

## Appendix 3 b

DATED

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**TRANSPORT SYSTEMS CATAPULT**

**CALL-OFF TERMS**

**FOR THE SUPPLY OF GOODS**

## Call-off Terms and Conditions for Supply of Goods

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** the date of the Purchase Order.

**Confidential Information**

- (a) all commercial, technical, financial and other information of whatever nature and in whatever form (whether written, oral, visual, recorded, graphical, electronic or otherwise) relating to the business, technology or other affairs of the Catapult or its employees, students, consultants, advisors, representatives or sub-contractors or of any other persons present on the Site; and
- (b) any systems, ideas, concepts, know-how, techniques, drawings, specifications, blueprints, tracings, diagrams, models, functions, designs and capabilities (including computer software, data and hardware used in conjunction with such software, business procedures, manufacturing processes or other information embodied in drawings or specifications) and any other intellectual property of the Catapult or its Representatives or any other persons present on the Site.

**Fees:** the fees to be paid by the Company to the Catapult as set out the Purchase Order;

**Force Majeure Event:** any cause affecting the performance by a Party of its obligations under these Conditions arising from acts, events, omissions or non-events beyond its reasonable control, including:

- (a) acts of God, including fire, flood, earthquake, windstorm or other natural disaster; or
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; or
- (c) acts of terrorism; or
- (d) extreme adverse weather conditions; or
- (e) fire, explosion or accidental damage.

**Framework Agreement:** means the Framework Agreement entered into between the Catapult and the Contractor.

**Goods:** means the specific goods as described in the Purchase Order sent to the Contractor pursuant to the procedure set out in the Framework Agreement.

**Intellectual Property Rights:** means any patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and 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 may now or in the future subsist in any part of the world.

**Purchase Order:** means the Purchase Order sent by Catapult to the Contractor for the Goods.

**Representatives:** employees, officers, agents, advisers, sub-contractors and other representatives of a Party.

**Site:** meaning the Catapult premises at the 170 The Pinnacle, Midsummer Boulevard, Milton Keynes MK9 1BP.

**Terms:** This Agreement shall commence on the Commencement Date and shall continue until the Goods have been delivered.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause headings shall not affect the interpretation of this Agreement and these Conditions.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 A reference to **writing** or **written** includes fax but not e-mail (unless otherwise expressly provided in these Conditions).

1.5 Any words following the terms **including**, **include**, **in particular** or **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

## **2. DELIVERY OF GOODS**

2.1 The Company shall supply the Goods in accordance with the provisions of this Agreement.

2.2 The Company shall ensure that:

- (a) the Goods are properly packaged and secured in such manner as to enable them to reach their destination in good condition.
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, all relevant Company and Catapult reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Purchase Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Company requires the Catapult to return any packaging material for the Goods to the Company, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Company at the cost of the Company.

2.3 The Company shall deliver the Goods:

- (a) on the date set out in the Purchase Order, or if no such date is specified then within 28 days of the date of the Purchase Order;
- (b) to the Catapult's premises at 170 The Pinnacle, Midsummer Boulevard, Milton Keynes MK9 1BP, or such other location as is set out in the Purchase Order or as instructed by the Catapult before delivery (Delivery Location).
- (c) during the Catapult's normal hours of business on a Business Day or as instructed by the Catapult.

2.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

2.5 The Company shall not deliver the Goods in instalments without the Catapult's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by Company to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Catapult to the remedies set out in condition 6.

## **3. QUALITY OF GOODS**

3.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable goods specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- (d) be fit for any purpose held out by the Company or made known by the Company, expressly or by implication and in this respect the Catapult relies on the Company's skill and judgment; and
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Company shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

#### **4. TITLE AND RISK**

4.1 Title and risk in the Goods shall pass to the Catapult on completion of delivery.

#### **5. REMEDIES**

5.1 Subject to condition 5.2, If the Company fails to deliver the Goods by the applicable date, the Catapult shall without limiting its other rights or remedies have one or more of the following rights:

- (a) to terminate this Agreement with immediate effect by giving notice in writing to the Company;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Company attempts to make;
- (c) to recover from the Company any costs incurred by the Catapult in obtaining substitute goods and/or services from a third party;
- (d) where the Catapult has paid in advance for Services that have not been provided by the Company and/or Goods which have not been delivered by the Company, to have such sums refunded by the Company; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Catapult which are in any way attributable to the Company's failure to meet such dates.

5.2 If the Goods are not delivered by the applicable date, the Catapult may, at its option, claim or deduct 5 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 25 per cent of the total price of the Goods. If the Catapult exercises its rights under this condition 5.2 it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery.

5.3 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Catapult or failure by Catapult to perform any relevant obligation (Catapult Default), the Company shall, without limiting its other rights have the right to suspend performance of the Services until the Catapult remedies the Catapult Default, and to rely on the Catapult Default to relieve it from the performance of any of its obligations to the extent the Catapult Default prevents or delays the Company's performance of any of its obligations.

5.4 If the Company has delivered Goods that do not comply with the undertakings set out in condition 3, then, without limiting its other rights or remedies, the Catapult shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Company at the Company's own risk and expense;
- (b) to terminate the Agreement with immediate effect by giving written notice to the Company;
- (c) to require the Company to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Company attempts to make;
- (e) to recover from the Company any expenditure incurred by the Catapult in obtaining substitute goods from a third party; and

- (f) to claim damages for any additional costs, loss or expenses incurred by the Catapult arising from the Company's failure to supply Goods in accordance with condition 3.

## **6. CHARGES AND PAYMENT**

- 6.1 The price for Goods shall be the price set out in the Purchase Order and shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Catapult. No extra charges shall be effective unless agreed in writing and signed by the Catapult.
- 6.2 The Company shall invoice the Catapult on or at any time after completion of delivery. The invoice shall include such supporting information required by the Catapult to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number. In consideration of the supply of Goods by the Company, the Catapult shall pay the invoiced amounts within 30 days of the date of the correctly rendered invoice to a bank account nominated in writing by the Company.
- 6.3 All amounts payable by the Catapult under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by the Company to the Catapult, the Catapult shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods.
- 6.4 If the Catapult fails to make any payment due to the Company under the Agreement by the due date for payment, then the Catapult shall pay interest on the overdue amount at the rate of 4% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Catapult shall pay the interest together with the overdue amount. This condition shall not apply to payments that the Catapult disputes in good faith.

## **7. INTELLECTUAL PROPERTY**

- 7.1 In respect of the Goods and any materials that are transferred to the Catapult as part of the Services under this Agreement, including without limitation the deliverables or any part of them, the Company warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Catapult, it will have full and unrestricted rights to sell and transfer all such items to the Catapult

## **8. LIABILITY**

- 8.1 The Company shall keep the Catapult indemnified up to a maximum of £1,000,000 against all liabilities, costs, expenses, damages and losses (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 reasonable professional costs and expenses) suffered incurred by the Catapult as a result of or in connection with:
- (a) any claim made against the Catapult for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, to the

extent that the claim is attributable to the acts or omissions of the Company, its employees, agents or subcontractors;

- (b) any claim made against the Catapult by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Company, its employees, agents or subcontractors; and
- (c) any claim made against the Catapult by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Company, its employees, agents or subcontractors.

8.2 The total liability of the Catapult to the Company arising under or in connection with these Conditions whether in contract, tort for negligence or breach of statutory duty, misrepresentation or otherwise, shall be limited as follows:

- (a) for non-payment of Fees due in respect of the Goods that have been provided, to the amount unpaid, and any interest due on such amount under condition 6.4; and
- (b) for any other liability to the Fees.

## **9. TERMINATION**

9.1 Without limiting its other rights or remedies, the Catapult may terminate the Agreement in whole or in part at any time before delivery with immediate effect by giving written notice to the Company, whereupon the Company shall discontinue all work on the Agreement. The Catapult shall pay the Company fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

9.2 Without limiting its other rights or remedies, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:

- (a) it commits a material breach of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
- (b) it repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- (c) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of either Party other than for the sole purpose of a scheme for a solvent amalgamation of either Party with one or more other companies or the solvent reconstruction of the company;

- (f) a creditor or encumbrancer of either Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 30 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over either Party;
- (h) the holder of a floating charge over the assets of either Party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets or a receiver is appointed over the assets of either Party;
- (j) any event occurs, or proceeding is taken, with respect to either Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 9.2(c) to condition 9.2(i) (inclusive); or
- (k) either Party suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.

9.3 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

9.4 Conditions which, by implication, survive termination of the Agreement shall continue in full force and effect.

## **10. CONSEQUENCES OF TERMINATION**

10.1 On termination of the Agreement for any reason by the Company, except where the termination was due to an act or omission of the Company, the Catapult shall immediately pay to the Company all of the Company's outstanding unpaid invoices. The Catapult shall return any materials belonging to the Company.

## **11. FORCE MAJEURE**

11.1 A Party, provided that it has complied with condition 11.2, shall not be in breach of these Conditions, nor liable for any failure or delay in performance of any obligations under these Conditions arising from a Force Majeure Event.

11.2 Any Party that is subject to a Force Majeure Event shall not be in breach of these Conditions provided that:

- (a) it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under these Conditions in any way that is reasonably practicable and to resume the performance of its obligations as reasonably possible; and
- (c) if the Force Majeure Event prevails for a continuous period in excess of three months, either Party may terminate the Agreement on 20 Business Days written notice. Termination under this condition shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring before such termination.

## **12. STATE AID**

12.1 The Parties acknowledge that the Catapult is a 'Research Organisation' as defined under European Union legislation and has an obligation to ensure, and is subject to audits to demonstrate, that all activities it undertakes is compliant with State aid rules including activities under this Agreement. The Parties therefore agree that, notwithstanding any other provision of this Agreement:

- (a) the Company shall provide the Catapult with all reasonable assistance and shall cooperate with any investigation by any grant funder or the European Commission with respect to this Agreement to the extent reasonably necessary to satisfy such investigation;
- (b) the Catapult shall use all reasonable endeavours to protect the confidentiality of the Company's Confidential Information under condition 15 and shall only disclose such Confidential Information as is strictly necessary for the purpose of the investigation and put in place obligations of confidentiality as restrictive as those within this Agreement insofar as it is able;
- (c) the Catapult shall keep the Company informed of any active and specific investigation into this Agreement and, where possible, liaise with the Company concerning any response to the European Commission; and
- (b) the Parties shall comply with any ruling of the European Commission.

## **13. DATA PROTECTION**

13.1 The Parties each undertake to comply, and will cause its Representatives to comply, with the Data Protection Act 1998 and all applicable data protection laws in connection with the performance of its obligations under this Agreement.

## **14. CONFIDENTIALITY, PUBLICATION AND ANNOUNCEMENTS**

14.1 The Parties shall keep, and shall procure that its Representatives shall, keep secret and confidential the Confidential Information and any other information (whether or not technical) of a confidential nature which has been communicated to them by the other Party either before the execution of, or as result of, this Agreement, or, in the case of the Company, of which its Representatives become aware when on the Site, and the parties further undertake that each shall not, and shall procure that its Representatives shall not, disclose the same (or any part of it) to any other person.

14.2 These restrictions shall cease to apply to any information which becomes available to the public generally, otherwise than through the default of a Party

- (a) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information; or
- (b) where the disclosing Party has given prior written consent that the information may no longer be considered confidential; or
- (c) where the Confidential Information is otherwise required to be disclosed by law (in which case, where legal to do so, the disclosing Party shall give the owning Party as much notice as possible to the disclosure of the Confidential Information); or



- (d) Neither Party shall make any announcement relating to this Agreement nor its subject matter without the prior written approval of the other Party except as required by law or by any legal or regulatory authority.

## **15. GENERAL**

15.1 **ASSIGNMENT:** Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

15.2 **SEVERANCE:** If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

### **15.3 WAIVER**

- (a) A waiver of any right or remedy under these Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) No failure or delay by a Party in exercising any right or remedy under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### **15.4 NOTICES**

- (a) A notice given to a Party under or in connection with this Agreement shall be in writing and delivered by hand or pre-paid first-class post, recorded delivery or special delivery to the address of the Party as set out in the front of this Agreement.
- (b) This Condition shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

### **15.5 ENTIRE AGREEMENT:**

- (a) This Agreement constitutes the whole agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, drafts, Conditions, promises, assurances, warranties, representations, arrangements and undertakings between them, whether written or oral, relating to its subject matter.
- (b) The Parties each acknowledge that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

15.6 THIRD PARTY RIGHTS: A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15.7 VARIATION: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by the Parties.

#### 15.8 COUNTERPARTS

- (a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.
- (b) Transmission of the executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format), shall take effect as delivery of an executed counterpart of this Agreement
- (c) If either method of delivery is adopted, without prejudice to the validity of the Conditions thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- (d) No counterpart shall be effective until each Party has executed at least one counterpart.

#### 15.9 GOVERNING LAW AND JURISDICTION

- (a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- (b) Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims) save that any party may bring proceedings injunctive relief in any relevant jurisdiction.