



## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Client:** CDW Limited, registered in England and Wales under company number 2465350, and whose registered office is at 10 Fleet Place, London, EC4M 7RB. This definition is deemed to include any of the Client's associated companies.

**Contract:** the Order and the Supplier's acceptance of the Order.

**Goods:** any goods agreed in the Contract to be bought by the Client from the Supplier (including any part or parts of them).

**Order:** the Client's written instruction to buy the Goods, incorporating these conditions.

**Regulatory Requirements:** means in relation to any jurisdiction where the Goods are intended to be marketed and/or sold, any and all applicable laws, enactments, orders, regulations and other instruments relating to the design, manufacture, packaging, labelling, storage, handling, marketing, sale, import, export and/or delivery of the Goods together with all relevant regulations, codes of practice and guidance imposed by any governmental, regulatory or trade body from time to time.

**Supplier:** the person, firm or company who accepts the Client's Order.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Client is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Client from the Supplier shall be deemed to be an offer by the Client to buy Goods subject to these conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Client's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by the General Counsel of the Client.

## 3. QUALITY AND DEFECTS

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Client to the Supplier.



- 3.2 The Client's rights under these conditions are in addition to the statutory conditions implied in favour of the Client by the Sale of Goods Act 1979.
- 3.3 At any time prior to delivery of the Goods to the Client the Client shall have the right to inspect and test the Goods at all times.
- 3.4 If the results of such inspection or testing cause the Client to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Client to the Supplier, the Client shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Client shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.6 If any of the Goods fail to comply with the provisions set out in condition 3 the Client shall be entitled to avail itself of any one or more remedies listed in condition 17.

#### **4. ORDER PROCESS**

- 4.1 When the Client wishes to place an order for Goods (an "Order") it shall send a written order form (a "Purchase Order") to the Supplier, which shall contain a unique order reference number (the "Order Reference"). The parties shall use the relevant Order Reference in all correspondence to identify each Order.
- 4.2 Each Order shall be deemed to be an offer by the Client to purchase Goods subject to these Conditions. The Supplier shall accept an Order by sending a written confirmation to the Client (an "Order Confirmation"). Acceptance of an Order Form by the Supplier shall give rise to a separate contract between the Client and the Supplier for the purchase of the Goods specified in the relevant Order Form subject to these Conditions (each a "Contract") and shall create fully enforceable obligations on the parties. Where a Contract is for more than one item of Product, it shall be regarded as a single Contract for all Goods supplied pursuant to that Contract.
- 4.3 The Client may amend, vary or cancel any Order or Contract by notifying the Supplier in writing at any time before the relevant part of the Order is fulfilled, except where additional products are required, when a new Order will be raised.

#### **5. SPECIFICATION OF THE PRODUCTS**

- 5.1 All Goods sold by the Supplier to the Client pursuant to any Contract shall conform in all respects to the specification of the Goods agreed in writing between the parties from time to time (the "Specification"). The Supplier acknowledges that conformity of the Goods with the Specification is a fundamental term of any Contract and accordingly the Client shall be entitled to reject any quantity of the Goods not in strict accordance with the Specification.
- 5.2 The Supplier represents and warrants to the Client that: (i) it has the right to sell the Goods and to pass good title free from any encumbrance to the Client; (ii) all Goods supplied by or on behalf of the Supplier to the Client shall conform with the Specification and with the quality, quantity, description and other particulars stated in the relevant Contract; (iii) all Goods supplied by or on behalf of the Supplier to the Client shall be fit for purpose, of satisfactory quality and shall be free from all defects in materials, quality and workmanship and (iv) all Goods supplied by or on behalf of the Supplier shall be new and legally sourced through the channels authorised by the manufacturers and for the avoidance of doubt shall not be Goods not to be sold within the EEA or through channels not authorised by the manufacturer (i.e. shall not be 'grey market' or 'brokered' Goods).



- 5.3 For the avoidance of doubt, these Conditions shall apply equally to any repaired or replacement products supplied by the Supplier.
- 5.4 If any of the Goods fail to comply with the provisions of clauses 5.1 or 5.2, the Client shall be entitled to any one or more of the remedies listed in clause 17.

## **6. INSPECTION**

- 6.1 At any time prior to delivery of the Goods to the Client, the Client shall have the right to inspect and test the Goods. If the results of such inspection or testing indicate that the Goods do not conform or are unlikely to conform with the Order or to any Specification, the Client shall inform the Supplier and the Supplier shall take such action as is necessary to ensure conformity prior to the due delivery date. The Client shall have the right to retest and inspect the Goods prior to delivery.
- 6.2 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods until risk passes in accordance with these Conditions. The Client shall not be deemed to have accepted the Goods, nor waived its rights of rejection, as a result of carrying out any inspection or testing pursuant to this clause 6.

## **7. INDEMNITY AND LIABILITY**

- 7.1 The Supplier shall keep the Client indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Client as a result of or in connection with:
  - (a) defective workmanship, quality or materials;
  - (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
  - (c) any claim made against the Client in respect of any liability, loss, damage, injury, cost or expense sustained by the Client'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 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 Supplier.
- 7.2 Save for liability arising from death or personal injury, the Client shall not in any circumstances be liable to the Supplier for loss of profits, business or contracts or any other indirect or consequential loss caused in any way by some act, omission, or misrepresentation (excluding any fraudulent or negligent misrepresentation) committed in connection with this contract (whether arising from negligence, breach of contract or howsoever), even if such loss was reasonably foreseeable or if the Supplier had advised the Client of the possibility of such loss.
- 7.3 Other than in respect of Clause 7.2, the total aggregate liability of the Client to the Supplier from any cause relating to or arising out of this contract, regardless of the form of action whether in contract, tort or otherwise, will not exceed the price payable by the Client to the Supplier under a Contract.



## **8. DELIVERY**

- 8.1 The Goods shall be delivered, carriage paid, to the Client's place of business or to such other place of delivery as is agreed by the Client in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by the Client.
- 8.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 5 days of the Order.
- 8.3 The Supplier shall invoice the Client upon, but separately from, despatch of the Goods to the Client.
- 8.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, 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.
- 8.5 Time for delivery shall be of the essence.
- 8.6 Unless otherwise stipulated by the Client in the Order, deliveries shall only be accepted by the Client in normal business hours.
- 8.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Client reserves the right to:
- (a) cancel the Contract in whole or in part;
  - (b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - (c) recover from the Supplier any expenditure reasonably incurred by the Client in obtaining the Goods in substitution from another Supplier; and
  - (d) claim damages for any additional costs, loss or expenses incurred by the Client which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 8.8 If the Supplier requires the Client to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Client and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 8.9 Where the Client agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Client at its option to treat the whole Contract as repudiated.
- 8.10 If the Goods are delivered to the Client in excess of the quantities ordered the Client 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.
- 8.11 The Client shall not be deemed to have accepted the Goods until it has had [NUMBER] days to inspect them following delivery. The Client shall also have the right to reject the Goods as though they had not been accepted for [NUMBER] days after any latent defect in the Goods has become apparent.

## **9. RISK/PROPERTY**

The Goods shall remain at the risk of the Supplier until delivery to the Client is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Client.



## **10. COMPLIANCE**

- 10.1 The Supplier shall, and shall ensure that the Goods shall, comply with all relevant Regulatory Requirements. The Supplier shall notify CDW immediately on becoming aware of any actual, suspected or threatened breach of this clause 7.1.
- 10.2 The Supplier shall comply with the procedures and requirements set out in the Supplier's Operations Manual or Supplier's Information Pack (as applicable) provided to the Supplier or which can be accessed on the website [www.CDW.co.uk](http://www.CDW.co.uk) from time to time.
- 10.3 If a Product Recall is required by relevant Regulatory Requirements or is deemed necessary by CDW, the Supplier shall promptly provide CDW with all necessary assistance to enable the Product Recall to be conducted efficiently and with due urgency and, where the Product Recall results from any breach by the Supplier of its obligations under the relevant Contract, the Supplier shall indemnify CDW (and its Affiliates) against any loss, cost, claim, damage or expense which CDW (and/or any of its Affiliates) may suffer or incur arising out of or in connection with any such Product Recall.

## **11. PRICE**

- 11.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Client shall be exclusive of value added tax but inclusive of all other charges.
- 11.2 No variation in the price nor extra charges shall be accepted by the Client.

## **12. PAYMENT**

- 12.1 The Client shall pay the price of the Goods within 30 days from the end of the month in which the relevant Invoice was received, but time for payment shall not be of the essence of the Contract.
- 12.2 Without prejudice to any other right or remedy, the Client reserves the right to set off any amount owing at any time from the Supplier to the Client against any amount payable by the Client to the Supplier under the Contract.
- 12.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Lloyds Bank plc base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

## **13. CONFIDENTIALITY**

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Client or its agents and any other confidential information concerning the Client's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Client and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.



#### **14. THE CLIENT'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Client to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Client but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Client and shall not be disposed of other than in accordance with the Client's written instructions, nor shall such items be used otherwise than as authorised by the Client in writing.

#### **15. AUDIT RIGHTS AND INSPECTIONS**

15.1 The Supplier shall maintain full, true and accurate copies of all records (whether in a physical or electronic form) documenting the Supplier's performance of its obligations under any Contract (including, without limitation, any documentation necessary to allow batch movements to be tracked and/or to allow CDW to effect a batch recall) until the later of 2 years following the Contract or until such time as required by applicable laws or regulations.

15.2 The Supplier shall at all times ensure that CDW and its personnel are allowed full access to all information, property, records and/or materials relevant to the performance of any Contract. The Supplier will permit CDW and its employees or agents access its premises and other premises from where the Goods are being manufactured or supplied or where data or information relevant to the Goods is held upon reasonable notice for the purpose of inspecting, auditing, verifying, monitoring or testing the methods of manufacture, stocks of finished and unfinished Goods and the manner and performance of the Supplier's obligations under any Contract. The Supplier shall give CDW and its personnel all reasonable assistance and cooperation to enable CDW to perform such tasks including by providing copies or extracts of relevant documents or records.

#### **16. TERMINATION**

16.1 The Client shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Client 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.

16.2 The Client shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:

- (a) the Supplier commits a material breach of any of the terms and conditions of the Contract; or
- (b) any distress, execution or other process is levied upon any of the assets of the Supplier; or
- (c) 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

- (d) the Supplier ceases or threatens to cease to carry on its business; or
- (e) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Client the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

16.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Client accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **17. REMEDIES**

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

- (a) to rescind the Order;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- (c) at the Client's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- (e) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

17.2 The Client's rights and remedies under this Clause 14 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness, for purpose and correspondence with sample implied into these Conditions by the Sale of Goods Act 1979.

## **18. ASSIGNMENT**

18.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Client.

18.2 The Client may assign the Contract or any part of it to any person, firm or company.



**19. FORCE MAJEURE**

The Client reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Client 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 (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**20. GENERAL**

- 20.1 Each right or remedy of the Client under the Contract is without prejudice to any other right or remedy of the Client whether under the Contract or not.
- 20.2 If any provision of the Contract 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, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 20.3 Failure or delay by the Client 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.
- 20.4 Any waiver by the Client of any breach of, or any default under, any provision of the Contract 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 Contract.
- 20.5 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.
- 20.6 The proper recovery/recycling of waste resulting from electrical and/or electronic products purchased under any Contract arising in the EU will be managed by the Supplier at no additional cost to CDW (other than the reasonable costs of delivery to the Supplier's designated collection point).
- 20.7 Each Contract (together with any documents referred to therein) shall constitute the entire agreement and understanding between the parties in connection with its subject matter and supersedes and terminates all prior agreements, undertakings and arrangements (both written and oral) between the parties relating to subject matter of that Contract
- 20.8 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.