

# Terms & Conditions of Grunenthal Limited for the Purchase of Goods and Services April 2009

## 1. Interpretation

In these Conditions (unless the context otherwise requires):

“Accounts Department Address” means Grunenthal Limited, Accounts Department, 2 Beacon Heights Business Park, Stokenchurch, Buckinghamshire, HP14 3XR.

“Affiliate” means any corporation or other entity that controls, is controlled by, or is under common control with Buyer.

“Applicable Laws” means all laws, requirements, statutes, rules, regulations, and ordinances applicable to the Parties’ activities in respect of the Goods and/or Services, including without limitation, applicable regulations and guidelines of any regulatory authority having jurisdiction.

“Buyer” means Grunenthal Limited (registered in England under company number 3658396, having its Registered Office at Lakeside House, 1 Furzeground Way, Uxbridge, Middlesex UB11 1BD).

“Conditions” means the standard terms and conditions of purchase set forth herein and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between Buyer and Seller whether stated on the Order or otherwise.

“Contract” means an executed written contract between the Parties for the sale and purchase of the Goods and/or performance of the Services.

“Control” has the meaning set forth in Section 574 of the Capital Allowances Act 2001.

“Equipment” means all equipment, tools, systems, cabling or facilities supplied to Seller by Buyer directly or indirectly in the supply of the Goods and/or Services.

“Goods” means the goods (including any instalment of the Goods or any part of them) as described in the Order.

“IP Rights” means any patent, registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual property right of any nature whatsoever in any part of the world.

“Material” means all drawings, Specifications and information supplied in connection with the Order.

“Order” means the purchase order for the Goods and/or Services placed by an authorised representative of Buyer with Seller and incorporating these Conditions.

“Parties” means Buyer and Seller, with each individually constituting a Party.

“Price” means the price of the Goods and/or Services.

“Seller” means the person, firm or company to whom the Order is addressed and who is to provide the Goods and/or Services.

“Services” means the services (or any instalment or part thereof) described in the Order to be undertaken by or on behalf of Seller.

“Specification” means the technical or other requirements (if any) for the Goods and/or Services which Buyer communicates to Seller in Writing.

“VAT” means the applicable value added tax.

“Writing” includes facsimile, electronic mail and any similar means of communication.

Words in the singular shall include the plural and vice versa, unless the context otherwise requires. Headings are intended for reference only and shall not affect construction.

These Terms and Conditions are not applicable to agreements with the NHS or its staff.

## 2. Basis of Purchase

(a) The Order constitutes an offer by Buyer to purchase the Goods and/or Services and must be acknowledged promptly in Writing by Seller giving a date of despatch of the Goods and/or performance of the Services. The Order shall be deemed accepted by the Seller unless rejected by the Seller in Writing within 8 days following the receipt of the Order.

(b) The Order taken together with these Conditions and any Specifications shall constitute an agreement between the Parties (the “Agreement”) and shall govern unless otherwise agreed by the Parties in the form of a Contract. The Agreement or the Contract (if any) shall apply to the exclusion of any other terms and conditions on which any quotation has been given to Buyer or subject to which the Order is accepted or purported to be accepted by Seller. In the event of any inconsistency between this Agreement and a Contract, the Contract shall prevail.

(c) No variation to the Order or this Agreement shall be binding unless agreed in Writing between the authorised representatives of Buyer and Seller.

(d) Only written orders are legally binding. Orders placed verbally, including by telephone, must be followed by written confirmation to become legally binding. The same applies to additional verbal side letters and amendments to the contract.

(e) Orders, delivery calls and amendments and supplements hereto may also be made by remote data transmission or by machine-readable media, if such was previously agreed in writing.

### 3. Invoices/Order Number

Invoices with Prices set out and giving the correct Order number must be sent to the Accounts Department Address of Buyer on or at any time after the despatch of the Goods. Failure to correctly invoice Buyer may result in a payment delay of Seller's account, for which Buyer shall not be liable. Invoices submitted improperly are deemed to be received by us only from the time of rectification of the invoice. The Order number must also appear on the packing note, all boxes, packages, containers, outers, cartons, delivery documents and correspondence. Each box, package, container, outer and carton sent to Buyer must contain a list of its contents.

### 4. Quality and Compliance/Health and Safety

Without prejudice to any other rights Buyer may have, Seller warrants to Buyer that:

(a) the Goods will:

- (i) conform as to quantity, quality and description with the particulars specified in the Order or as agreed by the Parties in Writing and comply with all Applicable Laws;
- (ii) be fit and sufficient for the purpose for which such Goods are ordinarily used and shall be accompanied by adequate information to ensure that when put to use the Goods will be safe and without risk to health;
- (iii) not infringe any copyright, design or other IP Rights of a third party;
- (iv) be free from defects and of sound materials and workmanship;
- (v) be tested, designed and constructed so as to be safe and without risk to the health and safety of persons using the same;
- (vi) meet in all respects the requirements of the Specifications, Order or Contract or as otherwise agreed by the Parties;
- (vii) if the purpose for which the Goods are required is indicated in the Order or in Writing by the Parties, either expressly or by implication, be fit for that purpose; and

(b) the Services will:

- (i) be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance and in accordance with Applicable Laws; and
- (ii) conform to the Specification and all requirements agreed between the Parties.

The provisions of this Condition 4 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial Goods or Services provided by Seller.

### 5. Progress and Inspection Testing

(a) Buyer may at reasonable times inspect the progress of the Services being performed and/or test the Goods during manufacture, processing and storage, and Seller shall at its own cost provide or shall procure the provision of all facilities as may reasonably be required by Buyer for this purpose. Any testing of the Goods shall not imply acceptance of the Goods by Buyer.

(b) If as a result of any inspection or test under Condition 5(a) Buyer or its representative is of the reasonable opinion that the Goods and/or Services do not comply with this Agreement or are unlikely on completion of manufacture or processing or performance so to comply, Buyer may inform Seller accordingly and Seller shall promptly take such reasonable steps as may be necessary to ensure such compliance.

### 6. Delivery

(a) The Goods shall be delivered and the Services performed by Seller at the address and at the time or within the period and in the manner specified in the Order or in Writing by the Parties and time of delivery of the Goods and/or performance of the Services shall be of the essence of this Agreement.

(b) Delivery shall take place during Buyer's usual business hours and Seller shall supply Buyer, in reasonable time, with any instructions or other information required to enable Buyer to accept delivery of the Goods and/or allow Seller to perform the Services.

(c) If the Goods are not delivered or the Services not performed at the time or within the period specified in the Order or in Writing by the Parties, Buyer shall be entitled to terminate this Agreement without liability to Seller and without prejudice to any claim for damages or other remedy, including any late delivery penalty specified in the Order or in Writing by the Parties.

(d) The Goods shall be transported and off-loaded at the sole risk and expense of Seller and shall remain at Seller's risk until accepted by Buyer in accordance with the Order and this Agreement.

(e) If the Goods are incorrectly delivered Seller will be responsible for any additional expense incurred in delivering them to their correct destination and acceptance of the Goods will not take place until they are delivered to their correct destination as specified in the Order or the Contract (if any).

(f) The Goods shall be properly packed, marked, secured and delivered in such a manner so that they arrive at their destination in good condition under normal conditions of transport having regard to the nature of the Goods and the other circumstances of the case and in compliance with Applicable Laws.

(g) Unless otherwise agreed in Writing between the Parties the Goods are not to be delivered or the Services performed in instalments but where the Parties have agreed that delivery of the Goods and/or performance of the Services shall be in instalments, the Agreement shall be treated as a single agreement, and not a severable agreement.

(h) Unless otherwise agreed between the Parties in Writing before delivery, Buyer shall have no obligation to pay for or return to Seller any packaging or packaging materials for the Goods, whether or not any Goods are accepted by Buyer and whether or not re-usable.

(i) All Goods shall be transported by the method specified in the Order or in Writing by the Parties or, if no method is specified, by the most expeditious method consistent with ensuring the Goods reach their destination in an undamaged condition.

#### **7. Hazardous Goods**

Seller will promptly inform Buyer in Writing in English of any dangers and special instructions relating to the handling, storage, safe use, transportation or disposal of hazardous goods (including any new information concerning these matters which from time to time becomes available).

#### **8. Performance of the Services**

(a) The Services will be performed in accordance with the Order and this Agreement, including without limitation any acceptance criteria or tests, provision of certificates, programme of installation or performance standard that may be agreed between the Parties in Writing.

(b) Where Seller is to provide the Services at Buyer's site, Buyer will ensure that Seller has reasonable access to the site as may be necessary for Seller to perform the Services in accordance with the Order and the Agreement.

(c) While performing Services at Buyer's site, Seller must:

(i) take reasonable care to ensure that the performance of the Services does not interfere with the business of Buyer, its employees or any other consultant or contractor employed on the site;

(ii) comply with all Applicable Laws;

(iii) comply with any policies and procedures required by Buyer and issued to Seller prior to the performance of the Services;

(iv) ensure that the Services are performed during Buyer's usual business hours, unless otherwise agreed in Writing by Buyer; and

(v) leave the site in a clean and tidy condition at the end of each day and on completion of the Services.

#### **9. Storage/Destruction**

If for any reason Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery Seller shall, if its storage facilities permit, store and safeguard the Goods and take all reasonable steps to prevent their deterioration until they are actually delivered and Buyer shall be liable to Seller for the reasonable costs (including insurance) relating thereto. Seller may not dispose or otherwise destroy the stored Goods without giving reasonable advance notice in Writing to Buyer.

#### **10. Confidentiality/ Buyer's Material and Equipment**

(a) The Order and this Agreement is confidential between Buyer and Seller, and Seller agrees that no confidential information connected therewith shall be published or disclosed to any third party without Buyer's consent in Writing. This Condition 11 shall survive termination of this Agreement, however arising.

(b) Seller shall keep in strict confidence all Material and all technical or commercial know-how, Specifications, inventions, or processes of a confidential nature which have been disclosed to Seller by Buyer, its Affiliates and its and their employees, agents or sub-contractors and any other confidential information concerning Buyer's business. Seller shall restrict disclosure of such confidential material to its employees, agents or sub-contractors who need to know the same for the purpose of discharging Seller's obligations to Buyer, and shall ensure that all such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those of Seller.

(c) All Material, Equipment and other data supplied by Buyer to Seller or purchased by Seller on behalf of Buyer shall, at all times be and remain as between Buyer and Seller, the exclusive property of Buyer, and be marked as such by Seller, but shall be properly insured, kept securely and maintained by Seller in good condition until delivered to Buyer, and shall not be disposed of or used other than in accordance with Buyer's instructions or authorisation in Writing. Seller shall indemnify Buyer against all loss thereof or damage thereto while in Seller's possession or control. In the case of Equipment purchased by Seller on behalf of Buyer, Seller shall assign or transfer to Buyer any warranties received from the relevant manufacturer or supplier.

(d) Where the Goods and/or Services are designed, created or otherwise developed by or for Seller pursuant to the Order and this Agreement, then all IP Rights in the Goods and/or Services throughout the world shall belong to Buyer absolutely. Seller hereby assigns with full title guarantee and free from all third party rights, all such IP Rights to Buyer with the intent that upon the making or creation of the Goods and/or Services the IP rights shall automatically vest in Buyer. Seller shall promptly at Buyer's

request, do or procure to be done all such further acts and things and the execution of all such documents as Buyer may from time to time require for the purposes of securing for Buyer the full benefit of this Agreement, including all rights, title and interest in and to the IP Rights and all other rights assigned to Buyer.

- (e) Seller irrevocably undertakes that neither it nor any other person will assert against Buyer or any third party any moral rights in or relating to the IP Rights and warrants that all such moral rights are irrevocably waived and extinguished.

#### **11. Risk and Property**

The Goods shall remain at the risk of Seller until delivery to Buyer is complete (including off-loading and stacking), when risk and ownership of the Goods shall pass to Buyer.

#### **12. Rejection/Remedies**

- (a) Without prejudice to any of its rights, Buyer may by notice in Writing to Seller reject any or all of the Goods and/or Services if Seller fails to comply with any of its obligations under this Agreement.
- (b) Buyer shall not be deemed to have accepted any Goods and/or Services or any part hereof until Buyer has had a reasonable time to inspect them following delivery and/or performance, or if later, within a reasonable time after any latent defect in the Goods and/or Services has become apparent.
- (c) Buyer shall when giving notice of rejection specify the reason for such rejection, and Seller shall within 8 days following receipt of notice of rejection remove any rejected Goods at Seller's risk and expense.
- (d) In the case of rejected Goods or Services Seller shall, at Buyer's option, without prejudice to any claim of Buyer against Seller for damages sustained in connection with the Seller's breach of this Agreement and Buyer's right to suspend any payment obligation it may have under this Agreement:
  - i) replace rejected Goods with Goods conforming in all respects with the terms of this Agreement; and/or
  - ii) re-perform the defective Services;
  - iii) treat the Agreement as discharged by Seller's breach and require the repayment of any part of the Price of the Goods and/or Services paid; and
  - iv) reimburse Buyer for all freight and handling costs reasonably incurred by Buyer and/or for which it may be liable in respect of such Goods and/or Services.
- (e) If the Goods are not promptly removed by Seller, Buyer may return the Goods at Seller's expense and risk.

#### **13. Warranty**

Without prejudice to any other remedies of Buyer, Seller shall as soon as reasonably practicable, upon the written request of Buyer and at the cost of Seller:

- (a) replace or (at Buyer's option) repair all Goods which are or become defective where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, Seller's erroneous instructions as to use, erroneous data or any breach by Seller of any provision of this Agreement. Repairs and replacements shall themselves be subject to the foregoing obligations after repair or replacement;
- (b) re-perform any Services found to have been performed defectively.
- (c) The warranty period shall be two years, except where expressly agreed otherwise. It starts with the supply of the delivered item to us or to third parties nominated by us at the receiving or usage site specified by us. For devices, machines and installations, the warranty period begins on the acceptance date of the performance stated in our written acceptance declaration. The warranty period for construction works shall conform to the statutory provisions; for spare parts it shall be two years after fitting/commissioning. Otherwise, the statutory warranty claims shall apply without restriction.
- (d) For supplied parts that cannot remain in operation during a defect investigation and/or defect rectification, the current warranty period shall be extended by the duration of the suspended operation. For repaired or new supplied parts, the warranty period restarts with the completion of the remedy or, where acceptance of the performance is agreed upon, on this acceptance. Where relevant, the acceptance of the performance shall be requested from us in writing.

#### **14. Price and Payment of Goods and Services**

- (a) The Price of the Goods and/or the Services shall be as stated in the Order or the Contract (if any) and, unless otherwise agreed between the Parties in Writing, shall be exclusive of any VAT.
- (b) Seller shall pay all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to Buyer and any import taxes or duties or other duties, taxes, imports or levies (other than VAT) in respect of the Goods and/or Services.
- (c) No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of Buyer in Writing.
- (d) Once the Goods and/or Services have been delivered in accordance with Condition 6, Seller shall send a correct invoice for the Goods and/or Services in accordance with Condition 3, and Buyer shall unless otherwise agreed in Writing pay such

invoice, if correctly rendered, 60 days from the end of the month of receipt of the invoice

(e) With respect to Services, Seller shall submit with the invoice, without limitation, a reasonable description of the Services performed and a list of any expenses incurred in the provision of the Services, together with supporting documentation. Reasonable direct expenses in relation to the Services will be reimbursed, subject to Buyer's prior approval in Writing.

(f) Buyer, upon reasonable notice to Seller, shall have the right, either itself or through a third party, to conduct an audit of Seller's accounts with respect to invoices rendered. Buyer shall use reasonable endeavours to ensure that any such audit is conducted in a manner designed to minimise inconvenience to Seller.

(g) Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by Seller, whether or not shown on its own terms and conditions of sale.

(h) Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off any amount owing at any time to it by Seller against any amount payable by Buyer to Seller under this Agreement or the Contract, if any.

(i) Payment of the Price of the Goods and/or the Services does not imply a waiver of any other right the Buyer may have against Seller under this Agreement or any Contract.

#### **15. Seller's Obligations**

Seller shall immediately inform Buyer in Writing if at any time Seller becomes aware (whether prior to or after delivery) of the Goods and/or performance of the Services of: (a) any defect or failure of the Goods and/or Services or any other similar goods and/or similar services; or (b) any unsuitability for any purpose identified in Writing for which the Goods and/or Services or any other similar goods and/or services were supplied and/or performed by Seller.

#### **16. Assignment and Sub-Contracting**

Seller shall not assign, transfer, charge or sub-contract the manufacture and production of the Goods and/or the performance of the Services to another party, in whole or in part, without the prior consent of Buyer in Writing. No sub-contracting by Seller shall in any way relieve Seller of any of its responsibilities under the Order or this Agreement. Buyer may at any time assign or transfer all or any of its rights or obligations under this Agreement to an Affiliate.

#### **17. Indemnity and Insurance**

(a) Seller shall indemnify and hold Buyer harmless against all actions, suits, claims, demands, costs, proceedings, charges, damages, losses and expenses suffered or incurred by Buyer, including

without limitation reasonable legal fees and expenses, due to, arising from or in connection with:

(i) any negligent or wilful acts or omissions of Seller, its servants, agents or contractors in supplying, delivering and installing the Goods and/or in the performance of the Services;

(ii) the breach of any provision of this Agreement or Contract (if any) by Seller;

(iii) the breach of any warranty given by Seller in relation to the Goods and/or the Services;

(iv) any defect in the workmanship, materials or design of the Goods or their packaging;

(v) any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other IP Rights for or relating to the Goods and/or Services unless such infringement has occurred directly as a result of any Specification supplied by Buyer; and

(vi) an incorrect description of the Goods and/or Services by Seller.

(b) Seller shall effect with a reputable insurance company a policy or policies of insurance covering all matters which are the subject of indemnities under this Agreement and shall at the request of Buyer produce the relevant policy or policies together with receipts or other evidence of payments of the latest premium due thereunder.

#### **19. Force Majeure**

"Force Majeure" means in relation to either Party, a circumstance beyond the reasonable control of that Party (the "Claimant") including, without limitation, strikes and other industrial disputes (excluding strikes or labour disputes between any Claimant and its employees), PROVIDED ALWAYS that the Claimant

i) notifies the other Party as soon as reasonably practicable of the Force Majeure event and

ii) exerts its best reasonable efforts to eliminate, cure or overcome any such circumstances and to resume performance of its obligations in a timely manner. If such failure or delay continues for a period in excess of four (4) weeks, the other Party may terminate this Agreement and any Contract forthwith without liability by giving notice in Writing to the Claimant. The Claimant shall not be deemed to be in breach of the Agreement or otherwise liable to other Party for any delay in performance or any non-performance of any obligations under this Agreement to the extent the delay or non-performance is due to Force Majeure.

#### **20. Notices**

Any notice given or made under or in connection with this Agreement shall be in Writing and shall be deemed to have been duly given or made and deemed received as follows:

(a) if correctly sent by recorded delivery post to the Party concerned at its address specified on the Order or such other address as that Party may from time to time notify in Writing, such notice shall be deemed received three (3) working days after such posting;

(b) if delivered personally, such notice shall be deemed received on the date of the personal delivery; and

(c) if sent by facsimile or electronic transmission with confirmed receipt, with a follow-up notice of the same sent within two (2) working days either in accordance with (a) or (b) above, such notice shall be deemed received when despatched.

## 21. Termination and Insolvency

(a) Buyer shall be entitled to terminate this Agreement without liability to Seller forthwith upon notice in Writing to Seller:

(i) if Seller becomes bankrupt, insolvent, compounds with its creditors, has distress or execution levied upon its property, is wound up, goes into liquidation (except for the purposes of a *bona fide* reconstruction), has a receiver, administrative receiver, or administrator appointed of the whole or any part of its assets, or shall suffer the appointment of any similar person under Applicable Laws; or

(ii) if Seller ceases or threatens to cease to carry on business; or

(iii) if Seller is in material breach of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within 15 days after receipt of a notice from Buyer in Writing specifying the breach; or

(iv) there is a change of control of Seller.

(b) Buyer may cancel any Order or part thereof by notice to Seller in Writing at any time prior to delivery. In the event that Buyer exercises its rights of cancellation, its sole liability to Seller shall be to pay for the cost to Seller (not exceeding the Price) of the work reasonably carried out by Seller or, in relation to the Goods at the date of cancellation, any liability reasonably incurred by Seller to a third party at the date of termination in relation to the manufacture and supply of the Goods. Written evidence of all such costs must be provided.

(c) The exercise of any rights granted to Buyer hereunder shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to Buyer or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

(d) On termination of this Agreement or the Contract for any reason Seller shall immediately deliver to Buyer:

(i) all Equipment and documents relating thereto and all Material and all copies of information and data provided by Buyer to

Seller for the purposes of this Agreement or the Contract. Seller shall certify to Buyer that it has not retained any copies of Material or other information or data, except for one copy which Seller may use for audit purposes only and subject to the confidentiality obligations in Condition 11; and

(ii) all Specifications, programs (including source codes) and other documentation comprised in any deliverables supplied under this Agreement or the Contract and existing at the date of such termination, whether or not then complete. All IP Rights in such materials shall automatically pass to Buyer (to the extent that they have not already done so by virtue of Condition 11 (d)).

(e) If Seller fails to fulfil its obligations under Condition 21(d), then Buyer may enter Seller's premises and take possession of any such items which should have been returned. Until they have been returned or repossessed, Seller shall be solely responsible for their safe keeping.

## 22. General

(a) No waiver by Buyer of any breach of this Agreement by Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Rights under this Agreement are cumulative and do not exclude rights provided by Applicable Laws.

(b) If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not be affected thereby.

(c) Seller shall not exploit in publicity in any form this Agreement or Seller's relationship with Buyer without the prior permission in Writing of Buyer.

(d) Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

## 23. Governing Law and Jurisdiction

(a) This Agreement shall be governed by and construed in accordance with English Law to the exclusion of the United Nations Convention on the International Sale of Goods (1980).

(b) The Parties agree to submit to the exclusive jurisdiction of the courts of England to settle any disputes which may arise out of, or in connection with this Agreement and that any proceeding, suit or action arising out of or in connection with this Agreement may be brought in such courts.