



## OPERATIONAL SYSTEMS

### Conditions of Purchase

Reference: OS2640A

#### 1 INTERPRETATION

In these Conditions of Purchase:

- 1.1 "Buyer" means Oat Services Limited (Company Number 04275710) whose registered office is at 226 Bassett Avenue, Southampton, Hampshire SO16 7FU;
- 1.2 "Contract" means the contract for the sale and purchase of the Goods;
- 1.3 "Delivery Address" means the address stated in the Order;
- 1.4 "Goods" means the goods (including any instalment of the goods or any part of them) described in the Order;
- 1.5 "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
- 1.6 "Order" means the Buyer's written instruction to buy Goods, incorporating these conditions;
- 1.7 "Price" means the price of the Goods;
- 1.8 "Seller" means the individual, firm or company selling the Goods;
- 1.9 "Services" means the services (if any) described in the Order;
- 1.10 "Specification" includes any plans, drawings, data or other information relating to the Goods;
- 1.11 "Terms" means these terms of purchase and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- 1.12 "Writing" and any similar expression, includes faxes and e-mail.
- 1.13 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.
- 1.14 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 Buyer to purchase the Goods subject to these Terms.
- 2.2 These Terms shall apply to a Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

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- 2.3 No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgment or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely upon such terms and conditions.

### **3 SPECIFICATIONS**

- 3.1 Any Specification supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to payment of the Price. 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.
- 3.2 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 3.3 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing, provided always that, notwithstanding any such inspection and testing, the Seller shall

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- 3.4 remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under a Contract.
- 3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of inspection or testing the Seller shall take such steps as are necessary to ensure compliance.
- 3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.7 The Buyer's rights under these Terms are in addition to the statutory conditions implied by the Sale of Goods Act 1979.

#### **4 PRICE**

- 4.1 The Price of the Goods shall be stated in the Order, or if no Price is quoted, the Price set out in the Seller's published price list in force at the date of the Contract, and unless otherwise so stated shall be exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice) and inclusive of all other charges.
- 4.2 No increase in the Price nor any extra charges shall be accepted by the Buyer.

#### **5 TERMS OF PAYMENT**

- 5.1 The Seller may invoice the Buyer on or at any time after delivery of the Goods and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order the Buyer shall pay the Price of the Goods within 30 days of the date of the Seller's invoice.

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- 5.3 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 4% per annum over Barclays Bank plc base rate from time to time.

#### 6 DELIVERY

- 6.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order in either case during the Buyer's usual business hours. The Seller shall off-load the Goods at its own risk as directed by the Buyer.
- 6.2 Where the date of delivery of the Goods is to be specified after the placing of the Order the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.4 If the Goods are to be delivered by instalments the Contract will be treated as a single contract and not severable.
- 6.5 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 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.
- 6.6 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to take any one or more of the following causes of action:
- 6.6.1 cancel the Contract in whole or in part;

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- 6.6.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; and
- 6.6.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier.

## 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 shall pass to the Buyer upon delivery unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## 8 INCOTERMS

- 8.1 In the event that an Incoterm shall apply to these Terms the Buyer shall confirm this in Writing to the Seller in its Order or such other pre-contractual document.
- 8.2 Such Incoterm shall be incorporated into and form part of these Terms and in the event of any conflict between such Incoterm and the rest of these Terms, the Incoterm shall prevail.

## 9 WARRANTIES AND LIABILITY

- 9.1 The Seller warrants to the Buyer that the Goods:
  - 9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing before or at the time the Order is placed;
  - 9.1.2 will be free from defects in design, material and workmanship;

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- 9.1.3 will correspond with any relevant Specification or sample; and
- 9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2 Without limiting any other remedy, if any Goods are not supplied or performed in accordance with the Contract then the Buyer shall be entitled:
  - 9.2.1 to require the Seller to repair the Goods or to supply replacement Goods in accordance with the Contract within 7 days; or
  - 9.2.2 at the Buyer's sole option and whether or not the Buyer 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.
- 9.3 The Seller shall keep the Buyer indemnified in full against all direct loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-
  - 9.3.1 breach of any warranty given by the Seller in relation to the Goods;
  - 9.3.2 any claim that the Goods infringe or their importation use or resale infringes the patent, copyright, design right, registered design, trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 9.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods; and
  - 9.3.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.

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9.4 Neither the Seller nor the Buyer 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. Without limiting the foregoing the following shall each be regarded as causes beyond either party's reasonable control:

- 9.4.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.4.4 import or export regulations or embargoes;
- 9.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party);
- 9.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
- 9.4.7 power failure or breakdown in machinery.

## 10 TERMINATION

10.1 The Buyer may cancel the Order in respect of all or part only of the Goods by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods in respect of which the Buyer has exercised its right of cancellation less the Seller's net saving of cost arising from cancellation.

10.2 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

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- 10.2.1 the Seller commits a material breach of any of the terms and conditions of the Contract;  
or
- 10.2.2 any distress, execution, or other process is levied upon any of the assets of the Seller; or
- 10.2.3 the Seller 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 Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or
- 10.2.4 the Seller ceases or threatens to cease to carry on its business; or
- 10.2.5 the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller to adequately fulfil its obligations under the Contract has been put in jeopardy.

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

#### 11 CONFIDENTIALITY

Any information which the Buyer discloses relating to the Goods which is not in the public domain at the time of disclosure shall be confidential and shall not be disclosed by the Seller to any third party and the Seller shall ensure that all its employees, agents and sub-contractors are subject to like obligations of confidentiality as bind the Seller.

#### 12 MEDIATION

If any dispute arises in connection with this Contract, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice. No party may commence any court proceedings in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either mediation has terminated or the other party failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

#### 13 NOTICES

A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice. In the absence of proof of earlier receipt, such notice shall be deemed to be served in the case of an inland letter 24 hours, in the case of any airmail letter 72 hours after proof of despatch or posting and in the case of e-mail or fax at 9:00 a.m. of the business day of the recipient party next following its despatch.

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#### 14 WAIVER AND SEVERANCE

- 14.1 Any indulgence granted by the Buyer to the Seller and any failure by the Buyer to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of the Buyer's rights or remedies nor be deemed a waiver of any subsequent default by the Buyer.
- 14.2 The invalidity, illegality, voidness, unenforceability or unreasonableness in whole or in part of any clause in these Terms shall not affect the validity of the remainder of such clause or these Terms.

#### 15 ASSIGNMENT

The Order is not assignable by the Seller without the written consent of the Buyer and is between the Seller and the Buyer as principals but the Buyer may without consent assign or sub-contract all or any of its rights and obligations hereunder.

#### 16 GOVERNING LAW

The interpretation and application of these Terms shall be in accordance with English Law and both parties agree to submit to the exclusive jurisdiction of the English Courts.

#### 17 THIRD PARTIES

The parties to the Contract do not intend that any terms of the Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

Date	Revision Number	Notes
11/06/14	1	Document Creation
15/05/18	2	Reviewed and updated

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