

**Advanced Plasma Power Limited  
Standard Terms of Purchase**

**1. Definition of Terms**

- 1.1 'Contract' means the contract stipulated in clause 3.
- 1.2 'General Conditions of Contract' means these terms and conditions as may be amended from time to time in accordance with the terms and conditions set out herein.
- 1.3 'Goods' means all the materials, systems and products required to be supplied by the Supplier under the Contract.
- 1.4 'Price' means the price to be paid for the supply of the Goods (as the case may be) as set out in the Purchase Order.
- 1.5 'Purchase Order' means the order in Writing for purchase of the Goods and/or Services submitted by the Purchaser to the Supplier which sets out the Price and other basic terms and conditions of the Contract.
- 1.6 'Purchaser' means Advanced Plasma Power Limited having its registered office at 7<sup>th</sup> Floor, 52/54 Gracechurch Street, London, EC3V 0EH.
- 1.7 'Services' means the services to be supplied by the Supplier under the Contract.
- 1.8 'Supplier' means the person, corporation or company with whom the Purchase Order is placed.
- 1.9 'Writing' means any recorded particular in words or figures not being merely a spoken particular.

**2. Price, Payment and Currency**

- 2.1 The Purchaser shall pay the Price to the Supplier in full when performance of all obligations of the Supplier under the Contract for the supply of Goods and/or Services (as the case may be) as specified in these General Conditions of Contract and in the Purchase Order have been completed and an acceptance in Writing has been issued by the Purchaser.
- 2.2 The Purchaser shall be given a reasonable opportunity to inspect and, as appropriate, grade the Goods and Services delivered. Goods and/or Services will not be deemed accepted until an acceptance in Writing is issued by the Purchaser following inspection and/or grading.
- 2.3 The Price is fixed for the duration of the Contract but may be subject to a mutually agreed variation or adjustment if the Contract is varied or amended in accordance with these General Conditions of Contract.
- 2.4 Unless otherwise agreed by the Purchaser in Writing, including, without limitation in the Purchase Order, the Price includes delivery DDP Supplier's premises (Incoterms 2000) during normal working hours. If the Goods are delivered to the wrong destination, the Supplier shall be responsible for any additional costs incurred in delivering them to the correct destination.
- 2.5 For the avoidance of doubt and unless otherwise agreed by the Purchaser in Writing, including, without limitation, in the Purchase Order, the Price shall be inclusive of all taxes (including, without limitation, value added tax or the equivalent in any other territory), duties, charges, shipping, carriage, delivery and fees.
- 2.6 Notwithstanding that the payment schedule is agreed on a contract-by-contract basis and set out in the Purchase Order, where an initial payment is made with the Purchase Order, then the balance of the Price will be paid when all Goods and/or Services (as the case may be) have been supplied in accordance with clause 2.1.
- 2.7 All payments to be made under the Contract by the Purchaser to the Supplier and by the Supplier to the Purchaser shall be made in pounds sterling (GBP) or in such currency as may be mutually agreed in the Purchase Order. All payments shall be made to such account as shall be nominated by the recipient thereof.

**3. Contract**

- 3.1 The Contract means all of the Purchase Order and these General Conditions of Contract. Notwithstanding any other provision of the Contract or these General Conditions of Contract, any terms and conditions on any order confirmation of the Supplier or any other document will not be incorporated into the Contract.

**4. Title & Risk in the Goods**

- 4.1 Title and risk in the Goods shall pass to the Purchaser upon delivery of the Goods and the signing of an acceptance document by the Purchaser.
- 4.2 If the Purchaser supplies the Supplier with any materials or parts to be incorporated into the Goods in accordance with the Contract, title to such materials or parts shall remain with the

Purchaser at all times while the risk in such materials or parts shall be borne by the Supplier until delivery as set out in clause 4.1 has occurred.

## **5. Delay of Delivery**

- 5.1 Time of delivery of Goods and performance of Services is of the essence of the Contract and, unless otherwise agreed in Writing, neither Goods nor Services may be delivered by instalments.
- 5.2 Without prejudice to any other remedy available to the Purchaser, if delivery of the Goods and/or performance of the Services is delayed the Purchaser may at its option either:
- (a) refuse to accept the Goods or any part of them and terminate or cancel the Contract in accordance with clause 9; or
  - (b) cause the Supplier to deliver the Goods to and/or perform the Services at the place specified in the Purchase Order or Contract, or to and at a place nominated by the Purchaser when the time for delivery or performance has expired, by the most expeditious means possible (including, without limitation, in relation to delivery of Goods, by air freight) without any additional cost to the Purchaser.

## **6. Non-Disclosure**

- 6.1 The Supplier shall procure that its and any sub-contractor's directors, employees, agents and representatives shall keep and maintain as confidential, and use solely for the purpose of the Contract, any and all information, know-how, trade secrets, designs, specifications and data, whether technical or non-technical, business information (including, without limitation, business methods, prices and customer lists or details) which is disclosed in any way to the Supplier by or on behalf of the Purchaser in the course of, as a result of, or in connection with the Contract or proposals or negotiations for the Contract ("**Information**") and shall not copy or communicate any Information to any third party without the prior consent in Writing of the Purchaser. The provisions of this clause 6 shall remain in force even after cancellation, expiration or termination of the Contract for any reason.
- 6.2 The Supplier shall promptly return all Information to the Purchaser upon cancellation, expiration or termination of the Contract for any reason or on demand.
- 6.3 The Supplier's obligations under clause 6.1 shall not apply to Information when, after, and to the extent that the relevant Information:
- (i) is or becomes generally available to the public through no fault or omission on the part of the Supplier; or
  - (ii) was in the Supplier's possession prior to the first disclosure to the Supplier by or on behalf of the Purchaser which the Supplier can show from its documentary records; or
  - (iii) is lawfully received by the Supplier from a third party after formation of the Contract, provided such third party did not (a) obtain such information either directly or indirectly from the Purchaser or any affiliate of the Purchaser and (b) impose any obligation of confidentiality with respect to that information on the Supplier or restrict the Supplier's use of that information in any way; or
  - (iv) is necessarily disclosed pursuant to a statutory or regulatory obligation but then only to the extent of such required disclosure.
- 6.4 For the avoidance of doubt, any process or application know-how or information acquired by the Supplier from the Purchaser in the course of performance of the Contract and applicable to the Goods and/or Services shall fall within the definition of Information and shall not be disclosed by the Supplier to any third party other than in accordance with the Contract.
- 6.5 If required by the Purchaser, the Supplier will sign and will procure any of its or any sub-contractor's directors, employees, agents and representatives sign a confidentiality agreement in such form as the Purchaser shall specify.
- 6.6 The Purchaser shall have the right from time to time upon reasonable notice and within normal working hours, to inspect and/or review the Supplier's facilities, records and procedures to ensure the Supplier's compliance with its obligations to the Purchaser under this clause 6. The Supplier grants an irrevocable licence to the Purchaser to give effect to this clause 6.
- 6.7 The Supplier shall, at its own expense, correct deficiencies (if any) found by any inspection and/or review under clause 6.6 to ensure compliance of the Supplier's obligations under this clause 6.

## **7. Insurance**

- 7.1 The Supplier shall maintain and pay for adequate insurance to cover its obligations, responsibilities and liabilities under the Contract including, without limitation, insurance cover for Goods up to the point of delivery to the Purchaser and, more generally, insurance for public liability, employer's liability, product liability, professional indemnity and personal accident.
- 7.2 If the Contract provides for work to be performed by the Supplier on property owned or controlled by the Purchaser or any other person, corporation or company, the Supplier shall insure each of its directors, employees, agents or representatives engaged in such work and

shall strictly comply with all applicable laws, rules or regulations with respect to such persons and shall indemnify and hold harmless the Purchaser from any and all claims, suits and demands of any nature whatsoever for injury to persons, including death resulting there from, and damage to property caused by or in connection with the performance of such work by the Supplier, its directors, employees, agents or representatives.

- 7.3 The Supplier shall furnish to the Purchaser on demand in Writing certificates obtained from insurance companies evidencing that all necessary insurance cover required under the Contract or at law has been procured and that all necessary premiums have been paid. Such certificates or accompanying documentation shall specify the name of the insurer, the policy number, the expiration date of the relevant policy, the sum insured and the maximum deductible. In the event of cancellation of any such policy by the Supplier, notice in Writing shall be given to the Purchaser at least ten (10) days prior to the intended date of such cancellation along with details of how such liability shall be insured against from the date of such cancellation.

## **8. Assignment & Sub-Contracting**

- 8.1 The Supplier shall not assign or sub-contract the Contract in whole or in part without the prior consent in Writing of the Purchaser. In no event, shall approval of assignment or sub-contracting relieve the Supplier of any of its obligations, responsibilities or liabilities under the Contract.

## **9. Termination/Cancellation for Default**

- 9.1 In the case of material breach by the Supplier of any of its obligations under the Contract including, without limitation, any systematic refusal to cooperate with the Purchaser or interruption of work required under the Contract without the consent of the Purchaser, the Purchaser may, without prejudice to any other rights or remedies available to the Purchaser, notify the Supplier in Writing (excluding email) setting out the breach and requesting the Supplier to remedy the situation immediately. If the Supplier does not or cannot comply with such request within fifteen (15) Days, the Purchaser may terminate or cancel the Contract without further action or notice.
- 9.2 At the time of termination or cancellation, the Supplier shall immediately refund to the Purchaser the total amount paid by the Purchaser under the Contract.
- 9.3 The Purchaser reserves the right to be paid by the Supplier for losses, damages, costs and lost interest sustained by it due to, without limitation, stoppage of work under the Contract.

## **10. Termination/Cancellation for Convenience**

- 10.1 The Purchaser may at any time with immediate effect and for any reason terminate or cancel the Contract, in whole or in part, by giving notice in Writing (excluding email) to the Supplier. In the case of termination or cancellation under this clause 10 and without prejudice to any other rights or remedies available to the Purchaser, the Supplier shall:
- i) effect the immediate cancellation of all orders which it may have placed with third parties in relation to the Contract and discontinue all work of manufacturing the Goods and/or providing the Services; and
  - ii) upon the Purchaser's request, deliver to the Purchaser any or all of the works, drawings, specifications, data sheets, draft or final material and manuals, and other materials that the Supplier or any sub-contractor may have prepared under the Contract and all materials, supplies and equipment paid for by the Purchaser either directly or indirectly in pursuance of the Contract, and the Purchaser shall have the right to make use of any of the foregoing for any purpose or purposes the Purchaser sees fit; and
  - iii) immediately return all the materials or parts supplied by the Purchaser (if any) to the Supplier in pursuance of the Contract without any compensation for work done by the Supplier.
- 10.2 Upon termination or cancellation for convenience by the Purchaser under this clause 10, the Purchaser shall pay to the Supplier the following amounts less those already paid to the Supplier:
- i) the price for all Goods and/or Services which have been completed in accordance with the Contract; and
  - ii) the actual costs incurred by the Supplier in performing the Contract until the date of termination or cancellation to the extent that such costs are reasonable in amount and occurrence and are properly allocable or apportionable under generally accepted accounting practices to the performed portion of the Contract, which costs may include the actual cost of work performed in the manufacture of Goods delivered to the Purchaser in accordance with clause 10.1 (but not clause 10.1(iii)) and the actual cost of discharging liabilities which are so allocable or apportionable.

## **11. Entire Agreement**

- 11.1 The Contract shall constitute the entire agreement between the Purchaser and the Supplier in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, statements, representations, promises, inducements or understandings between the parties in relation to such subject matter.
- 11.2 The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party given, nor shall either party be bound by any warranty, statement, representation, promise, inducement or understandings of any kind not set forth in the Contract.
- 11.3 Nothing in the Contract will exclude any liability which either party would otherwise have to the other party in respect of any statements made fraudulently.

## **12. Convention on Contracts for the International Sale of Goods 1980**

- 12.1 The parties agree that the Convention on Contracts for the International Sale of Goods 1980 ("CISG") will apply to the carriage of Goods outside of the UK. Where there is any conflict between the CISG and the Contract, the terms and conditions of the Contract shall take precedence over the CISG.

## **13. Intellectual Property**

- 13.1 The intellectual property rights arising out of or in connection with all inventions, ideas, designs and drawings developed by the Purchaser or for the Purchaser arising out of the performance of the Contract, the use and/or operation of the Goods or out of developments, improvements or modifications which are non-severable from the Goods (whether made during or after performance of the Contract) shall vest exclusively in and become the sole property of the Purchaser to the fullest extent permitted at law. The Purchaser shall be entitled to apply for and hold patent or other registered protection for such intellectual property as the Purchaser sees fit.
- 13.2 The Supplier grants the Purchaser a world-wide, royalty free, irrevocable, non-exclusive licence (with a right to sub-license) to use the Supplier's intellectual property for the sole purpose of giving effect to the Contract, including, without limitation, use of the Goods by the Purchaser and/or any of its customers or clients.
- 13.3 The Supplier agrees that it will do or will procure the doing of all such acts and things, and will execute or procure the execution of all documents, as may be required or necessary to vest all rights granted under this clause 13 and the Contract in the Purchaser.

## **14. Contracts (Rights of Third Parties) Act**

- 14.1 The parties to this Agreement do intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **15. General**

- 15.1 Any variation, adjustment, change, amendment or modification of any of the terms and conditions of the Contract, including, without limitation, Price and these General Conditions of Contract, shall be made in Writing and executed by the parties.
- 15.2 No failure or delay by the Purchaser to exercise any right will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right.
- 15.3 Subject as expressly provided in the Contract, the rights, powers and remedies provided in the Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 15.4 Any waiver of a breach of, or default under, any provision of the Contract by the Purchaser will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 15.5 If in any clause or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other clause or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

## **16. Law**

- 16.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract shall be governed by, and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.