

## **1 Scope**

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- 1.1** The following General Purchasing Conditions of Kelvin Hughes Limited, trading as HENSOLDT UK, whose principal place of business is at Unit 4 Voltage, Mollison Avenue, Enfield EN3 7XQ, UK (hereinafter referred to as "Purchaser") apply to the production of works and to the purchase of goods (together "Deliveries") from the supplier (hereinafter referred to as "Supplier") as well as to his performance of services ("Services").
- 1.2** Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Conditions are non-binding for the Purchaser, even if the Purchaser does not object to them explicitly, or if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance pursuant to Section 2.1, or the Deliveries note or, as the case may be, the purchase order. Acceptance or payment of Deliveries and Services does not constitute agreement either.

## **2 Conclusion of General Purchasing Conditions**

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- 2.1** Each Order for Deliveries and/or Services by the Purchaser from the Supplier shall be deemed to be an offer by the Purchaser to buy Deliveries and/or Services subject to these terms and conditions
- 2.2** The Supplier may accept orders of the Purchaser only by written declaration within a period of two weeks following receipt of order. The receipt of the acceptance by the Purchaser shall be decisive for the observation of the deadline.
- 2.3** In the event no written declaration is received within a period of two weeks, the Order will be assumed as accepted by the Supplier who shall be responsible for meeting the delivery dates on the Order under these General Purchasing Conditions.
- 2.4** The acceptance of orders shall contain all material order data, particularly the exact description of the ordered Deliveries and Services, the commission number, the order date and the Deliveries date. The Supplier shall be responsible for any delays, which result from a breach of these provisions by the Supplier.
- 2.5** Amendments or changes of orders require the written confirmation of the Purchaser.
- 2.6** The Supplier is not authorized to subcontract the Deliveries to third parties without the prior written consent of the Purchaser. The unauthorized subcontract of third parties entitles the Purchaser to rescind or terminate the General Purchasing Conditions in whole or in part and to claim damages.

## **3 Prices**

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- 3.1** The agreed prices are fixed prices and exclude subsequent claims or price increases of any kind.
- 3.2** Deliveries are made DAP, INCOTERMS 2020, unless agreed otherwise.

## 4 Payment Terms

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- 4.1 Invoices of the Supplier shall contain all information required in the order for each delivery.
- 4.2 Unless agreed otherwise, payments shall be made 60 (sixty) days after receipt of a due and proper invoice by the Purchaser.
- 4.3 Should the payment day be a Saturday, Sunday or a bank holiday the payment shall be made the following business day.
- 4.4 In the event of a dispute between the parties, the Purchaser shall be entitled to withhold the payment of any disputed invoice until resolution of such dispute.

## 5 Delivery Date, Place of Fulfilment

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- 5.1 Agreed delivery dates and deadlines are binding and shall be specified in the order. If no such date is specified then delivery shall take place within 28 days of the order. Time for delivery shall be of the essence
- 5.2 Deliveries or provision of Services before, or after the agreed delivery date shall only be permitted with the written consent of the Purchaser.
- 5.3 Relevant for the timeliness of Deliveries and Services is the receipt at the receiving place specified by the Purchaser. The Supplier shall notify the Purchaser without undue delay, if and as soon as it becomes apparent that he will be unable to meet the delivery or performance date. The acceptance of late Deliveries or Services by the Purchaser does not contain any waiver of compensation claims.
- 5.4 Unless otherwise stipulated by the Purchaser in the order, deliveries shall only be accepted by the Purchaser during its normal business hours.
- 5.5 If in the event of delay, without prejudice to any other rights which it may have, the Purchaser reserves the right to:
  - 5.5.1 cancel the Order in whole or in part;
  - 5.5.2 refuse to accept any subsequent delivery of the Deliveries and/or Services which the Supplier attempts to make;
  - 5.5.3 recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Deliveries and/or Services in substitution from another supplier;
  - 5.5.4 claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to deliver the Deliveries and/or Services on the due date.
  - 5.5.5 If in the event the Purchaser accepts a delayed delivery and the Supplier cannot prove that he is not responsible for the delay, the Purchaser may charge a penalty in respect of each commenced working day of delay amounting to one percent (1%) but not exceeding a total of ten percent (10%) of the total value of the order. In the event that the appropriate reservation of rights is not made at the time of acceptance of Deliveries, Services or rectification, this penalty may be claimed up until the date of final payment. Further rights and claims shall be reserved herewith.
- 5.6 If the Supplier requires the Purchaser to return any packaging material to the Supplier that fact must be clearly stated on the packaging material and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.7 Where the Purchaser agrees in writing to accept delivery of the Deliveries and/or Services by instalments the order shall be construed as a single order in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Purchaser at its option to treat the whole order as repudiated.

- 5.8** If the Deliveries and/or Services are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 5.9** Place of fulfillment for the Supplier's Deliveries or Services is the receiving place specified in the order. If no receiving place is specified and it cannot be derived from the nature of the obligatory relationship either, the branch office of the Purchaser as per the order or, in lack thereof, the Purchaser seat of the Purchaser shall be deemed place of fulfillment.

## **6 Shipment, Transfer of Risk, Export Control, Offset Provisions**

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- 6.1** The Supplier shall package, ship, and insure the Deliveries properly and comply with all relevant packaging and shipment provisions. The Supplier shall be liable for all damages, which the Purchaser suffers because of the improper or insufficient packaging, shipping, or insurance.
- 6.2** Shipping papers such as e.g. Deliveries notes and packing slips shall be included with the Deliveries. All documents shall state the order number and the identification marks stipulated by the Purchaser in the order.
- 6.3** Additional costs, which the Purchaser incurs as a consequence of non-compliance with the above rules, shall be borne by the Supplier.
- 6.4** In the case of Deliveries without installation or assembly, the risk passes when the goods are received at the receiving place specified by the Purchaser. In the case of Deliveries with installation or assembly, risk passes upon acceptance to be carried out at the place of assembly.
- 6.5** The exporting party shall be responsible for obtaining any export approvals and licenses, or any of its subcontractors or suppliers, to be in compliance with any applicable export control laws.
- 6.6** The importing party shall, provide information as reasonably required by the exporting party to enable it to comply with export control laws and regulations at no cost to the other party.
- 6.7** The importing party shall be responsible for obtaining any import approvals and licenses required to be in compliance with any applicable import control laws.
- 6.8** The exporting party shall, provide information as reasonably required by the importing party to enable it to comply with import control laws and regulations at no cost to the other party
- 6.9** The exporting party shall be responsible for all costs or delays resulting from failure to obtain any necessary export approvals, registrations, permits or licenses.
- 6.10** The Supplier shall take reasonable efforts to support the Purchaser in the context of its international offset obligations by providing on request of the Purchaser relevant information about third party transactions.

## **7 Rights of the Purchaser in case of defects**

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- 7.1** The Supplier shall be responsible for defects of the Deliveries under a purchase agreement or an Order to produce a work for a period of three years from the transfer of risk. The limitation period for buildings and for works, whose results consist in the rendering of planning or monitoring Services for this purpose, shall last for five years after acceptance.
- 7.2** The Purchaser will notify the Supplier in about any defects as soon as these are determined during the ordinary course of business.

- 7.3** The Purchaser shall be entitled to the statutory claims for defects without restrictions. The Purchaser shall have the right, at its option, to demand the Supplier rectify the defect or deliver an item free of defect or, as the case may be, the production of a new work. The right to claim damages, particularly the right to claim damages instead of performance, shall remain explicitly reserved.
- 7.4** In addition to the statutory claims, the Purchaser may in the case of a defect, after the fruitless expiration of a reasonable period set by the Purchaser for subsequent performance, rectify the defect itself and demand reimbursement of the necessary expenses, unless the Supplier has a right to refuse subsequent performance. The Purchaser may demand advance payment from the Supplier for the expenses required to rectify the defect.

## **8 Rights of the Purchaser in case of breach of Services**

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- 8.1** For the avoidance of doubt, in addition to the provisions of Section 7, the statutory rights of the Purchaser shall apply in case of breach of Services.

## **9 Quality and Safety, Access Right**

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- 9.1** The Supplier shall comply with the recognized rules of technology, the safety regulations and the agreed technical data and standards. The Supplier shall furthermore advise the Purchaser about any special, not generally known handling and disposal requirements and shall provide for each delivered good a manufacturer's certificate or certificate of conformity (CE) within the meaning of the applicable Directives of the European Union or other statutory provisions. Changes to the Deliveries and Services require the prior written consent of the Purchaser. The manner and nature of the cooperation on the quality sector, such as e.g. first sampling and documentation, is set forth in the respective product specification.
- 9.2** Employees authorized by the Purchaser and the representatives of public authorities shall have, during regular business hours, access to all business premises of the Supplier in which work is carried out for the Purchaser. They may inspect all applicable and order-related documents for auditing purposes or to verify legal requirements. These access rights during visits shall particularly be granted to all persons authorized by the Purchaser, who are responsible for monitoring progress of the work commissioned by the Purchaser from the Supplier and for related audits, examinations, or for the qualification of the Supplier.
- 9.3** The representatives of customers of the Purchaser shall (subject to a minimum of 48 hours prior notice, from the Purchaser to the Supplier) be granted accompanied access to all business premises at all times during regular business hours, where work is carried out for the Purchaser, if the Purchaser has accepted a contractual obligation to facilitate such access.

## **10 Provision of Materials**

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- 10.1** All documents and objects of any kind provided to the Supplier by the Purchaser remain the property of the Purchaser. They may only be used exclusively for providing the ordered Deliveries or Services. The Supplier shall insure all objects provided to him against loss and deterioration. The Supplier does not have any retention right with respect to the objects of the Purchaser.
- 10.2** To the extent that objects provided by the Purchaser are processed or transformed by the Supplier into a new movable object, the Purchaser is deemed to be the manufacturer. In the case of a connection or inseparable mixing with other objects, the Purchaser acquires joint ownership in the new object in proportion of the value, which the objects had at the time of connection or mixing. If the connection or mixing occurs in a manner, where the objects of the Supplier have to be considered the main object, it shall be agreed that the Supplier transfers proportional joint ownership to the Purchaser, while the Supplier stores the joint ownership for the Purchaser free of charge.

## 11 Confidentiality

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- 11.1** The order of the Purchaser shall be treated confidentially. The Supplier furthermore shall keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use these exclusively for providing the ordered Deliveries. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorized third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfill the obligations incumbent upon the Supplier. Any subcontractors shall be bound to confidentiality accordingly.
- 11.2** The Supplier is only entitled to mention, depict, or use the Purchaser name, the logo, the trademarks of the Purchaser or the Purchaser's customer(s) in any way for purposes of advertising materials, when naming references, or for other publications, if the Purchaser has consented to this in writing in advance.
- 11.3** The Purchaser may demand observance of further security regulations.

## 12 Spare Parts, Readiness to Deliver

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- 12.1** The Supplier shall supply spare parts to the Purchaser under fair and reasonable conditions throughout the period of the usual technical lifetime, but in any case, for a period of at least ten years after the last Deliveries.
- 12.2** If the Supplier discontinues the Deliveries after expiration of the period set forth in Section 12.1 or during that period, he shall provide the Purchaser with the opportunity for a last order under fair and reasonable conditions.

## 13 Rights to the Deliveries and Services; Open Source Software

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- 13.1** If the Deliveries or the Services provided by the Supplier are subject to patent or copyright protection, the Purchaser shall be granted all rights of reproduction, use, operation, release, adaptation, modification or translation of the Deliveries or Services as far as this is necessary for the purpose of the purchase Order. The grant of rights under this Section is included in the compensation according to Section 3.
- 13.2** The Purchaser acquires full property of the Deliveries or the Services covered by the respective purchase order, in particular insofar as folders, plans, technical memos, drawings, models, prototypes or tooling are concerned.
- 13.3** The Supplier shall inform the Purchaser at the latest at the time the order is confirmed whether the Deliveries and Services to be delivered contain "open source software". In the context of this provision "Open Source Software" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software. Should the Deliveries and Services delivered by the Supplier contain open source software, the Supplier shall deliver to the Purchaser the following, latest at the time the order is confirmed:
- The source code of the relevant open source software, insofar as the applicable open source conditions require the disclosure of this source code;
  - A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license;
  - A written declaration that through the intended use of the open source software neither the Deliveries of the Supplier nor the products of the Purchaser will be subject to a "Copy left Effect". In the context of this provision, "Copy left Effect" means that the provisions of the open source license require that certain of the Supplier's Deliveries, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed. Should the Supplier not indicate until after receipt of the order that the Deliveries and Services contain open source software, then the Purchaser is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

## **14 Intellectual Property Rights**

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- 14.1** All Intellectual Property Rights (other than the Supplier's Pre-Existing Intellectual Property Rights) in all works or supplies provided by the Supplier shall be owned by the Purchaser and the Supplier hereby assigns (including by way of present assignment of future copyright) to the Purchaser all of its right, title and interest in and to such Intellectual Property Rights. The Supplier shall ensure that it executes all documents necessary to affect such ownership. The Purchaser shall have copyright in any documentation generated under the Order irrespective of whether such documentation forms part of the Order or not
- 14.2** The Purchaser shall not acquire any right, title or interest in the Supplier's Pre-Existing Intellectual Property Rights.
- 14.3** The Supplier hereby grants to the Purchaser a royalty-free, irrevocable, non-exclusive, worldwide license to such of the Supplier's Pre-Existing Intellectual Property Rights and any Supplier Improvements and for such term as the Purchaser shall require solely for the purposes of the Order and such other purposes as it shall reasonably require that relate to the use and provision of the Order, together with the ability to sub-license the same.
- 14.4** The Supplier shall indemnify the Purchaser against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Right arising from any use, promotion, exploitation, distribution, sale, supply and/or sub-license of the deliverables or of any of the Supplier's Pre-Existing Intellectual Property Rights and/or Supplier Improvements, except to the extent that such liabilities have resulted directly from (a) the Purchaser's failure properly to observe its obligations under this Clause or (b) the use of the Purchaser's specifications where the deliverables would not otherwise have been infringing but for the use of the Purchaser's specifications.

## **15 Product Liability; Infringement of Rights of Third Parties**

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- 15.1** The Supplier shall meticulously examine its Deliveries for defects and undertakes to do everything feasible in order to avoid any product liability. If the Purchaser is held responsible by a third party because of the defectiveness of a product and if the defectiveness is due entirely or in part to a defect of the Supplier's Deliveries, the Purchaser may instead of compensation of all losses also demand indemnification vis-à-vis the third party. The Supplier's obligation to pay damages shall also include the costs of a precautionary recall measure in order to prevent damage, if this is appropriate.
- 15.2** The Supplier shall indemnify the Purchaser against any liability based on claims that the Deliveries and Services of the Supplier intentionally or negligently infringe any third-party rights. In this case, the Supplier shall indemnify and hold harmless the Purchaser on first written demand from all cost, expenses and payment obligations arising from the infringement. The Purchaser shall refrain from concluding any agreements with the third party related to the infringement, in particular from any settlement agreement, without the Supplier's prior approval.

## **16 Responsibility and Certification**

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- 16.1** The Supplier shall also observe HENSOLDT's provisions on Standards of Business Conduct, Environmental Policy, Quality Policy, Compliance Undertaking and GDPR Privacy Statement, as visible on the HENSOLDT UK web page ([www.uk.hensoldt.net](http://www.uk.hensoldt.net)) in the section "Responsibility and Certification".
- 16.2** The Supplier shall employ only such employees for works at the Purchaser who have the qualification required for this work. The Supplier shall make corresponding proof available to the Purchaser upon request with short notice for a sample examination.



## 17 Termination of Services

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- 17.1** The Purchaser shall have the right at any time and for any reason to terminate the Order in whole or in part by giving the Supplier written notice whereupon all work on the Order shall be discontinued and the Purchaser shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 17.2** The Purchaser shall have the right at any time by giving notice in writing to the Supplier to terminate the Order forthwith if:
- 17.2.1 the Supplier commits a material breach of any of the terms and conditions of the General Purchasing Conditions (for the avoidance of doubt, breach of provisions in clause 16.1 shall be deemed material for the purposes of this clause); or,
  - 17.2.2 any distress, execution or other process is levied upon any of the assets of the Supplier; or,
  - 17.2.3 the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or,
  - 17.2.4 the Supplier ceases or threatens to cease to carry on its business; or
  - 17.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Purchaser the capability of the Supplier adequately to fulfil its obligations under the Order has been placed in jeopardy.
- 17.3** The termination of the Order, however arising, shall be without prejudice to the rights and duties of the Purchaser accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## 18 Insurance

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- 18.1** The Supplier shall conclude and maintain with insurers of recognized reputation and security adequate insurance policies to cover its liabilities under the purchase orders issued by the Purchaser. At a minimum, Supplier shall maintain a General Third-Party Liability Insurance for an amount of no less than 5.000.000 (five million) GBP per occurrence and in the yearly aggregate. The Supplier shall also conclude and maintain Product Liability Insurance. The limit of coverage of such insurance shall be not less than 5.000.000 (five million) GBP per occurrence and 10.000.000 (ten million) GBP in the yearly aggregate.
- 18.2** The Supplier shall provide certificates of such insurances on request of the Purchaser at any time.

## 19 Final Provisions

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The formation, existence, construction, performance, validity and all aspects of the General Purchasing Conditions shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

- 19.1** Place of venue for all disputes arising from the business relationship as governed by these General Purchasing Conditions shall be, London. The Purchaser is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.
- 19.2** The Supplier shall not be entitled to assign the Order or any part of it without the prior written consent of the Purchaser.
- 19.3** The Purchaser may assign the Order or any part of it to any person, firm or company
- 19.4** Each right or remedy of the Purchaser under these General Purchasing Conditions is without prejudice to any other right or remedy of the Purchaser whether under the General Purchasing Conditions or not.
- 19.5** If any provision of the General Purchasing Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, void, voidable, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the General Purchasing Conditions and the remainder of such provision shall continue in full force and effect.
- 19.6** Failure or delay by the Purchaser in enforcing or partially enforcing any provision of the General Purchasing Conditions shall not be construed as a waiver of any of its rights under the General Purchasing Conditions.
- 19.7** Any waiver by the Purchaser of any breach of, or any default under, any provision of the General Purchasing Conditions by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the General Purchasing Conditions.
- 19.8** The parties to the General Purchasing Conditions do not intend that any term of the General Purchasing Conditions shall be enforceable by virtue of the General Purchasing Conditions s (Rights of Third Parties) Act 1999 by any person that is not a party to it
- 19.9** Changes and amendments to these General Purchasing Conditions as well as side agreements require the written form. This shall also apply to any waiver of this written-form clause.
- 19.10** If any of the above provisions should be or become ineffective, the validity of the remaining provisions shall remain unaffected. The parties hereto are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.