier will accept the purchase order based upon pre-agreed Schedules of Rates or quotations previously submitted and accepted by Clarke Telecom. Where any price or rate is not included within the Schedules of Rates or quotations, the parties shall co-operate in good faith to determine the applicable price or rate.

3 SUPPLIER'S WARRANTY OF PERFORMANCE

3.1 The supplier warrants that it will perform all services or deliverables in a good and workmanlike manner, with proper regard to the safety of all persons, with all professional care, skill and diligence, and that all services and deliverables will meet or exceed all relevant trade/industry/professional quality standards. All work will be undertaken with all due expedition to enable programmes and timetables to be met and with all work completed as soon as practically possible.

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3.2 The Supplier is deemed to have understood the nature and extent of the Works as set out by Clarke Telecom and Clarke Telecom's own customer, and to have visited the site and shall make no claim founded on the Supplier's failure to do so.

3.3 The supplier shall appoint Key Personnel who are identified by the parties as being key to the successful implementation/completion of the works or services as set out in the purchase order. The Key Personnel shall have the authority to act on behalf of the supplier on the matters for which they are expressed to be responsible,

3.4 The Supplier shall comply with the Buyer's Site Rules, which may include a mandatory site induction. The Buyer shall have the right to require the removal of any person brought to the Site by the Supplier who has failed to comply with the Site Rules, or has, in the opinion of the Buyer, misconducted himself/herself, or has been negligent or incompetent, or is prejudicial to health and/or safety.

3.5 The services or deliverables will be free from defects in design, material and workmanship and shall conform to the requirements and specifications of the applicable purchase order.

3.6 The supplier shall conform to all laws, regulations, codes and other legal directives in the performance of the services or deliverables.

3.7 On completion of the Works the Supplier shall remove from the Site all constructional plant, accommodation, rubbish and temporary works of every kind on the instructions of the Buyer and leave the Site and the Works in a clean and workmanlike condition to the satisfaction of the Buyer.

3.8 The Supplier shall provide for all its employees who will be present on the Site all the necessary safety and industrial wear such as overalls, safety footwear, hard hats and goggles.

3.9 Should any defect or deficiency arise in the services or deliverables carried out by the supplier within 12 months of completion, then the supplier will be given an opportunity to investigate whether the defect or deficiency is of its own making. Should this be the case, then the supplier undertakes, immediately to rectify any defects or deficiencies at its own cost.

4 COMPLETION CONDITIONS

4.1 Completion of the Services or Deliverables shall be made by the Supplier at the place and to the time schedule specified in the Order, and could include the satisfactory supply and provision of customer specified handover packs.

4.2 Any time or period for completion of the services or deliverables shall be of the essence.

5 QUALITY ENVIRONMENT AND SAFETY MANAGEMENT

5.1 The supplier shall establish and maintain a quality and environmental system in conformance with the requirement set out in ISO 9001, ISO14001 or such other quality system standard as may be agreed by the parties within the Clarke Telecom supplier on-boarding document.

5.2 The supplier will comply with the requirements of the Health and Safety Executive Construction, Design and Management Regulations.

6 INDEMNITIES

6.1 The Supplier will indemnify the Buyer against loss or damage or injury whatsoever and howsoever arising caused to the Buyer or for which the Buyer may be liable to third parties due to faulty design materials or workmanship of the services or deliverables, or

6.2 Claims in respect of death or injury howsoever caused to any agent, subcontractor or employee of the supplier while in or about the Buyer's site; and

6.3 Consequential loss or damage sustained by the Buyer as a result of the failure of the Supplier to supply the services or deliverables in accordance with this Order.

6.4 Nothing in these conditions shall prejudice any condition or warranty (express or implied) or any other right or remedy to which the Buyer is entitled in relation to the services or deliverables by virtue of statute law common law or otherwise.

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6.5 The Supplier shall pass to the Buyer and agrees that the Buyer shall pass to its customers and/or users all warranties and services guarantees relating to the services or deliverables.

6.6 Without prejudice to any other right or remedy which the Buyer may have, if any services or deliverables are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Buyer 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 services or deliverables have been accepted by the Buyer:

6.6.1 To rescind the Contract;

6.6.2 To reject the services or deliverables for a full refund.

6.6.3 At the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the services or deliverables or to carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

6.6.4 To carry out at the Supplier's expense any work necessary to make the services or deliverables comply with the Contract; and

6.6.5 To claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

7 INSURANCE AND RISK

7.1 The Supplier warrants that he has insurance which is adequate to cover the risks specified in Condition 3 and that such insurances will be maintained in force throughout the period of the carrying out of the services or deliverables and the warranty period specified in Condition 3.

7.2 Without prejudice to Condition 3, the Supplier shall maintain a public liability insurance policy with a limit of indemnity of not less than five million pounds (£5,000,000) unless Clarke Telecom agrees in Writing to a lower figure.

7.3 All free issue items provided by Clarke Telecom, plant, parts, equipment and materials used in the execution of the services or deliverables shall be at the sole risk of the supplier until Completion. Until Completion the Supplier shall be responsible for, and shall reinstate to Clarke Telecom's satisfaction, all loss or damage to the service or deliverables, Goods, equipment and such free issue items, howsoever caused, and the Supplier shall maintain insurance for their full reinstatement value.

7.4 The Supplier shall provide copies of the policies of insurance required to be maintained under the Contract and evidence of premiums paid whenever reasonably requested to do so by Clarke Telecom.

8 PAYMENT

8.1 Unless otherwise agreed in writing payment for the services or deliverables shall become due 60 days after the end of the month in which the relevant invoice is forwarded subject to all services and deliverables being fulfilled and completed to the Buyer's satisfaction.

8.2 Invoices should be submitted to the Buyer.

8.3 No interest surcharge will be accepted by the Buyer.

8.4 The Buyer may settle any invoice earlier if there is the benefit of a discount available in doing so.

8.5 The Buyer may set off against the invoice any sums owed to the Buyer by the Supplier.

9 CANCELLATION

9.1 In the event of a breach or non-observance of any of these Conditions by the Supplier or if the Buyer reasonably anticipates such breach the Buyer may give the Supplier written notice of such breach specifying the time after receipt of such notice in which to rectify the breach or non-observance. If in the event of such notice the Supplier should fail so to rectify then the Buyer shall have the right to give the Supplier notice forthwith terminating the Order and to obtain the services or deliverables from another source. The Supplier shall indemnify the Buyer from and against any excess cost resulting from the termination of the Order and the arrangement of another source of supply of the services or deliverables.

9.2 The Order and Contract may be terminated at any time by the Buyer giving the Supplier notice in writing. The Buyer shall not be liable to make any other payment to the Supplier (including payments in respect of economic

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or consequential loss or loss of profit) as a result of such termination.

9.3 Any termination of the Order shall not prejudice any rights which may have accrued to either party.

10 INSOLVENCY

10.1 This clause applies if:

10.1.1 The Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

10.1.2 An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

10.1.3 The Supplier ceases, or threatens to cease, to carry on business; or

10.1.4 The Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Buyer, the Buyer can cancel the Contract or suspend any outstanding obligation to accept the services or deliverables without any liability to the Buyer.

11 BUYER'S PROPERTY

11.1 All items such as tools, gauges, fixtures, materials, parts and drawings provided by the Buyer to the Supplier shall be and remain the property of the Buyer. The Supplier shall maintain all such items in good order and condition (fair wear and tear excepted) and insure them against all risks whilst in his custody and on request shall return them to the Buyer. The Supplier shall not use or permit the use of such items other than in connection with the Order. The Supplier shall not be entitled to any lien over such items and shall not allow them to be charged or to become subject to any distraint.

12 CONFIDENTIALITY

12.1 All information designs, specifications and drawings provided by the Buyer to the Supplier shall be treated by the Supplier as confidential and shall not be disclosed to any third party. The Supplier shall not sell or supply directly or indirectly to any third party any item made in accordance with the Buyer's information, designs, specifications or drawings.

12.2 The Contract is confidential and shall not be disclosed in whole or in part by the Supplier to any other party without the Buyer's written consent.

13 GIFTS

13.1 The supplier undertakes not to offer any gift or inducement whether financial or other to any employee or agent of the buyer.

14 GENERAL

14.1 Notices Any notice given under the provisions of this agreement shall be in writing and shall be deemed to have been sufficiently served if delivered personally or sent by fax or telex or (within the U.K.) by first class post or (outside U.K.) by airmail, and the address of services shall be that shown in this agreement or such other address as the relevant party shall notify from time to time. Any notice served by first class post shall be deemed to have been served 48 hours after the date of dispatch, any notice served by airmail shall be deemed to have been served 10 days after the date of dispatch and any notice served by telex or fax shall be deemed to have been served at 10 o'clock on the business day of the recipient next following the date of dispatch.

Notices or other communications sent by the Supplier to the Buyer shall be sent to the address given for the Buyer on the face of the Order.

14.2 Severance In the event that any term condition or provision of the Contract shall be nullified or made void by any governmental law, decree, regulation or order or by the decision or order of any Court having jurisdiction the remaining terms, conditions and provisions of the Contract shall remain in full force and effect.

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14.3 Jurisdiction These conditions shall be governed by construed and shall take effect in accordance with the Laws of England and shall be subject to the sole jurisdiction of the English Courts.

14.4 Third Parties The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.5 Assignment The Buyer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985) or the subsidiary of any such holding company and any act or omission of any such company shall for the purposes of the Contract be deemed to be the act or omission of the Buyer. The Buyer may assign the Contract or any part of it to any person, firm or company. The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.