

STANDARD TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

1.1 In these conditions:

'Conditions' means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes the terms and conditions set out in the Order and any special terms and conditions agreed in writing by the Purchaser.

'Contract' means the contract for the sale and purchase of the Goods and the Services arising from the Seller's acceptance of the Order.

'Delivery Address' means the address stated in the Order.

'Goods' means the goods (including any installment of the goods or any part of them) described in the Order (if any).

'Order' means the Purchaser's purchase order to the Seller for the Goods and the Services, including any Specification and other documents attached thereto by the Purchaser.

'Purchaser' means Toshiba Data Dynamics Pte Ltd.

'Price' means the price of the Goods and the charge for the Services.

'Seller' means the person so described in the Order.

'Services' means the services described in the Order (if any).

'Specification' includes any plans, drawings, data or other information relating to the Goods and Services.

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

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

2. Basis of purchase

2.1 The Order constitutes an offer by the Purchaser to purchase the Goods and the Services subject to the Conditions.

2.2 The Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any terms or conditions which the Seller may purport to apply under any quotation, sales offer or similar document.

- 2.3 No variation to the Order or the Conditions shall be binding unless otherwise agreed to in writing by a duly authorized officer or agent of the Purchaser.
- 2.4 The Order may be withdrawn or varied by the Purchaser by written notice at anytime prior to the receipt by the Purchaser of the Seller's written acceptance of the Order.

3. Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in the Conditions, be as specified in the Order and there shall not be any variance in the quantity, quality and description of the Goods and the Services unless authorized by the Purchaser in writing.
- 3.2 Any Specification supplied by the Purchaser to the Seller, or specifically produced by the Seller for the Purchaser, in connection with the Contract, together with the copyright, design rights or other intellectual property rights in the Specification, shall be the exclusive property of the Purchaser. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller or as required for the purpose of the Contract.
- 3.3 It is the Seller's responsibility to furnish the proper quantity as specified in the Order. No variation of the quantity specified will be accepted as compliance with the Order, except by prior written agreement of the Purchaser. The Purchaser reserves the right to return excess shipments of the Goods at the Seller's expense.

4. Price and terms of payment

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
 - 4.1.1 exclusive of any goods and services tax (which shall be payable by the Purchaser subject to a receipt of the Seller's original tax invoice); and
 - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties or levies other than goods and services tax.
- 4.2 The Seller shall at its own expense promptly obtain all necessary export licences, clearances and other consents necessary for the supply and delivery of the Goods and the performance of the Services.
- 4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of the Purchaser.
- 4.4 The Seller shall be entitled to invoice the Purchaser on or at any time after delivery of the Goods and performance of the Services in accordance with the Contract.

- 4.5 The Purchaser shall pay the Price of the Goods and the Services within the relevant number of days as stated in the Order after the receipt by the Purchaser of a proper invoice.
- 4.6 The Purchaser shall be entitled to set off against the Price any sums owed to the Purchaser by the Seller whether under the Contract or otherwise.

5. Delivery/Performance

- 5.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date stated in the Order.
- 5.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, delivery of the Goods and performance of the Services will take place within a reasonable time from the Seller's acceptance of the Order.
- 5.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 5.4 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 5.5 The Purchaser 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 Purchaser has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 5.6 The Seller shall supply the Purchaser in good time with any information required to enable the Purchaser to accept delivery of the Goods and performance of the Services.
- 5.7 The Purchaser shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Purchaser.
- 5.8 All shipments of Goods must be forwarded to the Delivery Address in the manner indicated on the Order. In the event of any variance, all additional expenses to which the Purchaser may be subjected shall be borne by the Seller.
- 5.9 The Goods shall be marked in accordance with the Purchaser's instructions and all lawful requirements and properly packed and secured for delivery to the Purchaser in an undamaged condition. All Goods that are shipped to the Purchaser from abroad shall be securely packed for export as light as possible and in the smallest cubical bulk consistent with safe carriage by ocean vessel, railroad or aircraft (as the case may be) and insurance requirements. All packaging and boxing costs shall be borne by the Seller.

- 5.10 The purchase number as stated in the Order shall be stencilled or otherwise clearly marked on or outside the wrapping or casing of each delivery or consignment of the Goods and shall be noted on all invoices and Bills of Lading.

6. Risk and Property

- 6.1 Unless otherwise indicated in the Order, risk of damage to or loss of the Goods shall pass to the Purchaser upon delivery to the Purchaser in accordance with the Contract.
- 6.2 The property in the Goods shall pass to the Purchaser upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made and the Goods have been appropriated to the Contract.

7. Warranties and liability

- 7.1 The Seller warrants to the Purchaser that the Goods:
- 7.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act Cap. 393) and fit for any purpose held out by the Seller or made known to the Seller at the time the Order is placed;
 - 7.1.2 will be free from defects in design, material and workmanship;
 - 7.1.3 will correspond with any relevant Specification or sample; and
 - 7.1.4 do not infringe any patent, copyright, design right, trade mark or other intellectual property rights of any person.
- 7.2 The Seller warrants to the Purchaser that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances.
- 7.3 The Seller warrants that it will comply with all governmental laws and regulations concerning the manufacture, packaging, packing, delivery and sale of the Goods and the performance of the Services.
- 7.4 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Purchaser shall be entitled:
- 7.4.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven (7) days; or

- 7.4.2 at the Purchaser's sole option, and whether or not the Purchaser has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 7.5 The Seller shall indemnify the Purchaser in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- 7.5.1 breach of any warranty given by the Seller in relation to the Goods or the Services;
- 7.5.2 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 7.5.3 any act or omission of the Seller or its employees, agents or sub-contractors in connection with the performance of the Services.
- 7.6 Except in relation to liability for death or personal injury, the Purchaser and its officers, employees and agents shall not be liable to the Seller for any damage to any property of, or any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred or suffered by the Seller or by its employees, agents, sub-contractors or by any other person arising directly, indirectly or in any manner whatsoever from any act, omission or negligence of the Purchaser or its officers, employees and agents.
- 7.7 Neither the Seller nor the Purchaser shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control ("Force Majeure"), and the time for performance of its obligation shall be extended accordingly. Force Majeure shall include but are not limited to strikes, fires, wars, acts of God and civil commotion. If the Force Majeure in question prevails for a continuous period in excess of six (6) months, either party shall have the right to terminate the Contract.

8. Termination

- 8.1 If a bankruptcy or winding up application shall be filed against the Seller or the Seller makes any voluntary arrangement with its creditors, or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller, or the Seller ceases or threatens to cease to carry on any business, then the Purchaser shall be entitled to terminate the Contract without liability to the Seller by giving written notice to the Seller.

9. General

- 9.1 The Conditions constitute the entire agreement between the parties and supersede any previous agreement or understanding.
- 9.2 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under the Contract.
- 9.3 Any notice required to be served, delivered or given under the Conditions shall be in writing and shall be deemed sufficiently served if sent by registered post, facsimile or by personal delivery to the last known address or facsimile number of the other party.
- 9.4 No waiver by the Purchaser of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.5 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.
- 9.6 The laws of Singapore shall apply to the Contract. The Seller hereby irrevocably agrees that the courts of Singapore shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Agreement and for such purposes hereby irrevocably submits to the jurisdiction of such courts. Nothing contained in this clause shall limit the rights of the Purchaser to take proceedings against the Seller in any other court of competent jurisdiction, whether concurrently or not (unless precluded by applicable law). The Seller irrevocably waives any objection which it may have now or in the future to the courts of Singapore being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.