



## ***CONDITIONS OF PURCHASE***

### ***1. DEFINITIONS***

In these Conditions, the following expressions shall have the following meanings:

- A) “the Company” – Beakbane Limited
- B) “the Supplier” – any person firm or company with whom the Company contracts for the supply of goods work or work and materials or services.
- C) “Order” – any order or request by the Company to the Supplier made in writing on the Company’s Order Form for the supply of goods work or work and materials or services.

### ***2. GENERAL.***

- A) Each and every Contract (“the Contract”) made between the Company and the Supplier pursuant to an Order shall be subject to and incorporate in their entirety these Conditions and all the terms of the Contract shall be those contained expressly or by reference in the order, to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- B) The Order constitutes an offer by the Company to purchase goods in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order, and the Supplier doing any act consistent with fulfilling the Order, at which point the contract shall come into existence.
- C) The Company shall not be liable for any Orders other than those issued and confirmed on our official printed Order.

### ***3. QUALITY ETC.***

All goods, work or work and materials or services supplied or used in pursuance of the Contract shall be of the highest quality and suitable in every respect for the purpose for which they are required and shall correspond in every respect with any sample, patent, specification, description or drawing relating thereto. The Supplier shall ensure that the goods, work or work and materials or services will comply in all respects with all relevant statutory and regulatory requirements relating thereto. The Supplier shall also ensure that the goods are free from defects in design, material and workmanship and remain so for 12 months after delivery.

#### ***4. APPROVAL AND ACCEPTANCE.***

All goods and materials supplied and work and services performed under the Contract shall be subject to acceptance and approval by the Company and any goods or materials or work rejected by the Company may be returned to the Supplier at the Supplier's expense and until return shall remain at the Company's premises or on any other location or site to or at which the goods, work or work and materials were delivered or performed (as the case may be) at the Supplier's risk.

#### ***5. INSPECTION.***

The Company, its servants or agents shall be entitled, at any time before delivery, to inspect, examine and test all goods work or work and materials or services being produced supplied or performed pursuant to the Contract and for this purpose the Supplier shall afford the Company its servants or agents access at all reasonable times in normal working hours to the Supplier's premises or any other locations or sites where the goods work or work and materials or services are being produced supplied or performed (as the case may be). The Supplier shall remain fully responsible for the goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract. If upon any such inspection, any goods work or work and materials or services shall be found to be defective or not in accordance with the Contract, the Supplier shall forthwith at his own expense take remedial action immediately to make good such defect and/or ensure that the goods, work or work and materials or services (as the case may be) comply in all respects with the Contract. The Company may conduct further inspections and tests after the Supplier has carried out its remedial actions. Approval by the Company its servants or agents of the goods work or work and materials or services pursuant to this condition shall not be deemed to be acceptance of the same for the purposes of the preceding Condition 4 hereof.

#### ***6. DRAWINGS, DESIGNS AND SPECIFICATIONS ETC.***

All drawings designs specifications and other technical documents and samples supplied by the Company to the Supplier for the purposes of the Contract shall remain the exclusive property of the Company and the Supplier shall not without the prior written consent of the Company copy or reproduce transmit or communicate the same to any third party and the Supplier shall procure that its employees servants and agents shall also comply with this condition. The Supplier shall keep the same in safe custody at its own risk, maintain them in good condition until returned to the Company and not dispose or use the same other than in accordance with the Company's written instructions or authorisation.

#### ***7. PATENTS ETC.***

A) Where any goods are manufactured or work and work and materials are supplied by the Supplier specifically in accordance with the Company's designs drawings and specifications the Company shall indemnify the Supplier against any and all claims for infringement of patent or trade mark registered design copyright or any other proprietary or industrial property rights made against the Supplier in respect thereof.

B) In any other case, the Supplier warrants that the goods materials supplied and work performed will not infringe any patent, trade mark, registered design copyright or other proprietary or industrial property rights of any third party and will indemnify the Company against any and all claims made against the Company in respect thereof.

#### **8. RISK AND TITLE.**

Unless otherwise agreed in writing, the Supplier shall bear the risk of loss, destruction or damage to any goods work and materials until in the case of goods delivery is effective in accordance with Condition 10 hereof at the place of delivery specified in the Order or otherwise as directed by the Company or in the case of work or services the completion thereof to the Company's satisfaction. The property in such goods and such materials shall pass to the Company on delivery thereof or upon completion of the work or services as the case may be.

#### **9. SAMPLE.**

If specified in the Order by the Company, the Supplier shall submit samples for approval and the bulk of the Order shall not be started until the Company has communicated its approval in writing. The Company may retain the samples until the Order is completed or the whole of the goods, work and materials delivered.

#### **10. DELIVERY.**

A) Time shall be the essence of each and every Contract and delivery or performance must be effected within the time specified in the Order to the address specified in the Order during the Company's normal business hours, or as instructed by the Company, failing which the Company reserves the right to rescind the Contract and recover from the Supplier any direct or consequential loss thereby incurred. Delivery shall only be effected under the Contract when the goods or work and materials are received at the Company's works or on site (as the case may be) by the Company's duly authorised representative and the signature of such representative on the Supplier's delivery advice note only shall be evidence of such delivery.

B) Notwithstanding the provision of sub-clause (A) of this Clause the Company shall be entitled to regulate the rate of delivery of performance of the goods, work or work and materials or services by means of Delivery Schedules. The Company shall be entitled to amend or update any Delivery Schedule upon giving reasonable notice in writing to the Supplier. If the Supplier fails to, accept and comply with any reasonable Delivery Schedule or any amendments thereto submitted by the Company, the Supplier shall be deemed to be in breach of the Contract and shall pay to the Company as damages for the breach all costs and expenses incurred by the Company as a result thereof and in particular but without prejudice to the generality of the foregoing all sums expended by the Company in securing alternative supplies of all or any of the goods, work or work and materials or services specified in the Contract (including any sum expended by reason of any increase in the price thereof) and any loss suffered by the Company as a result of delays in its production.

C) Unless the Company expressly agrees otherwise in writing, all goods and materials supplied are to be delivered by the Supplier carriage paid to the address for delivery specified in the Order.

D) The Supplier shall send to the Company on the date of despatch an advice note enclosed with the goods, quoting the appropriate Order numbers, quantity, and part numbers.

E) The goods must be packed by the Supplier in such a manner as to ensure safe transit and to enable them to reach their destination in good condition. No extra charges will be accepted by the Company for packaging.

(F) If the goods are not delivered on the date specified in the order, or do not comply with the order or clause 3, then, without limiting any of its other rights or remedies, and whether or not it has accepted the goods, the Company may exercise any one or more of the following rights and remedies: to terminate the Contract, to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense, to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid), to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make, to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party and to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

## ***11. PRICES AND PAYMENT.***

A) All goods, work and materials are to be invoiced at the prices as specified on the relevant Order. No variations in the Contract Price or extra charges will be accepted by the Company unless variations are agreed in writing by the Company.

B) The Supplier may invoice the Company for the price of the goods on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number and where goods work or materials supplied are subject to VAT the Supplier shall show this as a separate item on the invoice which shall show the Supplier's VAT registration number. In the absence of this information, the Company shall be under no obligation to pay VAT.

C) Payment will be made to the established payment terms with the Supplier subject to compliance in all respects by the Supplier with its obligations under the Contract. If the Supplier is in breach of any such obligation at the date for payment, the company shall be entitled to withhold payment in whole or in part until such breach has been remedied by the Supplier.

## ***12. CANCELLATION AND DELAYS.***

The Company may cancel any Order (notwithstanding that the Supplier shall have accepted the same) or delay the delivery of any goods or completion of any work and shall not thereby incur any liability in respect thereof if owing to any cause beyond the Company's control the Company has no need of the goods work or

materials or some part thereof or is unable to take delivery of such goods or to afford to the Supplier access to the site where the work is to be performed provided that in the event of cancellation the Company will reimburse to the Supplier such of the Supplier's reasonable cost and expenses as the Company shall be able to recover from any third party.

### ***13. SET-OFF.***

The Company shall be entitled to apply any moneys due to the Supplier under any Contract in or towards payment of any sum owing by the Supplier to the Company in relation to any matter whatsoever. For this purpose reference to "the Company" and "the Supplier" include any Company which is for the purposes of the Companies Act 2006 a subsidiary or holding company or a subsidiary of a holding company of the Company or the Supplier respectively. The Supplier shall not be entitled to any such right of set-off.

### ***14. INSURANCE***

During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. Where any work or services are to be undertaken or supplied by the Supplier otherwise than at the Supplier's premises, the Supplier shall adequately insure against all Employer's Liability and Third Party Risks, including Third Party Fire Risks arising out of or in connection with the execution of such work and/or the performance of such services and shall produce to the Company on demand the policies of such insurances together with the receipts for premiums if requested. In the event of the Supplier failing to effect such insurances the Company shall implement insure on behalf of the Supplier and to deduct the amount of any premium so paid by the Company from any amounts due to the Supplier under the Contract. In addition, the Supplier shall also adequately insure the Company against all claims and all costs in respect of any injury loss or damage to persons or property caused by the works or services carried out or performed by the Supplier or by the execution thereof or by its workmen. It is a condition of the Contract that the Supplier's employees servants and agents become acquainted and comply with the fire precautions and regulations in existence on any site where any work is to be carried out or services performed.

### ***15. TOOLING.***

A) All tools (including but not limited to fixtures, gauges, moulds, patterns etc.) furnished by the Supplier and charged to the Company shall remain the property of the Company and shall be maintained by the Supplier in a condition to be suitable for Production at all times.

B) All tools furnished by the Supplier and charged to the Company shall be used exclusively for the Companies goods.

C) All tools are to be adequately insured by the Supplier whilst on their premises with a certified copy of insurance to be available if requested.

D) All tools which are the property of the Company may be removed by the Company at any time at its convenience.

## ***16. CONFIDENTIALITY***

A) Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16(B)

B) Each party may disclose the other party's confidential information to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16. Each party may also disclose the other party's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

C) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## ***17. TERMINATION.***

The Company may by notice in writing to the Supplier (without prejudice to any other rights or remedies available to it) immediately terminate the Contract in respect of the whole or any part of the goods, work and material or services if the Supplier:-

A) Commits any breach of or fails to observe, perform or comply with any of its obligations under the Contract.

B) (Being an individual or partnership) the Supplier or any partner in the Supplier appears to be unable to pay his debts within Section 268 of the Insolvency Act 1986 or presents his own or has presented against him a bankruptcy petition.

C) (Being a Company) takes any step or action in connection with its entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or the Supplier is deemed to be unable to pay its debts within Section 123 of the Insolvency Act 1986 or has an administrative receiver, receiver or manager of any of its assets appointed.

D) Has any distress or execution levied on its assets which is not paid out within 7 days of its being levied.

E) Suffers any procedure analogous to that set out in clauses 16(B) to 16(D) inclusive of this condition in the country in which it is constituted.

Upon the termination of the Contract pursuant to this condition, the Supplier shall not be entitled to any compensation in respect thereof but shall forthwith supply to the Company such of the goods, work and materials or services as have been finished against payment by the Company therefore in accordance with the Contract, the Company being entitled to deduct from any sums due to the Supplier under this Condition the amount of any additional costs and expenses incurred by the Company in completing the work or in obtaining replacement goods, material or services.

#### **18. INDEMNITY.**

The Supplier shall keep the Company fully and effectively indemnified against all costs, claims, actions, damages, expenses, losses or liabilities (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company and any injury, loss or damage to persons or property) resulting directly or indirectly from:

- A) the failure of the Supplier for any reason to perform the Contract in accordance with its terms, any negligent performance or failure or delay in performance by the supplier or
- B) any defect in the goods, work and materials or services the subject of the Contract including all such claims for injury loss or damage to persons or property for public liability and all such claims made under the Consumer Protection Act 1987 (except where and to the extent that the goods and material have been manufactured or supplied or the work or services have been performed in accordance with specifications or designs of the Company) or resulting from any failure by the Supplier to comply with the Control of Substances Hazardous to Health Regulations (1988).

**19.** The Supplier shall not without the prior written consent of the Company assign, sublet or subcontract any of its rights or duties under this Contract.

**20.** Neither this Contract nor the Company's name shall be used by the Supplier for advertisement or publicity purposes without the Company's prior written consent.

#### **21. WAIVER.**

The waiver by the Company of any breach of any provision of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be waiver of any subsequent breach of that or any other provision.

#### **22. GOVERNING LAW.**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in all respects in accordance with the laws of England.

**23. JURISDICTION.**

The Company and the Supplier submit themselves to the exclusive jurisdiction of the Courts of England and Wales except in such circumstances where the country in which the Supplier is constituted is not a party to an agreement with the United Kingdom for the reciprocal enforcement of judgments when all disputes in connection with the Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. Such arbitration shall take place in London.