

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions:-

"Company" means Cassidian Test & Services Limited;

"Customer" means the other party to the contract;

"Dual National" means an individual who holds nationality for more than one country, one of which is the UK;

"End User Statement" means a statement about the intended end or final use of a service, equipment or technology;

"Export Licence" means all relevant official approvals, licences, authorisations and registrations including licences for re-export and deemed export required from time to time to comply with Export Regulations;

"Export Regulations" means the laws, rules, regulations and guidelines relating to export control issued by the home state of both Parties and any state that the Parties to this Agreement give notice that they must comply with in order to perform each and every part of its obligations under the Agreement;

"FCA" means Free Carrier (...named place) as such expression is defined in INCOTERMS 2000 published by the International Chamber of Commerce;

"ITAR Agreement" means either a Technical Assistance Agreement (TAA), Manufacturing Licence Agreement (MLA) or Warehouse Distribution Agreement as required by US International Traffic in Arms Regulations (ITAR);

"Non-UK National" means an individual who holds nationality for a country other than the UK and who is not a Dual National;

"Software" means all software material to be supplied by the Company under a contract including all copies supplied to or made by the Customer;

"Total Contract Price" means the aggregate price of all goods and/or services to be supplied by the Company under a contract including value added tax and all taxes, charges, levies or duties of any kind payable on the supply of the goods and/or services and any delivery charges as set out on the quotation.

2. QUOTATION, OFFER AND ACCEPTANCE

A quotation by the Company is an invitation to the Customer. If the Customer wishes to proceed, it must make a written offer within the validity period of the quotation. The Company may then accept such offer. Until it does so there is no contract. The Customer agrees that the quotation fully specifies its requirements for goods and/or services.

3. INCORPORATION AND PRECEDENCE OF THESE CONDITIONS

These conditions shall apply to the contract between the Company and the Customer, save for any modification in writing expressly agreed by the quotation, order and acceptance. These conditions shall prevail over any terms or conditions of the Customer and over any other document or statement, save as expressly agreed in writing by the quotation, order and acceptance.

4. PRICES, TAXES AND OTHER CHARGES

4.1 Orders for Supply within the UK

All prices for the goods and/or services are exclusive of Value Added Tax which will be charged by the Company in addition at the rate current at the date of invoice by the Company.

4.2 Orders for supply outside the UK

All prices are exclusive of all taxes charges, levies or duties of any kind payable on the supply of the goods and/or services and these are payable by the Customer in addition.

4.3 The Company reserves the right to vary the price quoted for the goods if following the date of the quotation there is any change in the rates of exchange or any imposition or alteration of Government tax which increases the cost to the Company of supplying the goods. Such variation will be stated on the invoice for the goods.

Unless otherwise expressly agreed in writing in the quotation, order and acceptance, all prices are for delivery of goods to the Customer's premises in the mainland of the UK, or FCA (UK port or airport) for any other destination. The Customer shall pay any delivery charges set out on the quotation.

5. PAYMENT

5.1 UK Customers

The Company may invoice the Customer at any time after delivery of the goods or supply of the services, whether or not acceptance has taken place, and, unless otherwise agreed in writing by the Company, payment is to be made by the Customer, in all cases in full without deduction or set off, in cash within 30 days of the date of invoice.

5.2 Overseas Customers

Unless otherwise agreed in writing by the Company the Customer's order must be accompanied by a remittance for the Total Contract Price or advice that an irrevocable Pounds Sterling Letter of Credit for the Total Contract Price has been established with and confirmed by a first class UK Clearing Bank in favour of the Company. The letter of Credit should have a validity equal to the full delivery period of the goods and/or services plus one month and should provide for part shipment and trans-shipment of the goods with the release of one hundred per cent of the value of each shipment against presentation of (i) commercial invoice; and additionally in the case of goods; (ii) packing list; and (iii) bill of lading or forwarding agent's receipt or air waybill as evidence of despatch of the goods.

5.3 Payment of Interest

Without prejudice to the Company's rights under clauses 5.4 and 12.1, any sum not paid on the due date shall be subject to interest at the rate of 4% per annum above the Base rate of Barclays Bank Plc from time to time compounded monthly from the due date until date of actual payment such interest to run from day to day to accrue after as well as before any judgement.

5.4 Cancellation or Suspension

In the event that the Customer fails to make any payment on the due date to the Company under the contract or under any other contract between the Customer and the Company then without prejudice to any other remedy or right available to the Company, including the right of termination under clause 12.1, the Company shall be entitled to suspend any further deliveries or services to the Customer without liability to the Customer.

6. DELIVERY AND RISK

6.1 Whilst the Company will endeavour to meet any dates or times specified or requested for delivery and/or installation of any goods and/or the provision of any services, all such dates and times shall (unless the Company at the request of the Customer shall have specifically agreed in writing that this clause is not to apply) be deemed to be estimates only and the Company shall not have any liability for delay or for any damages or losses sustained by the Customer as a result of such dates or times not being met.

6.2 The company reserves the right to make deliveries in instalments. Delay or default in relation to a particular instalment shall not relieve the Customer of the obligation to accept delivery of and pay for other instalments.

6.3 Delivery instruction where required (and, in the case of sales overseas, the name and address of the Customer's nominated carrier) shall be provided by the Customer not later than seven (7) days after being advised that any goods are ready for despatch. If no delivery instructions are received within this period the Company, without prejudice to its other rights, shall have the right in its discretion to deliver the goods to any address of the Customer known to the Company using any carrier.

6.4 6.4.1 In the case of sales within the UK mainland, delivery shall be deemed to take place:-

- (a) If the goods are to be collected - on delivery to the Customer or to the Customer's named carrier; or
- (b) In all other cases - on delivery to the Customer's premises or other specified delivery point in the UK mainland.

6.4.2 In the case of sales outside the UK mainland (including non-mainland UK) sales shall be FCA (UK port or airport) and delivery shall take place on delivery to the Customer's named carrier (or in the case of clause 6.3 any carrier).

6.5 Risk in the goods shall pass to the Customer upon delivery or, if the Customer fails to take delivery, at the time when the Company has tendered delivery.

6.6 If the Customer or its carrier does not accept a delivery of goods or fails to give the Company adequate delivery instructions, then without prejudice to any other right or remedy available to the Company:-

6.6.1 The cost of storage and any insurance in respect of the goods until actual delivery or their disposal shall be borne by the Customer; and

6.6.2 if such failure to accept delivery continues for more than ten (10) days the Customer shall be deemed wrongly to have repudiated the contract, and the Company may terminate the contract in accordance with clause 12.

7. TITLE

Goods other than Software

In no case shall title in any goods pass from the Company to the Customer before delivery.

7.1 Notwithstanding delivery and/or the passing of risk in any goods, full legal and beneficial ownership remain with the Company until the Company shall have received in cash or cleared funds payment in full of the Total Contract Price under the contract. This shall not restrict the Company's right to recover the Total Contract Price from the Customer.

7.2 In addition, and even if payment in full has been made under clause 7.1, title in any goods shall not pass to the Customer unless and until full payment in cash or cleared funds has been received by the Company in respect of all other amounts (including VAT) overdue by the Customer to the Company on any other contract or otherwise howsoever.

7.3 Unless and until the Company shall have received the Total Contract Price and all other amounts overdue, the Company shall be entitled at any time:-

7.3.1 To require (at no cost to the Company) any goods to be separately stored and clearly marked in such a way that they will readily be seen to be the property of the Company; and/or

7.3.2 To require the Customer to deliver up the goods or any part of them to the Company, and if the Customer fails to do so forthwith to repossess them; and/or

7.3.3 to enter any premises or vehicle (by its employees or agents and in the case of premises, with or without vehicles) where goods still owned by the Company are stored or reasonably thought to be stored in order to inspect and/or repossess the same. All costs and expenses reasonably incurred by the Company in connection with such inspection and/or recovery shall be borne by the Customer.

7.4 The Customer shall take all necessary measures for the protection of the Company's goods at no cost to the Company, including the insurance thereof against all usual risks with a reputable insurance company approved by the Company for the full replacement value.

7.5 The Company's continuing ownership of goods under clauses 7.1 and 7.2 will not be affected if the goods are assembled or incorporated by the Customer into other goods (provided in the case of any part of the Company's goods that it retains its substantial identity as a separate component and can be disassembled without unreasonable difficulty or expense) or if minor processes (such as, by way of example and not limitation, re-labelling, re-boxing, re-packaging or the installation of additional or different operating software) not affecting the substantial identity of the goods are applied by the Customer to the goods.

Software

7.6 Software supplied under the contract and the copyright and all other intellectual property rights of whatever nature in the Software are and shall remain the property of the Company or, in the case of third party proprietary software, the third party owner of the Software. The Customer's use of the Software shall be subject to the terms and conditions of the Company's standard Software Licence. Without prejudice to the foregoing, if the Company is entitled to repossess any goods pursuant to this clause 7 it shall be entitled to repossess any software supplied under the same contract at the same time. This right shall be exercisable by the Company notwithstanding the fact that the Company may be the licensor and not the owner of the Software.

8. LIABILITY OF THE COMPANY

8.1 The Customer acknowledges and agrees that:-

8.1.1 it is responsible for the operation of the goods and should ensure that they are used safely and properly and that it should use, maintain, store and keep them in accordance with any instructions, user handbook or other form of guidance relating to them provided by the Company; and

8.1.2 the price of the goods is quoted and agreed commercially and at arms length on the basis of the Company's potential liability as set out in these conditions, with the Customer having the opportunity however for any particular contract to ask for a relaxation of these conditions with any appropriate adjustment to the price; and

8.1.3 notwithstanding the Company's acceptance of limited liability in these conditions, it would be prudent for the Customer to insure against all loss or damage which the Customer could suffer as a result of the Company's acts or omissions.

8.2 The goods will be supplied generally in accordance with the Company's specification. The company's policy is one of continuous development and consequently specifications may be revised from time to time. The Customer shall not be entitled to reject the goods, or to make a claim in respect of failure of the goods to comply with any specification, unless any departure from specification is material in which case clauses 8.5 and 8.6 will apply.

8.3 Description and illustrations contained in Company catalogues, proposals and/or user handbooks shall not form part of the contract.

8.4 Subject to the rights of third parties all specifications, drawings and technical descriptions submitted with or in connection with any quotation or acknowledgement of the Company are the Company's copyright.

8.5 Any goods which are found to the Company's satisfaction to be defective as a result of faulty design, manufacture or workmanship and/or to materially depart from specification in accordance with clause 8.2 will at the sole discretion of the Company either be replaced or repaired free of charge provided that:-

8.5.1 the goods (or samples thereof showing the alleged defects) are returned within twelve (12) months (or such other time as may be specified in the Company's quotation) from delivery as defined properly packed carriage paid to the Company's specified works in the UK or to a service centre of the Company in the Customer's country or other location as may be nominated by the Company. The Customer shall obtain the instructions of the Company as regards the place of return of the goods. The goods shall be returned to the Company's nominated location at the Customer's risk except where returned to a location in a country other than that of the Customer where they shall be returned to the Company FCA (Company's nominated port/airport in Customer's country); and

8.5.2 the goods have not been misused, mishandled, overloaded, amended, modified or repaired in any way by the Customer, its employees, agents or sub-contractors, or used for any purpose other than that for which they were designed; and

8.5.3 if the goods have been manufactured to the Customer's drawing design or specification the defects are not as a result of faulty drawing design or specification supplied by the Customer; and

8.5.4 if the goods have been installed and/or commissioned by someone other than the Company or its employees, agents or its subcontractors the defects are not as a result of faulty installation and/or commissioning; and

8.5.5 the defect is not due to fair wear or tear, wilful damage, negligence, abnormal working conditions or failure to follow the Company's instructions; and

8.5.6 the Total Contract Price has been paid, if due.

8.6 Repaired or replaced goods will be returned free of charge to destinations in the same country as the Company's nominated service location or delivered FCA (port or airport in the country of the said location) for other destinations.

8.7 The Company may at its sole discretion and if so requested by the Customer, send the Company's personnel to repair or replace the goods provided that if on investigation at the Customer's site it appears that the alleged defects do not exist or are the result of any of the causes referred to in clauses 8.5.2 to 8.5.5 (inclusive) hereof THEN:-

8.7.1 The Company shall be under no obligation to carry out any repairs or replacement of the goods concerned and shall be entitled to recover from the Customer all costs and expenses involved in sending such personnel to the Customer's premises at the Company's normal charging rate for such personnel; and

8.7.2 if the Company agrees to carry out any repairs to the goods it shall be entitled to charge the Customer for all such costs expenses referred to in 8.7.1 and all repair works at the Company's normal charging rate for such personnel and list price for spare parts used.

8.8 Subject to clause 8.9, the Company accepts liability to the Customer

8.8.1 where the Company's negligence in its performance of the contract causes death or personal injury;

8.8.2 where the Company's negligence in its performance of the contract causes direct physical damage to or destruction of property but so that such liability shall not exceed the sum of £1,500,000;

8.8.3 arising out of any breach of the obligations as to title implied by The Sale of Goods Act 1979.

For the avoidance of doubt the Company's liability under clauses 8.8.1 and 8.8.3 shall be unlimited.

8.9 The liability set out in 8.8 is not accepted by the Company on any contract to which Section 27(1) of the Unfair Contract Terms Act 1977 applies which is an international supply contract as described in Section 26 of the Unfair Contract Terms Act 1997.

8.10 The Customer is required to notify the Company of any claim under clause 8.8 above as soon as reasonably possible.

8.11 Save as set out in clauses 8.5 to 8.8, all terms, warranties and conditions relating in any way to description, sample, condition, quality or fitness of any goods, and/or as to the skill or care of the Company, its servants or agents relating to the supply or provision of any services, whether statutory, express or implied, and whether arising directly or indirectly, are excluded; and the Company shall not be liable to the Customer for any negligence of itself, its servants or agents howsoever arising.

8.12 Under no circumstances (whatever the basis of any claim against the Company whether in contract, tort (including negligence) or otherwise), except as provided in clauses 8.8.1 and 8.8.3, will the Company be liable for any loss of profit, business, contracts or revenues or for any indirect or consequential loss.

8.13 Further and in any event, under no circumstances except as provided in clause 8.8 and whatever the basis of any claim against the Company whether in contract, tort (including negligence) or otherwise will the Company's liability, for any one claim or the total of all claims arising from any one act or default or from any single series of acts or defaults of the Company, its servants or agents, exceed in the aggregate the sum expressly agreed in writing in the quotation, order and acceptance or (if there is no such agreement) the greater of the Total Contract Price of the goods in respect of which the liability arises and £250,000.

8.14 **Consumer Contracts** - Where the Customer neither makes the contract in the course of a business nor holds himself out as doing so, and the goods being sold by the Company are of type ordinarily supplied for private use, and the sale is not by competitive tender, then the Company will not accept any re-negotiation of these conditions which will apply subject to the modification that the company undertakes without limitation that all goods supplied will be in accordance with their description by the Company, of satisfactory quality, and where the sale is by sample in accordance with the sample. NEITHER THIS CLAUSE NOR ANY PART OF THESE CONDITIONS AFFECTS THE STATUTORY RIGHTS OF A CONSUMER.

9. PATENT INDEMNITY

9.1 Subject to clause 9.2, if the Customer is threatened with any action alleging that the goods in the form supplied by the Company infringe any patent, copyright registered design, design right or other intellectual property rights then provided that the Customer promptly informs and fully co-operates with the Company and in cases where the Company so requests allows the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that the Company shall have the right at its option and its own expense either to:-

- 9.1.1 modify any goods so that they do not infringe; or
- 9.1.2 replace any goods with non-infringing goods; or
- 9.1.3 procure for the Customer the right for the Customer to continue its use of any goods.

9.2 The Company shall have no liability in respect of claims for infringement or alleged infringement of any third parties' patent or other proprietary rights arising from the execution of the contract in accordance with the Customer's designs plans or specifications and the Customer shall indemnify the Company against all losses, damages, expenses, costs or other liability arising from such claims.

10. EXPORT REGULATIONS

10.1 Export Controls

10.1.1 The Parties acknowledge that compliance with Export Regulations is an express condition of this Agreement. To achieve compliance with all Export Regulations the Parties agree to make full disclosure at all times of all applicable Export Regulations, or other compliance obligations, which may affect the delivery or use of their products, information or services and/or the performance of their obligations under this Agreement.

10.1.2 All Parties acknowledge that they will undertake at their own expense all necessary actions to obtain the Export Licences required to perform their obligations under this Agreement.

10.1.3 In the event that the end use differs from that originally intended or described in the End User Statement, the relevant Party will immediately notify the other Party in writing and the Parties shall use all reasonable endeavours to obtain a revised Export Licence.

10.1.4 Where any Party is not able, for whatever reason, to obtain an Export Licence sufficient to allow performance of its obligations under this Agreement on time, or at all, it shall immediately communicate this to the other Party(ies). The Parties shall work together in good faith to resolve the difficulties in obtaining an Export Licence.

10.2 Additional Obligations Arising under the Laws of the USA

10.2.1 Each Party shall inform the other(s) immediately if an ITAR Agreement is required to enable any Party to perform its obligations under this Agreement and all relevant Parties shall agree its content prior to submission to the relevant authorities for approval.

10.2.2 Each Party shall inform the other(s) of all necessary details relating to Dual or Non-UK Nationals which may have a bearing on Export Licence obligations and compliance.

10.2.3 Each Party shall clearly identify to the others any impacted product or data being exported in support of this Agreement as being subject to US ITAR regulations and the TAA or licence under which it was exported.

10.3 Export And Import Consents

10.3.1 In the event that the Company is unable to obtain an export licence to enable the goods to be exported to the country of destination and/or visas or consent for personnel required to provide services in the country of destination the Company shall not be held liable for any failure to perform the contract.

10.3.2 The Customer shall obtain all consents necessary for the import of the goods to the country of destination and where required any visas or consents required for the entry of the personnel into the country of destination and shall comply with all laws and regulations in connection therewith.

11. EXCUSABLE EVENTS

Notwithstanding any other provision of the contract, the Company shall be under no obligation and may terminate the contract without liability if the Company is unable to perform the contract as a result of any cause beyond the control of the Company including but not limited to acts of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workmen, strikes or lockouts or shortage of labour.

12. TERMINATION

12.1 Without prejudice to any other right and remedy available to the Company, and in particular the right to accept a wrongful repudiation and recover unliquidated damages, the Company shall have the right forthwith to determine the contract by notice:-

- (i) if the Customer commits any breach of any of the terms of the contract; or
- (ii) if the Customer, being an individual, dies, or suffers an interim order (with the meaning of the Insolvency Act 1986) to be made against him, or enters into a voluntary arrangement with his creditors, or suffers the making of a statutory demand or the presentation of a petition for a bankruptcy order, or if the Customer, being a body corporate, enters into any liquidation or calls any meeting of its creditors, or has a receiver or receiver manager of all or any of its undertaking or assets appointed, or suffers the appointment or the presentation of a petition for the appointment of an administrator under the provisions of Part II of the Insolvency Act 1986, or is deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts or if any distress execution or other legal process is levied on or against any goods or property of the Company or the Customer, or against any premises where the same may be, or if the Customer suffers any analogous proceedings as referred to in this clause under foreign law or if the Customer permits any judgement against it to remain unsatisfied for seven (7) days; or
- (iii) if the Customer is in breach of any other contract entered into by the Customer with the Company and such termination will be without prejudice to the Company's accrued rights including any rights to damages, but the Company shall be relieved of any further performance.

12.2 On termination in any case, the Customer shall immediately pay any sums due to the Company and redeliver to the Company all goods of which the Customer has not already become owner. For the avoidance of doubt the provisions of clause 6 (as to risk) and clause 7 (as to the Company's title and ancillary remedies and Software) and clause 8 (as to the limitation of the Company's liability) shall continue after termination.

12.3 In the case of termination under clause 12.1 by the Company following breach by the Customer, the Customer shall pay all the Company's costs and expenses, and the company's loss consequent on such breach and termination being the Total Contract Price less any saving to the Company as to further performance by being able to resell the goods and otherwise.

13. ENTIRE AGREEMENT

These conditions with the order and acceptance supersede all previous conditions, understandings, commitments, agreements or representations whatsoever, whether oral, by conduct or written, relating to the subject matter hereof.

The Customer acknowledges and agrees that save as expressly set out in these conditions the Company will not have any liability for any untrue statement or representation made by it or on its behalf (whether or not negligently) upon which the Customer relied in entering into the contract referred to in clause 3 unless such untrue statement or representation was made fraudulently.

14. ASSIGNMENT

The Customer shall not assign, pledge, charge or deal in or make over in any way the benefit of the contract without the prior written consent of the Company.

15. WAIVER

No waiver by the Company of any breach of any provision of the contract shall be held to be a waiver of any other or subsequent breach and the failure of the Company to enforce any provision shall not be a waiver of any right subsequently to enforce any other provisions.

16. GOVERNING LAW AND JURISDICTION

The contract shall be governed construed and shall take effect in accordance with the laws of England, and all disputes arising in relation thereto shall be subject to the exclusive jurisdiction of the English Courts to which the Customer and the Company by agreement irrevocably submit.

17. SEVERABILITY

If any of the words or provisions of these conditions shall be deemed to be invalid, illegal or unenforceable for any reason, then the contract shall be read as if the invalid, illegal or unenforceable words or provisions had to that extent been deleted and the validity of the remaining provisions shall not be affected.

18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a party to any contract incorporating these conditions shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that contract.

Edn 19th January 2011