

## PROTEA LTD – TERMS OF SALE

### 1. General

- 1.1 Contracts and orders are accepted by the Company only on the basis of the following terms and conditions. The acceptance by the Company of any order from the Client shall be deemed to incorporate these Terms of Trading to the exclusion of all other terms and conditions including any terms and conditions which the Client may purport to apply under any purchase order or similar document and no variation contained in any order form or other document.
- 1.2 Any representation made by or on behalf of the Company shall not have any force or effect whatsoever unless expressly stated by the Company in writing.
- 1.3 No Contract shall exist between the Company and the Client until the Client has confirmed in writing acceptance of a proposal or quotation and has stated an order number.
- 1.4 Any order for the Deliverables shall be deemed to be an offer by the Client to purchase the Deliverables subject to these terms of sale and acceptance of delivery of the Deliverables shall be deemed conclusive evidence of the Client's acceptance of these terms.
- 1.5 No waiver by the Company of any breach of the Contract by the Client shall constitute a waiver of any subsequent breach of the same or any other provision.
- 1.6 Any clause or part of these terms of sale which is or may be void or unenforceable shall be treated as severable from the remainder and shall not affect any other provision to these terms.

### 2. Definitions and Interpretation

- 2.1 The 'Company' means Protea Ltd and any associated or subsidiary company.
- 2.2 The 'Client' means the person or company who accepts a quotation of the Company for the sale of Deliverables, or whose order for the supply of Deliverables is accepted by the Company. The Client contracts with the Company as principal whether or not the Client in turn contracts as agent on behalf of its own client or customer.
- 2.3 'Deliverables' means any form of goods or services (including without limitation hardware, software, systems, installations, commissioning, support and training) which the Company is to supply in accordance with these Terms of Trading.
- 2.4 'Contract' means the contract between the Company and the Client for the sale and purchase of the Deliverables.
- 2.5 The headings to the clauses in this document are for convenience only and shall not affect their interpretation.

### 3. Validity

Quotations and proposals are valid for a period of 30 days from the date thereof, and are subject to the Company's written acceptance of a Contract. Until a Contract has been accepted the Company reserves the right to withdraw or modify any quotation or proposal either verbally or in writing and no liability whatsoever shall be incurred by such withdrawal or modification.

### 4. Variations

- 4.1 No variations in the Deliverables shall be made except by agreement in writing between the Company and the Client, but the Company will use all reasonable endeavours to negotiate with the Client any such variations as the Client may request.
- 4.2 The Company reserves the right to amend any design or to incorporate any modifications or improvements in the Deliverables as it may deem necessary.
- 4.3 In the event of variation or suspension of work by the Company on the Contract as a result of the Client's instructions or lack of instructions, the contract price shall be subject to variation accordingly.

### 5. Prices

All prices are exclusive of:

- (a) VAT, which shall be added to invoice at the rate applicable at point of dispatch.
- (b) Charges for packing, carriage, shipping and insurance, which charges shall be for the account of the Buyer.

### 6. Performance and Liability

- 6.1 The Company shall use all reasonable endeavours to adhere to the delivery schedule set out in the Contract. Such schedule is not however guaranteed nor deemed to be of the essence of the Contract. Except to the extent of any liquidated and ascertained damages agreed in writing between the parties, the Company shall not be liable for any delay in delivery, and the Company shall in no event be liable for any delay which is the result of any circumstance beyond its reasonable control. Where no date has been specified by the Client for the delivery of any Deliverables under the Contract, the Client shall give the Company all necessary instructions and authorities so that delivery may take place within 14 days after the Company has notified the Client that the Deliverables are ready for delivery.
- 6.2 The Company shall not in any circumstances be under liability for any loss of use, loss of profit or loss any contract or for any indirect or consequential loss or damage howsoever caused. Except in respect of death or personal injury resulting from the Company's negligence the Company's liability in respect of all causes of action arising in contract, tort or otherwise shall not exceed the price of the Deliverables.
- 6.3 It shall be the sole responsibility of the Client to ensure that the Deliverables comply with all the requirements whether statutory or otherwise of the location in which they are to be delivered or used. For the avoidance of doubt the Company gives no warranty in this respect.

### 7. Payments

- 7.1 Unless otherwise set out in the Contract, payment is due in full value within 30 days of the date of the invoice, and shall be made by cheque or by bank transfer to the account of the Company at a bank nominated in writing by the Company. All costs incurred in making the payment (including without limitation currency conversion charges and money transfer charges) are to be paid by the Client.
- 7.2 If payment of the invoice value or any part thereof is not made by the due date, the Company shall be entitled to charge interest on the outstanding amount at the rate of 2% per calendar month from the date payment became due until the Company receives payment in full.

### 8. Cancellation and Insolvency

- 8.1 The Company shall have the right to suspend or terminate the Contract and to cease deliveries thereunder, if the Client
  - (a) Commits any breach of the Contract which is incapable of remedy, or
  - (b) Fails to remedy a breach of the Contract, being capable of remedy, within 14 days of notice of the breach having been served, or
  - (c) Commits an act of bankruptcy, has a petition for winding up presented which is not discharged within 14 days (other than a members' voluntary winding up for the purpose of amalgamation or reconstruction), enters into any arrangement or composition with its creditors, or ceases or threatens to cease to carry on business.
  - (d) Or if the Company reasonably considers that any of the events above mentioned is about to occur in relation to the Client and notifies the Client accordingly.
  - (e) In the event of such suspension or termination of the Contract, payment in respect of any deliveries made shall immediately be due, notwithstanding anything to the contrary contained in the Contract.
  - (f) Cancellation of the Contract by the Client shall not be effective without the prior written consent of the Company. Upon any cancellation the Client shall pay to the Company such sum as is reasonable in respect of work done and materials ordered or supplied, and loss of profit.

### 9. Damage in Transit

If any shipment of Deliverables to the Client under a Contract is received damaged or deficient, it shall be signed for accordingly by the Client, who shall give notice to the delivering carrier and to the Company in writing within three days of receipt of the goods. No claim shall be entertained by the Company nor any responsibility whatsoever accepted for loss or damage unless the Client has strictly complied with these requirements.

### 10. Passing of Property

- 10.1 Title to the Deliverables shall remain with the Company until full payment for them and other payments due or overdue have been received by the Company.

- 10.2 If payment is not made for any Deliverables by the due date, the Company shall have the right at any time with or without prior notice to take repossession of the whole or any part of the Deliverables (and for the purpose to enter any premises occupied by the Client) without prejudice to any other remedies.
- 10.3 Until the Company is paid in full for the Deliverables the relationship of the Client to the Company shall be fiduciary in respect of the deliverables and if the same are sold by the client the Company shall have the right to trace the proceeds thereof according to the principles in re Hallett's Estate (1880 13 CLD 696). y.

#### **11. Intellectual Property**

- 11.1 The Company shall retain exclusive ownership of and reserve all copyright in all documents supplied or produced to the Client in connection with any quotation, proposal or Contract and it shall be a condition of such supply or production that the contents (in whole or in part) of such documents shall not be communicated directly or indirectly to any third party without the Company's prior written consent.
- 11.2 The Client shall not reproduce any part of the Deliverables for sale use.
- 11.3 The rights to all design and techniques embodied within the Deliverables shall remain permanently with the Company. Any invention, discovery or improvement, whether or not patentable, made by the Company, its servants or agents, in connection with the Contract shall belong wholly and exclusively to the Company.

#### **12. Confidentiality**

Both during and after termination of the Contract the Client shall each treat as confidential all ideas and information learned by the Client about the business of the Company in connection with discussion negotiation or execution of the Contract and shall not use the same for any purpose. The Client shall not use the Company's name for advertising or promotional purposes without obtaining the Company's prior written approval.

#### **13. Warranty**

The Company warrants that the Deliverables shall correspond with the Company's written specification therefor and that at the time of delivery and for a period of 12 months thereafter and shall be free from defects in design (other than design furnished or approved by or on behalf of the Client) materials and workmanship in manufacture. If any part of the Deliverables shall fail to comply with the warranty hereby given the Company shall without charge supply a replacement for the non-compliant part or parts, and compliance by the Company with this undertaking shall be the full extent of the Company's liability and the sole remedy of the Client in respect any defect in the Deliverables.

No liability shall exist in respect of any defect arising out of normal wear and tear, or where the Deliverables have been used or stored or maintained by the Client with insufficient care or improperly, or not in accordance with the Company's instructions (whether verbal or written), or arising out of unauthorised alteration or servicing of the Deliverables, or arising from errors in any drawing design or specification supplied by the Client, and except where the Client is dealing as a consumer (as defined in UCTA/1977) all other representations, warranties, conditions or terms relating to fitness for purposes, merchantability or condition of the Deliverables and whether implied by statute or common law or otherwise are expressly excluded.

#### **14. Restriction**

The Client shall not, prior to completion of the work or within 12 months of the completion or termination of the Contract, enter into or offer to enter into an agreement or arrangement with any person who is or had been engaged on the work as an employee of the Company, whereunder such person would carry out any work on the Client's behalf similar to or arising out of work carried out under the Contract.

#### **15. Governing Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with the Laws of England and both parties agree to submit any dispute arising out of or in connection with the Contract to the exclusive jurisdiction of the Courts of law in England.

21/11/16