

# ORACLE COMPONENTS HOLDING GROUP – TERMS & CONDITIONS OF PURCHASE AND SUPPLY

## DEFINITIONS

In these conditions of purchase:

“**The Buyer**” means Oracle Components Ltd, now referred to ‘OCL’. “**The Supplier**” means the person or company to whom this purchase order is addressed. “**Conditions**” means the terms and conditions set out in this purchase order. “**Contract**” means a contract between the Supplier and the Buyer for the supply of Goods which is subject to the Conditions (as varied, if it be the case, in accordance with clause 2.2.2 below). “**Purchase Order**” means a purchase order subject to the Conditions and otherwise substantially in the form of this purchase order and “**Specification**” includes any specification, design, plan, prototype, drawing, software, data or other information relating to the Goods. Where a Contract or Purchase Order is for the provision of services, the word ‘**Goods**’ shall be read, where the context permits, as meaning and/or including any services which the Supplier contracts to provide.

## OPERATIVE CLAUSES:

### 1. Exclusion of Supplier’s Terms and Conditions

1.1. Every supply of Goods and services to the Buyer by the Supplier is made on the Conditions and all terms and conditions proposed by the Supplier (except to the extent that they are repeated in and are not inconsistent with the Conditions) are hereby expressly excluded.

### 2. Basis of purchase

2.1. The Purchase Order constitutes an offer by the Buyer to purchase the Goods from the Supplier subject to the Conditions. No verbal or written order, request or enquiry for Goods is binding on the Buyer unless set out in a Purchase Order signed by the duly authorised representative of the Buyer.

2.2. No variation to a Purchase Order or the Conditions is binding on the Buyer unless agreed in writing between the authorised representative of the Buyer and the Supplier.

2.3. Execution by the Supplier of a Purchase Order in whole or in part constitutes acceptance thereof.

### 3. Specification

3.1. The quantity, quality and description of the Goods shall be as specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Supplier and referred to in the Purchase Order.

3.2. The Supplier shall not disclose to any third party or use any Specification except to the extent that it is or becomes within public knowledge otherwise than as a result of a breach by the Supplier of this clause

3.3. Or as required for the purpose of the performance by the Supplier of the Contract.

#### 3.4. Software Products

3.4.1. if the Supplier notifies OCL in writing that it may only sell the Software Products to an End User Customer if accompanied by an End User Licence then OCL shall ensure that all copies of the Software Products which are sold to its End User Customers shall be accompanied by the End User Licence which accompanies the Software Product.

3.4.2. if any of End User Customers shall return any Software Product to OCL within the time period permitted by its accompanying End User Licence on the ground that it does not agree to the terms of such licence, OCL shall promptly refund the purchase price to that End User Customer and return the relevant Software Product to the Supplier (whereupon the Supplier will refund OCL the Price).

3.5. Supplier (electronic component distributor or custom electronic assembler) is hereby notified that the delivery of counterfeit parts is of special concern to OCL. If counterfeit parts are furnished under this order or found in any of the custom assembled goods delivered hereunder, such items will be impounded by OCL. The supplier shall promptly replace such counterfeit parts with parts acceptable to OCL. To further mitigate the possibility of the inadvertent use of counterfeit parts, the supplier shall only purchase electronic component parts directly from the Original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEM) or through authorized distributors.

### 4. Prices

4.1. Unless otherwise stated in the Purchase Order all prices are fixed and include the cost of packing and delivery and all taxes (other than VAT) and other dues.

### 5. Delivery

5.1. The Goods shall be delivered to the address for delivery specified in the Purchase Order on the date or within the period stated therein, between 08.45 and 17.30 hours on a week day which is not a bank holiday.

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5.2. The Supplier shall deliver the Products and Services to OCL in accordance with the date of delivery specified in the Order, with time for delivery being of the essence. The Supplier shall ensure that each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, 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.

5.3. If the Products are delivered to OCL in excess of the quantities ordered OCL shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

5.4. The Supplier requires OCL to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to OCL and any such packaging material will only be returned to the Supplier at the cost of the Supplier.

5.5. Where the date of delivery of the Goods may be specified after acceptance of the Purchase Order, the Supplier shall give the Buyer reasonable notice of the specified date.

5.6. If the Goods are to be delivered by instalments, each instalment will be treated as a single Contract and not severable.

5.7. The Buyer shall be entitled to reject any Goods which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer 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.

5.8. If Goods are not supplied in accordance with the Contract, then without prejudice to any other remedy to which it shall be entitled whether pursuant to the Conditions or otherwise, the Buyer shall be entitled to terminate the Contract and to be repaid forthwith any price paid or to obtain equivalent Goods or rectification from a suitable source, the cost whereof shall be reimbursed by the Supplier to the Buyer.

5.9. Control of Substances Hazardous to Health (COSHH). Where chemicals or hazardous substances are being supplied, the Supplier will clearly identify the outer packaging as such and supply safe handling and Supplier Data Sheets in advance of the delivery.

5.10. All items delivered shall be fabricated in accordance with general industry standards for good workmanship. Packaging shall protect the item from shipping damage. Electrostatic sensitive items shall be packaged to prevent static damage and conspicuously marked as static sensitive.

5.11. Material with shelf life must be marked with date of manufacturing and expiration date, accompanied by the appropriate material safety data sheet.

5.12. Please make note of Courier ACCOUNT NUMBERS on the Purchase Order, we will hold you, the seller, responsible for freight charges if you place the wrong Account number or have used your own forwarder DO NOT SHIP PARTIAL BACK ORDER QUANTITIES UNLESS AUTHORIZED BY THE BUYER.

## 6. Terms of payment

6.1. The Supplier shall be entitled to invoice the Buyer on or at any time after delivery of all Goods (or performance of all services comprised therein), and each invoice shall quote the number of the Purchase Order.

6.2. Unless otherwise stated in the Purchase Order the Buyer shall pay the price of the Goods within 30 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, within 30 days after acceptance of the Goods by the Buyer. Any invoice which fails to state clearly the correct reference of the Goods as set out in the relevant Purchase Order shall not be a proper invoice for the purpose of this Condition.

6.3. The Buyer shall be entitled to set off against the price any sums owed to the Buyer by the Supplier on whatever account.

6.4. Time for payment shall not be of the essence of the Contract and the Supplier shall not be entitled to suspend or to cancel any delivery by reason of any failure by the Buyer to make any payment (under the Contract or otherwise) on the due date.

## 7. Risk and Property

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2. The property in the Goods, including any components thereof and/or raw materials incorporated therein, shall pass to the Buyer upon delivery.

7.3. All property of the Buyer (including without limitation the Goods and the Specification) for the time being in the custody or possession of

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the Supplier shall be at the risk of the Supplier which shall at its own expense insure such property against the risk of loss and/or damage from whatever cause and all other usual risks.

7.4. All tooling in the custody or possession of the Supplier shall be maintained in good conditions at the Supplier's expense.

## 8. Warranties and Liability

8.1. The Supplier warrants to the Buyer that the Goods are of satisfactory quality, fit for any purpose held out by the Supplier in writing at the time of the Purchase Order and are, and will be for twelve months after delivery, free from defects, whether of design, material, workmanship or otherwise, correspond with any relevant Specification or sample, and comply with all applicable statutory requirements and regulations relating to their manufacture and supply throughout the European Union.

8.2. Without prejudice to any other remedy, if the Goods or any of them are not delivered or in the case of services are not performed in accordance with the Contract, the Buyer is entitled to require the Supplier either to repair the Goods or to supply replacement Goods in accordance with the Contract or to treat the Contract as discharged by the Supplier's breach and to require immediate repayment of any part of the price which has been paid.

8.3. The Supplier shall indemnify the Buyer in full against all direct, indirect and consequential liability (all three of which terms including, 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 expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

8.3.1. late delivery of, defective workmanship, quality or materials or breach of any warranty given by the Supplier in relation to, the Goods;

8.3.2. any failure by the Supplier to comply with all applicable laws in the European Union concerning waste management relating to the Goods;

8.3.3. Any claim or alleged claim that the Goods infringe, or their importation, use or resale, infringes, any intellectual property or other right of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.3.4. any liability under the Consumer Protection Act 1987 in respect of the Goods; and

8.3.5. any breach of the Contract and any other act or omission of the Supplier or its employees agents or subcontractors in supplying, delivering or installing the Goods;

8.4. The Supplier represents warrants and undertakes to the Buyer that it has carried out all testing and evaluation and other work necessary to eliminate any risk to health or safety from the use of Goods and that if in any circumstance there is or may be any such risk then no later than the delivery of the Goods the Supplier will bring such circumstances to the attention of the Buyer in writing and provide free of cost full and proper information about such circumstance and the safeguards to be observed to ensure that the Goods re-used safely and without risk to health.

## 9. Conformity with the Contract

9.1. The Buyer shall have the right to inspect and test and/or to procure or to permit to be inspected and tested the Goods at the Supplier's premises during manufacture, processing and storage. Such inspection and testing by the Buyer shall not relieve the Supplier of any obligation to the Buyer to which the Supplier would otherwise be subject nor shall it create any estoppels in favour of the Supplier against the Buyer.

9.2. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract then the Buyer shall be entitled within seven days thereafter to terminate the Contract and any monies paid to the Supplier by the Buyer and an amount equal to the cost to the Buyer of any material provided to the Supplier by the Buyer shall be repaid immediately by the Supplier to the Buyer.

9.3. At the same time as delivering the Goods the Supplier will, if so required by the Buyer, deliver to the Buyer a certificate that the Supplier has carried out all procedures in relation to the Goods which conform with any relevant accreditation of which the Supplier at the commencement of the Contract has the benefit.

9.4. At the same time as delivery of the Goods the Supplier will deliver to the Buyer a certificate that the Goods have been inspected and conform to the requirements of the relevant specification designated or implied in the Contract. Supplier shall provide a C of C and as applicable, supporting documentation with each shipment. Supplier shall maintain on file all quality data/records such as; certificates of material and/or processes, acceptance test reports, inspection records, and other applicable quality control data, for a minimum of seven (7) years from completion of Purchase Order. These records shall provide objective evidence of the quality assurance operations performed to permit traceability from the delivered item back through its manufacture and inspection to the procurement records and its constituent parts and materials and must be readily retrievable and made available to OCL and/or its customer upon request.

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9.5. Items, products or materials not conforming to requirements of this Purchase Order/subcontract, drawing, specification, test, etc. shall not be shipped to OCL without prior written approval of OCL Quality Assurance by submitting a full summary detailing the deviation/s from contract. The Summary document shall describe the non conformance in detail, the quantity, and the cause and corrective action to preclude a recurrence. Failure to comply will result in return of the shipment at the supplier's expense and will affect supplier rating.

9.6. Supplier (electronic component distributor or custom electronic assembler) is hereby notified that the delivery of counterfeit parts is of special concern to OCL. If counterfeit parts are furnished under this order or found in any of the custom assembled goods delivered hereunder, such items will be impounded by OCL. The supplier shall promptly replace such counterfeit parts with parts acceptable to OCL. To further mitigate the possibility of the inadvertent use of counterfeit parts, the supplier shall only purchase electronic component parts directly from the Original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEM) or through authorized distributors.

## 10. Termination

10.1. In addition to and without prejudice to the rights conferred on it in clauses 5.7, 9.2 and 10.2 of these Conditions, the Buyer shall be entitled at any time to terminate the Contract in whole or in part upon payment to the Supplier of whichever is the lesser of (i) the balance of the amount payable by the Buyer to the Supplier under the Contract and (ii) the aggregate of the amounts already expended by the Supplier in purchasing materials specifically for the purpose of and necessary for its performance of the Contract which have not then been incorporated in finished Goods delivered to the Buyer and in unavoidable cancellation costs incurred by the Supplier to third parties in consequence of termination of the Contract after deducting from such aggregate the amount of any savings from which the Supplier will benefit in consequence of such termination.

10.2. The Buyer shall be entitled by notice in writing to the Supplier to terminate the Contract forthwith without compensation in any of the following events:

10.2.1. the Supplier committing any irremediable breach of its obligations under the Contract or any other contract between the Buyer and the Supplier;

10.2.2. the Supplier failing within seven days of written notice requiring it so to do to remedy any remediable breach of its obligations under the Contract or any such other contract;

10.2.3. the Supplier compounding with or negotiating for any composition with its creditors generally or failing to satisfy any final judgement within seven days thereof or suffering any execution over any of its assets;

10.2.4. the Supplier being insolvent, ceasing business, or entering into liquidation or bankruptcy or any receiver or administrator of the Supplier or any of its assets being appointed.

## 11. The Contracts (Rights of Third Parties) Act 1999

11.1. The Provisions of The Contracts (Rights of Third Parties) Act 1999 are hereby excluded and shall not apply.

11.2. The Purchase Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under the Contract.

11.3. Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.4. The Contract shall be governed by the laws of England. The Supplier submits to the jurisdiction of the English courts.

11.5. Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

11.6. If any provision of the Contract, Purchase Order or these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract, Purchase Order or Conditions (as the case may be) and the remainder of such provision shall continue in full force and effect).

11.7. Failure or delay by the Buyer 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.

11.8. Any waiver by the Buyer 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.

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