

EUGEN SEITZ AG - CONDITIONS FOR THE SUPPLY OF SERVICES

The Customer's attention is drawn in particular to the provisions of clauses 4 (Supplier's Obligations and Warranties) and 10 (Limitation of Liability).

1. INTERPRETATION

- 1.1 In these Conditions, the following terms shall have the following meanings: *Affiliate* means in respect of the Supplier, any entity which controls, is controlled by or is under common control with the Supplier, and *control* means the ability, directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise; *Background IP* means any Intellectual Property, other than Foreground IP, which is used in performing the Services; *Customer* means the person(s) so described in the Offer; *Confidential Information* means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised; relating to the disclosing party's business and including information relating to patents, trademarks, registered/ unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies; *Contract* means Customer's acknowledgement of Supplier's Offer whether verbally or in writing or a purchase order issued by Customer based on Supplier's Offer; *Foreground IP* means any Intellectual Property that arises, or is obtained or developed by, the Supplier in the course of or in connection with the performance of the Services; *Intellectual Property* means any patents, rights to inventions, registered designs, copyright and related rights, database rights, design rights, rights in designs, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; *Offer* means the Supplier's quote or tender for Services to which these Conditions are annexed and to which they shall apply; *Price* means the price to be paid by the Customer to the Supplier in accordance with the Contract; *Services* means any services agreed in the Contract to be provided by the Supplier as described in the Order; *Supplier* means Eugen Seitz AG, Spitalstrasse 204, 8623 Wetzikon, Switzerland.

2. GENERAL

- 2.1 Any Offer made by the Supplier and any subsequent Contract shall be governed only by these Conditions to the entire exclusion of all other terms or conditions unless otherwise agreed in writing by the Supplier.
- 2.2 Unless otherwise stated in writing Offers shall be considered as an invitation to treat and shall in any case lapse after 30 days from their date. The Supplier will only accept an acknowledgment or a purchase order if based on the corresponding Offer.
- 2.3 Times quoted for the performance or completion of the Services shall run from the date of such acknowledgment or purchase order.
- 2.4 In the event that the Supplier, for any reason, accepts the cancellation of all or part of an acknowledgment or a purchase Order, the Customer shall be liable for payment in full all costs incurred by the Supplier up to the point of cancellation.

3. VARIATIONS AND MEETINGS

- 3.1 Any variation to these Conditions shall have no effect unless expressly agreed in writing by the Supplier.
- 3.2 If any variation, suspension or any instruction of the Customer increases or reduces the cost or time to the Supplier of performing the Contract, then the Price and programme shall be adjusted accordingly. The time for performance of the Services shall automatically be adjusted in accordance with any variation.
- 3.3 The Supplier shall not be obliged to accept any variation where the net effect, together with variations already made, is to increase or reduce the Price by more than 15 percent.
- 3.4 Variations shall, if not the subject of an Offer from the Supplier which has been accepted by the Customer prior to the variation being ordered, be priced by reference to the Price or where this is not relevant, by cost plus 25 percent.
- 3.5 The parties shall throughout the performance of the Services hold regular meetings to discuss the performance of the Services and any other issues arising out of the Contract.

4. THE SUPPLIER'S OBLIGATIONS AND WARRANTIES

- 4.1 The Supplier shall perform the Services in accordance with these Conditions and other provisions of the Contract. The Supplier warrants that the Services will be performed with all reasonable skill and care.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in an Offer, but such dates shall be approximate only, and time shall not be of the essence for performance of the Services unless expressly agreed to the contrary in writing.
- 4.3 The Supplier shall not be bound by any statement concerning the scope of supply, performance or characteristics of the Services unless expressly incorporated in the Contract, although nothing in these Conditions shall be construed as attempting to limit either party's liability for fraud or fraudulent misrepresentation.

- 4.4 Subject to clause 4.5, the Supplier's obligation under the warranty in clause 4.1 shall be limited to supplying such additional services as the Supplier believes are necessary for any work done which proves to be defective under normal conditions within 12 months from the date of completed performance of the Services in question or, at the Supplier's option, reimbursing the Price received by the Supplier for the Services. In respect of replacement Services supplied by the Supplier hereunder, the Supplier shall guarantee such replacement Services up to the end of the original warranty period.
- 4.5 The Supplier's obligation shall not extend to failure caused by designs and specifications provided by the Customer, instructions given by the Customer, software and firmware programs developed by the Customer and used in or with the Services and more generally by defects for which the Customer is to blame or which are caused by activities performed by the Customer without the Supplier's written consent.
- 4.6 SUBJECT TO CLAUSE 10.3, THIS WARRANTY IS IN PLACE OF AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. THE SUPPLIER'S LIABILITIES AND THE CUSTOMER'S REMEDIES IN RESPECT OF SERVICES WHICH ARE NOT PERFORMED IN ACCORDANCE WITH THESE CONDITIONS WHETHER ARISING FROM BREACH OF CONTRACT, STATUTORY DUTY, WARRANTY, NEGLIGENCE OR OTHERWISE ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SUPPLIER'S WARRANTY CLAUSE, AND THE SUPPLIER SHALL HAVE NO LIABILITY OF ANY KIND FOR ANY SUCH DEFECTS WHICH APPEAR AFTER THE EXPIRY OF THE WARRANTY PERIOD DESCRIBED ABOVE.

5. PRICE

- 5.1 The Customer shall pay to the Supplier the Price.
- 5.2 Any services which the Supplier performs which are additional to those specified in the Contract shall be the subject of an additional charge at the Supplier's standard rates unless otherwise agreed in writing with the Customer.
- 5.3 Except as expressly agreed in writing to the contrary, the Price shall be exclusive of any value added tax or similar sales tax, or other tax payable in the country of the Customer.
- 5.4 If any law or regulation comes into force after the date of the Supplier's Offer which increases the cost of performing the Contract, the Price shall be adjusted accordingly.
- 5.5 If the cost to the Supplier of providing the Services increases as a result of (i) any breach of these Conditions by the Customer; or (ii) the supply of incorrect or inadequate information by the Customer; or (iii) any increase in costs or fees payable by the Supplier to any third party in respect of the Services, such increase will be added to the Price. The Supplier shall notify the Customer in writing of such a price increase. The Customer will be entitled to cancel the purchase order by written notice to the Supplier within 5 working days of the date of the Supplier's notice of price increase. In the absence of such notice, the price increase will be binding on the Customer.

6. PAYMENT

- 6.1 All payments shall be made in clear funds in the currency indicated in the Offer to the designated account of the Supplier. Payments from sources originating outside of Switzerland shall be paid by telegraphic transfer, the costs of which shall be borne by the Customer, into the designated account of the Supplier. All sums due to the Supplier shall be payable within 30 days of the date of the Supplier's invoice and time for payment shall be of the essence. No deduction whether by way of set-off, counterclaim or otherwise, shall be made by the Customer.
- 6.2 If any amount due and payable to the Supplier under the Contract is overdue for reasons for which the Supplier is not responsible, the Supplier may, without prejudice to any other right it may have and at its own option, either suspend the Services or terminate the Contract and in addition charge the Customer simple interest on amounts overdue at an annual rate of 2% above the EURIBOR rate from time to time in force during the period that any such amount is overdue (before and after judgement).
- 6.3 All bank charges arising outside of Switzerland (including but not limited to the cost arising in establishing or extending any letter of credit) and charges relating to bank confirmation of the letter of credit shall be paid by the Customer. All other bank charges arising within Switzerland shall be paid by the Supplier with the exception of those arising within the Customer's bank which shall be paid by the Customer.

7. CUSTOMER'S GENERAL OBLIGATIONS

- 7.1 The Customer shall provide on time any necessary information, approval, instruction, material, facilities, equipment or other thing which may be required in relation to the performance of the Supplier's obligations and which is not expressly stated to be the Supplier's responsibility.
- 7.2 Any authorisation, licence, permit, planning permission or approval required from any regulatory authority for which the Supplier is not expressly made responsible in the Contract shall be obtained in due time by the Customer.
- 7.3 The Customer shall give all reasonable assistance to the Supplier in obtaining any work letter of invitation, permit, visa and similar document which the Supplier or any of its employees or agents may require at no cost to the Supplier.
- 7.4 The Customer shall promptly respond to any and all requests or submissions of documents, drawings or information for comment or approval.
- 7.5 The Customer shall be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, if outside Supplier's premises, and shall inform the Supplier of all health and safety rules and regulations that apply at the Customer's premises.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Background IP is and shall remain the exclusive property of the party owning it.
- 8.2 Nothing in these Conditions shall give the Customer any rights in respect of any Background IP of the Supplier or of the goodwill associated with such Background IP.
- 8.3 Subject to clause 8.6, Foreground IP shall vest in and be owned by the Customer and the Supplier shall do all things and render all such assistance as may reasonably be required by the Customer in order to vest such rights in the Customer provided that the Customer shall reimburse to the Supplier any expenses incurred by the Supplier in so doing.
- 8.4 The Supplier warrants that the Foreground IP does not infringe any Intellectual Property rights belonging to a third party and that it has all rights and licences which may be required from a third party to enable the Supplier to transfer the Foreground IP to the Customer in accordance with clause 8.3.
- 8.5 Subject to clause 8.6, the Customer grants to the Supplier an irrevocable, royalty free, non-exclusive right and licence in any Foreground IP arising from or created, produced or developed in the course of the performance of the Services.
- 8.6 Nothing in these Conditions shall have the effect of transferring to the Customer, or requiring the transfer to the Customer, of (i) any Intellectual Property rights in any other right, title and interest in or to work created or developed by the Supplier other than pursuant to a Contract; and (ii) any Intellectual Property rights in any other right, title and interest in or to any system or procedure developed or used by the Supplier in connection with the performance of the Services.

9. INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

- 9.1 Subject to the remainder of this clause 9.1, each party (*Indemnifying Party*) shall, at its own expense, defend (or, at its option, settle) any action brought against the other (*Indemnified Party*) which consists of a claim that the use of the Indemnifying Party's Background IP infringes any Intellectual Property right belonging to a third party. The Indemnifying Party agrees to be responsible for, and to indemnify the Indemnified Party against, all losses, costs (including reasonable legal costs), damages, liabilities, claims and expenses suffered or incurred by the Indemnified Party in connection with any such claim. The Indemnifying Party's obligations under this clause 9.1 shall be conditional on the Indemnified Party: (i) giving the Indemnifying Party prompt written notice of any claim for infringement; (ii) permitting the Indemnifying Party (at the Indemnifying Party's expense) to conduct on the Indemnified Party's behalf any litigation or negotiations in respect thereof; and (iii) the Indemnified Party at the request and reasonable expense of the Indemnifying Party taking all action as may be reasonably required to assist the Indemnifying Party in relation to any infringement or claim. Subject to the provisions of clause 10, the foregoing states the Indemnifying Party's entire liability for intellectual property right infringement.

10. LIMITATION OF LIABILITY

- 10.1 Subject to clause 10.3, the Supplier shall not in any circumstances be liable for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs, any depletion of goodwill, any product recall or corrective action costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Customer or by any third party, which arise out of or in connection with these Conditions including but not limited to a Contract.
- 10.2 The exclusions and limitations of liability contained in these Conditions shall apply to all claims of any kind whether in contract tort (including negligence or breach of statutory duty), misinterpretation, restitution, or otherwise on the part of the Supplier, its employees, agents, sub-contractors or suppliers.
- 10.3 No limitation or exclusion contained in these Conditions shall apply in cases of fraud or fraudulent misrepresentation or in cases of death or personal injury caused by the negligence of the Supplier, or for any other matter for which it would be illegal to exclude or to attempt to exclude the Supplier's liability.
- 10.4 Except as provided under clause 10.3, notwithstanding anything else in these Conditions or otherwise, the total aggregate liability of the Supplier to the Customer for all claims of any kind for any loss or damage resulting from its performances or lack of performance under this and all other Contracts under these Conditions in any one calendar year will not in any event exceed an amount equal to 50% of the value of the Services provided to the Customer in such calendar year.

11. CONFIDENTIALITY

- 11.1 The receiving party will not divulge or communicate to any person without prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than to perform its obligations under a Contract.
- 11.2 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party or is disclosed subject to a legal or regulatory requirement.
- 11.3 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the other receiving party to return all Confidential Information in its possession.

12. FORCE MAJEURE

- 12.1 The Supplier reserves the right to partially or wholly suspend the performance of the Services or to cancel the Contract (without liability to the Supplier) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

13. TERMINATION AND SUSPENSION

- 13.1 A party may immediately terminate a Contract by giving written notice to the other party, if the other party: (i) commits a material breach of the Contract which is not capable of remedy, (ii) commits a continuing breach of the Contract or of these Conditions and fails to remedy it within 15 days of a written notice requiring the breach to be remedied; (iii) is dissolved, becomes insolvent, fails or is unable to admit in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (iv) ceases or threatens to cease to carry on business.
- 13.2 The Supplier may at its option suspend performance of the Contract: (i) until the events giving rise to the exercise of its rights of termination under clause 13.1(ii) are remedied; or (ii) if in the Supplier's bona fide opinion the Customer has failed to make payment when due or to perform on time any of its other obligations under the Contract. The Supplier shall be entitled to: (i) exercise its rights of termination or suspension at any time during which the event of default giving rise thereto shall not have ceased or have been remedied, and for the avoidance of doubt if the Supplier has elected to suspend its performance it may at any time during the period of suspension decide to terminate the Contract; (ii) the time for Supplier's completion shall be extended to such extent as is reasonable to take account of such suspension; and (iii) any cost incurred by the Supplier as a result of or in connection with such suspension shall be reimbursed to the Supplier by the Customer.
- 13.3 No notice of termination may be given by either party except in accordance with the express provisions of these Conditions.
- 13.4 Subject to clause 13.5, upon termination or expiration of this Contract, neither party, shall be entitled to any amount for any cause arising directly or indirectly from such termination or expiration from the other party, provided that within 15 days of the issue by either party of a notice of termination the Customer shall pay to the Supplier the outstanding balance of the Contract value of the Services which have been delivered at the date of the notice.
- 13.5 Termination or expiration of this Contract shall be without prejudice to: (i) any party's obligations contained herein which survive the termination or expiration of this Contract; and (ii) any prior rights which either party has accrued prior to the termination or expiration of this Contract.

14. NON-SOLICITATION

- 14.1 For the duration of a Contract and for a further period of 12 months after the termination of a Contract neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Customer) in the receipt of the Services at any time. For the avoidance of doubt, this restriction does not prevent employment arising genuinely from a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other part.

15. MISCELLANEOUS

- 15.1 The Supplier may perform its obligations and exercise the rights granted under these Conditions through any Affiliate or carry out its obligations through any agents or sub-contractors appointed by it in its absolute discretion for that purpose, and any act or omission of any such entity will for the purposes of these Conditions be the act or omission of the Supplier.
- 15.2 Each right or remedy of a party under the Contract is without prejudice to any other right or remedy of the party whether under the Contract or not.
- 15.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.4 Failure or delay by a party 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.
- 15.5 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.6 The Supplier may assign the rights and benefits arising from this Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the Customer consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).
- 15.7 Notices must be in writing and delivered by hand, first class post, or facsimile to the other party at its registered office or trading address at the date of the Contract.
- 15.8 This Contract shall be governed by and construed in accordance with the laws of Switzerland without regard to its conflict of law provisions. Any disputes, controversies or differences arising out of or in any way connected with this Contract shall be determined and finally settled by binding arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce "Rules", by three arbitrators appointed in accordance with such Rules. The venue of arbitration shall be in Zurich, Switzerland and the arbitration proceedings shall be conducted in the English language. Nothing in this arbitration clause shall prevent a party from applying to any appropriate court in the Supplier's or Customer's jurisdiction for any injunction or other like interim remedy to restrain the other party from committing any breach or anticipated breach of these Conditions.

Eugen Seitz AG

Wetzikon, 17 August 2010