

Lucideon - Conditions of Business

Definitions

- 1.1 **Company** - means Lucideon Limited
- 1.2 **Client** - means any party who enters into a Contract with the Company, whether or not that person is also a member of the Company.
- 1.3 **Contract** - means any contract under which the Company agrees to provide Goods or Services to any Client.
- 1.4 **Goods** - shall include plant and equipment (and parts and components therefor) and standard products or other goods from time to time offered by the Company.
- 1.5 **Services** - shall include research and development, consultancy, advisory, training, technical assistance, testing and other services from time to time offered by the Company.
- 1.6 **Results** - shall include any and all results, whether or not patented or patentable, arising from the Company's performance of any Contract.

Extent of Contract

- 2.1 These conditions shall be incorporated in all Contracts to the exclusion of any terms or conditions referred to by the Client whose acceptance of the delivery of any Goods or the carrying out of any Services shall constitute conclusive acceptance of these conditions.
- 2.2 No amendment of any Contract or these conditions shall bind the Company unless confirmed in writing by a Director or the Secretary of the Company. The variation of any Contract or exercise of any right of termination or otherwise thereunder shall not require the consent of any third party.
- 2.3 The Company reserves the right to withdraw or cancel any proposal or quotation without notice at any time prior to its acceptance by the Client and such proposals and quotations shall be deemed to have been withdrawn if not accepted within 30 days from the date thereof or other validity period agreed in writing by the Company.

Prices and Payment

- 3.1 The Company's prices and charges exclude VAT and unless otherwise stated, in the case of Goods, are ex works, exclusive of carriage and insurance.
- 3.2 Unless otherwise stated, the Company's prices and charges are subject to adjustment for any variations in cost incurred by the Company after the date of the Company's proposal or quotation as a result of:-
- 3.2.1 any alterations in specifications, quantities or times of delivery or performance or suspension of any work requested by the Client;
- 3.2.2 any delay in the supply by or on behalf of the Client of any instructions, data or materials of whatever kind or any inaccuracy, insufficiency or defect therein, or non-conformity to their specifications; or
- 3.2.3 any other factor beyond the Company's control (including without limitation, any foreign exchange fluctuations, alterations of duty or increase in the costs of labour, materials, utilities or other costs of manufacture).
- 3.3 All amounts due to the Company, unless otherwise agreed in writing, shall be payable directly to the Company's bank account in Pounds Sterling not later than 30 days after the date of the Company's invoice together with VAT, where applicable, at the then current rate but without any set-off or other deductions whatsoever. The time of payment shall be of the essence of the Contract and, without prejudice to any other rights of the Company, if the invoice is not paid in full by the due date, interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of 2 points over the base rate from time to time quoted by the Company's bankers.

Delivery and Performance

- 4.1 Times quoted for the delivery of any Goods or the performance of any Services are subject to the supply of all instructions or other matter of whatsoever kind required from the Client for the performance of the Contract. The Company shall endeavour to meet such times for delivery or performance but shall not be liable for any loss, damage, or expense of whatever kind arising from any delay or failure from whatsoever cause nor shall such failure or delay entitle the Client to refuse to accept any delivery or performance or repudiate the Contract.
- 4.2 The Company may affect delivery or performance by instalments. No failure by the Company in any one or more instalments shall entitle the Client to repudiate any Contract for Goods or Services previously supplied or to refuse to accept any undelivered Goods or unperformed Services.
- 4.3 Unless otherwise stated, Goods shall be delivered and risk in them shall pass to the Client when they are made available at the Company's premises or other location agreed in writing by the Company.
- 4.4 If the Client fails to take delivery of any Goods on the due date or to provide adequate delivery instructions the Company may store the Goods at the risk of the Client who shall pay all storage, transportation, handling or other charges incurred by the Company as a result of such failure and the Company shall be entitled to payment as though delivery had taken place.
- 4.5 The Company reserves the right to charge extra for any special delivery arrangements made at the Client's request.

Loss or Damage in Transit

- 5.1 Where the carriage of any Goods has been arranged by the Company and paid for by the Client, the Company shall, in respect of any such Goods as it is satisfied have been lost or damaged in transit:-
- 5.1.1 if the loss or damage has occurred during transit on the Company's own vehicle, replace within a reasonable period the lost or damaged Goods at the original point of delivery or, at its option, allow credit for their invoice value or proportionate part thereof; or
- 5.1.2 if condition 5.1.1 does not apply, take all reasonable steps to make the best practicable recovery from the carrier and pay to the Client any amount so recovered.
- 5.2 Claims by the Client under condition 5.1 above will be considered if notified to the Company in writing within 3 days from the date of receipt of the Goods (or, if a whole consignment is missing, within 10 days from the date of the Company's invoice or the date on which the Goods would in ordinary course have reached their destination, whichever is the later) and to any carrier in accordance with the carrier's claims procedure.

Title

- 6.1 Title in the Goods shall remain with the Company and not pass to the Client until the Company has received payment in cleared funds of the full price of the Goods and of all other debts owed to it by the Client on any account.
- 6.2 Until title passes:
- 6.2.1 the Client shall hold the goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company which shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Client;

6.2.2 the Company shall be entitled at any time on demand to repossess and sell all or any of the Goods and thereby terminate (without any liability to the Client) the Client's right to use or sell them; and

6.2.3 the Company may enter any premises where the Goods are stored for the purpose of inspecting or repossessing them.

6.3 The Company transfers to the Client only such title and rights of use as the Company has in the Goods.

Warranty

- 7.1 The Company will subject to the following provisions and within a reasonable period and at its discretion replace at the original point of delivery, make good, repair or allow the Client credit for the invoice value (or proportionate part thereof) of any Goods which the Company is satisfied:
- 7.1.1 were at the time of their delivery;
- (a) not in accordance with their contract description, or
- (b) (subject to conditions 7.1.2 below) defective in materials and/or workmanship; or
- 7.1.2 (in the case only of Goods consisting of plant or equipment or the like for which the warranty constituted by this condition 7.1.2 is expressly stated in the Company's proposal or quotation to apply) have ceased to be capable of operation in accordance with the specification stated in such proposal or quotation by reason only of defects of materials and/or workmanship which have appeared under proper use during a defects period which, unless otherwise specified in the said proposal or quotation, shall be not longer than twelve months from the date of delivery of such equipment.
- 7.2 Claims by the Client under conditions 7.1 above will be considered only if:
- 7.2.1 the Company has received written notice of the claim within 28 days from the date of the receipt of the Goods or (if condition 7.1.2 applies), immediately upon becoming aware of the defect and, in any event, within the said defects period.
- 7.2.2 the Client has afforded the Company reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy or defect and complied with any request by the Company for the return, properly packed and carriage paid, of any Goods for examination;
- 7.2.3 the Client has paid the full amount of all invoices due prior to the date of the claim;
- 7.2.4 the Client has not permitted any person other than the Company or other person approved in writing to the Company to effect any modification or repair to the Goods or other remedial work in connection with any Contract.

7.3 In the case of Goods alleged to be defective which are not of the Company's manufacture and in lieu of any liability on the part of the Company therefor, the Company's liability shall be limited to assigning to the Client (so far as the Company is able to do so) any warranties given by the manufacturer of such Goods.

7.4 The company shall have no liability for any defects in any Goods which:

- 7.4.1 arise from accident or improper storage, handling or use of the Goods or from installation, maintenance or operation other than in accordance with any recommendations or instructions supplied by the Company or any supplier of any parts of the Goods or any equipment with which the Goods are to be used;
- 7.4.2 appear after the claims period applicable to the original Goods has expired; or
- 7.4.3 result from any inaccurate or incomplete information or details supplied by the Customer.

7.5 Any goods replaced by the Company shall become the Company's property and shall not be sold or, except in accordance with the Company's written instructions, disposed of by the Client.

7.6 This condition shall extend (so far as it is capable of application thereto) to any discrepancies in any Services provided by the Company as though the above references to "Goods" included a reference to any Services which the Company is satisfied did not conform to their contract description or were not performed with reasonable skill and care.

Liability

- 8.1 Except to the extent stated in these conditions or otherwise agreed in writing by the Company:
- 8.1.1 neither the Company nor any of its agents, contractors or subcontractors, nor any of its or their directors, officers, partners or employees shall have any liability, duty or obligation in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever in connection with Goods or Services supplied by or on behalf of the Company other than, in the case of any of the foregoing persons, for death or personal injury resulting from its or his negligence or for fraud on its part or on part of any of its directors, officers, partners or employees whilst acting in the course of their duties or employment; and

8.1.2 in particular, neither the Company nor any of the other foregoing persons shall have any liability for any consequential loss or damage suffered, directly or indirectly, by the Client under or in connection with any Contract, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the customer by any person.

8.2 Because the effectiveness of the Services offered by the company may depend upon factors outside the Company's control, the Company shall in no circumstances have any liability for the Client's use of or inability to use any Results or for the suitability of the same for any particular purpose, whether or not known to the Company.

8.3 The Company shall have no liability for any loss of or damage to any samples, materials or equipment arising from any tests, investigations or consultancy undertaken by or on behalf of the Company. The Client acknowledges, in particular, that testing may be to destruction and that the Company reserves the right to dispose of or return items submitted to it in accordance with its procedures from time to time in force.

8.4 The Company shall be discharged from all liability to which these conditions apply unless proceedings are begun within twelve months after the Client became aware (or should reasonably have become aware) of the facts giving rise to such liability.

8.5 In view of the range of Goods and Services provided by the Company, prices and charges are put forward on the basis that the client has the primary responsibility for any risks associated with them and for insuring against such risks as it thinks fit. Accordingly the Company's liability in connection with any such Goods or Services shall in no circumstances exceed, in the aggregate, the prices or charges payable for them or such other amount as may be specifically agreed in writing between the parties before the contract is entered into.

Specifications, etc

- 9.1 Unless otherwise agreed in writing the Company reserves the right at any time without notice to change or modify the particulars of any specifications or other details of the Goods.
- 9.2 The Company shall have no liability under these conditions in respect of any advice, opinion or information furnished by the Company, its employees or agents in connection with any contract unless given in writing quoting the Contract number by a person expressly so authorised by the Company for that purpose in response to a written request by the Client.

Indemnity

10 The Client shall indemnify the Company against all actions, claims, losses, damages, liabilities, costs and expenses of whatsoever nature suffered or incurred by the Company, its agents, contractors and subcontractors and its directors, officers, partners or employees, in connection with any claim relating to the infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trade mark, copyright, design right or breach of confidence arising from the Company's use of any design or instruction provided by or on behalf of the Client or from the Company's use of or provisions of Services in relation to any material supplied by or on behalf of the Client.

Confidentiality

11 The Company will treat as confidential and not disclose to any third party any information which it acquires from the Client under the Contract in relation to the Client's business or technical operations which the Client has in writing identified as confidential prior to disclosure provided that this restriction shall not apply to any information which is or (otherwise than in breach of this condition) becomes publicly available, is known to the Company at the date of disclosure or is thereafter acquired by the Company in good faith from an independent source.

Results, Etc

12 All Results and all rights (including copyright and any design rights) therein shall be and remain the property of the Company which shall have the right to use and authorise others to use the same subject to any rights granted in writing by the Company to the Client.

Use of Reports and Other Material

- 13.1 The Client will not without the Company's prior written consent:
- 13.1.1 reproduce in part any reports relating to samples tested or use them in any way which might lead to a misrepresentation of the test results or their implications;
- 13.1.2 in any advertising, marketing or other publication refer or permit any reference to be made to the Company or to any tests, investigations or other services provided by the Company provided that subject to this condition the Client will at the Company's request publish such credits for the Services provided by the Company as the Company reasonably requests.
- 13.2 Unless otherwise agreed in writing, all Results, including but not limited to reports or other data are intended for use by the Client only and the Company accepts no liability in case of their disclosure to or use by any third party.
- 13.3 If the Client wishes to use any such Results in or in connection with any litigation or proceedings it is a condition of the contract under which the Services in question are to be performed that all of the circumstances relating to such litigation or proceedings have been disclosed in writing to the Company prior to the Contract being entered into.

Force Majeure

14 The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract caused by any circumstances outside the Company's reasonable control and shall inform the Client of the beginning and end of such delay or failure and continue performance whenever such circumstances cease to prevail.

Suspension and Termination

15 If the Client fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or other agreement with the Company, becomes insolvent, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy appointed for all or any part of its business, is the subject of any bankruptcy order or has any order made or resolution passed for its winding up, whether compulsorily or voluntarily, or is dissolved, compounds with its creditors or suffers in consequence of debt any action similar to any of the foregoing, the Company shall be entitled, at its option, by giving the Client written notice at any time or times, without any liability to the Client, to forthwith suspend its performance of or (whether or not such performance has previously been suspended) terminate the contract and the Client's right to use any Results.

Cancellation

16 The acceptance of any cancellation of any Contract or return of any Goods (notwithstanding the Company's retention of title therein) shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company which reserves the right to charge for any costs or expenses which it incurs in connection with any such cancellation or return.

Assignment, Etc

17 The Contract shall not be assignable by the Company or the Client but the Company shall be entitled to sub-contract its obligations under the Contract to any party at its discretion.

Lien

18 The Company shall have a lien on any items supplied by or on behalf of the Client and any undelivered goods manufactured or acquired in connection with any Contract in the Company's possession for all sums due at any time from the Client on any account and shall be entitled to keep possession of the same until payment is made in full. The Company shall have the further right at its option to sell or dispose of any such items as agent for and at the expense of the Client and apply any proceeds in and towards the payment of such sums on twenty eight days written notice to the Client.

Law and Jurisdiction

19 The Contract shall be governed by English law and the Client consents to the jurisdiction of the English courts.

Construction

20 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

Notices

21 Any notice to be given under the Contract shall be in writing and if sent by email, facsimile or forwarded by first class pre-paid letter post to the receiving party at its business address as last notified in writing to the other party, shall be deemed to have been given on the date of the email or facsimile dispatch, or 2 working days (or 7 working days in the case of Clients outside the United Kingdom) following the date of posting.

Lucideon Limited
Company No. 1960455
Issued: November 2016