

CONDITIONS – TERMS OF PURCHASE

Interpretation

In these Conditions:

"Conditions"	means the standard terms and conditions of purchase set out in this document, and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties;
"Contract"	means the contract for the purchase of the Goods and/or the supply of the Services in accordance with these Conditions;
"Buyer"	means In-Motion Ltd;
"Delivery Address"	means the delivery address stated on the Purchase Order;
"Goods"	means the goods (including any instalments of the goods or any part of them) described in the Purchase Order;
"Price"	means the price of the Goods and/or the charge for the Services;
"Provider"	means the entity that is responsible for providing the Goods and/or the Services as stated in the Purchase Order;
"Purchase Order"	means the Buyer's purchase order on the back of which are these Conditions, or in relation to an electronic purchase order, the Buyer's purchase order to which these Conditions are annexed and/or available on the Buyer's website;
"Services"	means the services (including any part of them) described in the Purchase Order;
"Specification"	includes any plans, drawings, data or other information relating to the Goods and/or the Services.

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

1. Basis of Purchase

- 1.1 This Purchase Order constitutes an offer by the Buyer to purchase the Goods and/or the Services subject to these Conditions. The Buyer's Conditions will apply and override all terms & conditions that the Provider seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing unless agreed in writing between the authorised representative of the Provider and a Director of the Buyer.
- 1.2 The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Provider issuing written acceptance of the Purchase Order; or
 - (b) any act by the Provider consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 1.3 No variation to the Purchase Order or these Conditions shall be binding unless agreed in writing between the authorised representative of the Provider and a Director of the Buyer.

2. Specification

- 2.1 The quantity and description of the Goods and/or the Services shall be specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Provider.
- 2.2 The Provider shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, packaging, labelling, storage, handling and delivery of the Goods and/or performance of the Services.
- 2.3 The Provider shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and/or the Services.
- 2.4 The Buyer shall have the right to inspect and test the Goods at any time before delivery.
- 2.5 If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Provider's warranties at clause 6, the Buyer shall inform the Provider and the Provider shall immediately take such remedial action as is necessary to ensure compliance.
- 2.6 Notwithstanding any such inspection or testing, the Provider shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Provider's obligations under the Contract, and the Buyer shall have the right to conduct further inspections and tests after the Provider has carried out its remedial actions.

3. Price and Payment

- 3.1 The Price of the Goods and/or the Services shall be as stated in the Purchase Order and, unless stated otherwise, shall, in respect of Goods be inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address, and any duties or levies other than Value Added Tax and in respect of Services be inclusive of all costs and expenses of the Provider other than Value Added Tax.
- 3.2 In respect of Goods, the Provider shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Provider shall invoice the Buyer on completion of the Services. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

4. Delivery

- 4.1 The Provider shall endeavour that the Goods shall be delivered to and/or the Services shall be performed at, the Delivery Address on the date or within the period specified in the Purchase Order and if unable to comply, shall notify the Buyer at the earliest possible opportunity.
- 4.2 The Provider shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.3 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 4.4 At time of delivery, the Provider shall supply the Buyer with any instructions manuals or other information relevant to the Goods.
- 4.5 The Provider shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Provider to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 6.7.
- 4.6 Title and risk in the Goods shall pass to the Buyer on completion of delivery.

5. Quality Assurance

- 5.1 The Provider shall operate a self-regulatory system of quality assurance and quality measures relating to the Contract in addition to any quality requirements in the Specification which ensures that the Goods and/or Services are provided in accordance with the requirements of the Contract.

6. Warranties and Liability

- 6.1 The Provider warrants to the Buyer that the Goods will be:
- (a) of sound materials and first class workmanship;
 - (b) equal in all respects to the samples, patterns, description or specification provided or given by either party.
- 6.2 if the purpose for which the goods are required is indicated in the Purchase Order or specification the Provider warrants that the goods be fit for that purpose and be free from defects in design, material and workmanship.
- 6.3 The Provider warrants to the Buyer that any Services will be performed by appropriately trained and qualified personnel, with due care, skill and diligence, and to the standards which would reasonably be expected from a skilled and experienced provider engaged in the provision of services similar to the Services under the same or similar circumstances.
- 6.4 The Provider will indemnify the Buyer in full against the following:
- (a) loss, liability, damages, costs, expenses (including legal and other professional fees and expenses on a full indemnity basis) or injury whatsoever and whenever arising caused to the Buyer, or for which the Buyer may be liable to third parties due to:
 - (i) defective workmanship or unsound quality of the Goods and/or the Services supplied;
 - (ii) breach, negligent performance or failure or delay in performance of the Contract by the Provider, its employees, agents or subcontractors; and
 - (iii) actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
 - (b) (Subject to clause 6.9) all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or subcontractors, of the Provider, while in or about the Buyer's sites, works or other places of business
- 6.5 The Provider having given the above mentioned indemnity shall accordingly maintain in force during the term of the Contract full and comprehensive insurance as appropriate in respect of the provision of the Goods and/or Services such insurance to be with reputable insurers acceptable to the Buyer acting reasonably.
- 6.6 Without prejudice to any other remedy, if any of the Goods and/or Services are not fit for purpose, in accordance with the Contract, then the Buyer shall be entitled, to require the Provider to repair the Goods or to supply replacement Goods and/or Services in compliance with the Contract within 30 days and if applicable, indemnify the Buyer against any costs incurred with regards to the removal and re-installation of the goods.
- 6.7 If the Provider fails to deliver the Goods and/or perform the Services by the applicable date, the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Provider;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Provider attempts to make;
 - (c) to recover from the Provider any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;
 - (d) where the Buyer has paid in advance for Services that have not been provided by the Provider and/or Goods which have not been delivered by the Provider, to have such sums refunded by the Provider; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Provider's failure to meet such dates.
- 6.8 If the Provider has delivered Goods that do not comply with the warranties set out in clause 6, then, without limiting its other rights or remedies, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Provider at the Provider's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Provider;
 - (c) to require the Provider to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

- (d) to refuse to accept any subsequent delivery of the Goods which the Provider attempts to make;
 - (e) to recover from the Provider any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and
 - (f) claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Provider's failure to supply Goods in accordance with clause 6.
- 6.9 Nothing in these Conditions shall limit or exclude the Buyer's liability for death or personal injury cause by its negligence or the negligence of its employees, agents or sub-contractors or arising out of fraud or fraudulent misrepresentation.

7. Termination

- 7.1 The Buyer shall be entitled to cancel the Contract in respect of all or part only of the Goods and/or the Services by giving notice to the Provider at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay the Provider fair and reasonable compensation for any work in progress not exceeding the Price for the Goods and/or the Services in respect of which the Buyer has exercised its rights of cancellation.
- 7.2 The Buyer shall be entitled to terminate the Contract without liability to the Provider by giving notice to the Provider at any time if:
- (a) the Provider commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
 - (b) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Provider makes any voluntary arrangement with all or any class of its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) is the subject of a bankruptcy petition or order or (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Provider (being a company) or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) (otherwise than for the purpose of solvent amalgamation or reconstruction); or
 - (d) an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Provider; or
 - (e) the Provider ceases, or threatens to cease to carry on all or a substantial part of its business; or
 - (f) the Provider does anything improper to influence the Buyer to give the Provider any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010; or
 - (g) the Buyer reasonably believes that any of the events mentioned above is about to occur in relation to Provider and notifies the Provider immediately.
- 7.3 On termination of the Contract or any part of it for any reason the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

8. General

- 8.1 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party.
- 8.2 No waiver by the Buyer of any breach of the Contract by the Provider shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 8.3 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 8.4 Acceptance of this Purchase Order will be deemed to bind the Provider to these Conditions and no Goods and/or Services shall be supplied or performed by the Provider, its employees, agents or representatives, except in accordance therewith.
- 8.5 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes and claims).
- 8.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute either party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 8.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.