

ARENA INSTRUMENTATION LIMITED
BUSINESS TERMS AND CONDITIONS

1.0 **INTERPRETATION**

1.1 In these Standard Terms and Conditions "Arena" means Arena Instrumentation Limited; "Services" means the services to be provided by Arena to the Customer, "Customer's Goods" includes goods, samples, equipment, and materials or information of the Customer upon which or in connection with which the Services are carried out; "Report" means the Report to be supplied by Arena.

1.2 Arena provides Services only on these terms unless it otherwise agrees in writing.

2.0 **QUOTATIONS**

Any quotation or estimate is not an offer. Both are given in reliance on the Customer giving all relevant information correctly and the scope of the task being as understood by Arena. An estimate is not binding.

3.0 **DELIVERY**

Arena will endeavour to carry out the Services within the time agreed, and if no time is agreed, within a reasonable time. Arena will not be liable for loss liability or damage of any kind arising from any delay in the performance of Services. Arena may make delivery of the Services by instalments.

4.0 **LIABILITY AND INDEMNITY**

4.1 Arena shall not be liable for any breach of contract or duty or otherwise unless it is at fault. Arena accepts no responsibility for the use made by the Customer or any third party of any information or advice arising from the Services. Where Arena is liable, the aggregate liability shall be limited to the price of the Services, or £500,000, whichever is the lower. In no event shall Arena be liable for loss of profits, loss of business or any indirect or consequential loss. Nothing in this agreement shall exclude or limit Arena's liability for death or personal injury.

4.2 Arena hereby excludes all conditions, warranties and stipulations except as expressly provided for in this Agreement or where the Customer is by law deemed to be a consumer.

4.3 Save to the extent that Arena can be shown to have been at fault, the Customer shall indemnify Arena against all liability and expense suffered or incurred by Arena as a result of, or in connection with any third party claim against Arena arising from the use, operation, methods or other results of the Services.

5.0 **REPORTS**

5.1 The Customer will on placing its order provide Arena with full and accurate details of the purpose and intended use of the Report to be prepared hereunder. A Report will be provided to the Customer on completion of the Services. A Report is only a statement of the matters of fact found by Arena on examination and/or (if applicable) Arena's consequent conclusion or opinion.

5.2 Except for the purposes and intended use in clause 5.1 the Customer shall not without the prior written consent of Arena use, exploit, divulge or disclose to third parties the Report of Arena results or conclusions therein or any Arena proprietary material including, but not limited to, business or other systems, methodologies, testing techniques and applications, programmes, marketing or technical information, intellectual property rights, which may be communicated to or gained by the Customer in connection with or as a result of Arena providing the Services.

5.3 The Customer shall not use Arena's name in any way to imply endorsement or otherwise by Arena of any process or product.

5.4 The Customer shall fully indemnify Arena against all liability to third parties and expense arising out of or in connection with any use of information claimed to be confidential, or of intellectual property rights at the behest of, or supplied by, the customer.

5.6 Any statements or Reports as to the results of the Services are made in good faith and on the basis of the samples, materials, equipment and information provided to Arena by the Customer. The Customer warrants, in respect of each of the samples, materials, information, and equipment provided to Arena by the Customer, that it is correct, as described and in good order and has not to the best of the Customer's knowledge been tampered with, altered, added to or substituted in any way.

6.0 **ACTUAL OR CONTEMPLATED PROCEEDINGS**

The Customer must obtain Arena's prior written consent in writing if the Services relate to, or any Report is to be referred to in, any actual or contemplated legal proceedings.

7.0 **HEALTH AND SAFETY**

The Customer will ensure that all appropriate safety measures and legislation are observed when sending any material to Arena and will ensure that any hazardous material is clearly marked. Where the Customer knows or suspects that any substance or procedure it is providing, making available or requesting may give rise to a hazard the Customer will make Arena aware in writing of the nature of that hazard before the materials are in Arena's possession or the procedure is commenced. In both cases the Customer will provide full instructions and a suitable risk assessment.

8.0 **CUSTOMER'S GOODS**

It is the Customer's responsibility to ensure that the Customer's Goods are tested or inspected and are suitable for use by Arena in the performance of the Services. The Customer shall arrange at his expense and risk the delivery of the Customer's Goods to Arena. Arena shall not be liable for any damage or deterioration to equipment or samples caused by the inherent nature of the testing done.

9.0 **PRICE**

Arena may change the price if the extent of the Service changes due to additional information, matters not provided for by Arena or a request from the Customer. Unless expressly stated otherwise all prices are exclusive of VAT.

10.0 **PAYMENT**

10.1 Arena may invoice at any stage for work done or goods supplied. Payment will be made by the Customer in pounds sterling within 30 days of the date of the Arena invoice. The Customer will have no right of set off, statutory or otherwise.

10.2 Arena may charge interest on overdue invoices at a rate of 2% for each calendar month or part during they are overdue until payment.,

10.3 Where payment is overdue or the Customer is otherwise in breach of its obligations, Arena without liability may postpone any delivery or may cancel the Agreement and/or any other Agreement with the Customer but without prejudice to Arena's other rights and remedies.

10.4 Arena shall have a general lien on all goods and other property belonging to or supplied by the Customer to secure all obligations of the Customer.

11.0 INTELLECTUAL PROPERTY

Unless otherwise agreed in writing, Arena shall own all intellectual property rights arising from the provision of Services or the preparation of Reports and the Customer shall be granted a non-exclusive non-transferable licence to use the right solely in accordance with these terms and conditions.

12.0 CONFIDENTIALITY

Both parties will take reasonable measures to keep confidential for a period of five years from the date of supply any information provided or disclosed by or on behalf of the other. This does not apply to any information which at the time of disclosure is (or subsequently becomes) published or generally available to the public (other than as a breach of the receiving party's obligation under this clause), or which at the time of disclosure was already in the possession of the receiving party (other than under an obligation to the disclosing party), or subsequently legally comes into their possession from another source.

13.0 CANCELLATION

The customer may not cancel any order after Arena has accepted it or started work. If the Customer extends or delays (or purports to cancel) the Agreement or part thereof, or fails to accept supply of the Services at the time agreed (or if no time is agreed within a reasonable time), then the Customer shall (without prejudice to any other rights of Arena) indemnify Arena against any resulting loss, damage or expense in connection with the supply or non-supply of the Services including the cost of any services, material, plant or tools used or intended to be used and the cost of labour and other overheads plus a percentage in respect of profit.

14.0 TERMINATION

14.1 Arena may terminate this Agreement forthwith by notice in writing if the Customer is in breach of this Agreement and shall have failed to remedy the breach within 7 days of the receipt of a request in writing to remedy the breach such request indicating that failure to remedy the breach may result in termination of this Agreement.

14.2 If the Customer goes into liquidation, administration or has a receiver appointed, then Arena may terminate the agreement on notice in writing, or suspend work and/or require payment in advance for work to be done and payment of all current invoices.

14.3 The termination of this Agreement will be without prejudice to the rights and duties of either party accrued prior to termination and the clauses in this Agreement which expressly or impliedly have effect after termination. The price in respect of any Services (or part thereof) supplied prior to termination shall remain payable regardless of the reason for termination.

15.0 FORCE MAJEURE

If Arena is unable (whether temporarily or permanently) to procure equipment services or goods necessary to enable it to supply the Services or if this is prevented or hindered by reason of any cause beyond Arena's reasonable control Arena's may without liability suspend performance of its obligations for so long as the circumstances apply. If this lasts for 3 months or more then either party may cancel the Agreement by notice in writing provided that the Customer shall remain liable to pay for the Services delivered prior to the date of such cancellation.

16.0 DATA PROTECTION

16.1 Where Arena acts as a data controller in the processing of personal data in performing the Services, it will comply with the provisions of the Data Protection Act 1998 ("DPA").

16.2 Arena and any successor to its business may use the information provided by the Customer for the purpose of performing its obligations and for marketing its goods and services.

17.0 ARENA'S EMPLOYEES

17.1 While the Services are being provided and until 12 months after the later of the issue of the Report or the last invoice for the Services, the Customer shall not offer employment to or otherwise in any way (unless through Arena) use the services of any person who was at any time in that period employed by Arena and did any work for the Customer.

17.2 If the Customer breaches this obligation then it will pay a recruitment fee to Arena. To reflect the cost to Arena of recruiting and training a replacement, and the benefit to the Customer, the fee shall be equal to 30% (+ vat) of the greater of the annualised salary paid by the Customer to the person or the annual salary last paid by Arena. If the person is engaged part time the fee shall be based on the full time equivalent rate.

18.0 GENERAL

18.1 Arena may sub-contract any part of the Services.

18.2 On completion of the Services or termination of this Agreement Arena may at its option either return, store or dispose of samples, material, information and equipment provided by the Customer. Arena may charge for storage or disposal at its standard rates.

18.3 Arena may announce publicly that it is providing services to the Customer with the prior written agreement of the Customer

18.4 Failure by Arena to enforce any of the Agreement terms will not be construed as a waiver of any of its rights hereunder.

18.5 The Agreement will be subject to English Law and the parties submit themselves to the exclusive jurisdiction of the English courts.

