



# PEAK NDT

## STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

#### 1.1 Definitions

In these Conditions the following definitions apply:

the "**Commencement Date**" has the meaning set out in clause 2.2;

the "**Conditions**" means these terms and conditions as amended from time to time in accordance with clause 16.8; the "**Contract**" means the contract between Peak NDT and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

the "**Deliverables**" means any deliverables resulting from the Services;

the "**Disclosing Party**" has the meaning set out in clause 13; the "**Goods**" means the goods (or any part of them) set out in the Purchase Order;

the "**Goods Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Peak NDT and the Supplier;

the "**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Peak NDT**" means Peak NDT Limited registered in England and Wales with Company number 03126822 whose registered office is at The Old Vicarage, 51 St John Street, Ashbourne, Derbyshire, DE6 1GP;

"**Peak NDT's Free Issue Materials**" means any equipment, part, component or system provided by Peak NDT to the Supplier in order for the Supplier to fulfill its obligations under the Contract;

the "**Purchase Order**" means Peak NDT's order for the supply of Goods and/or Services, as set out in Peak NDT's purchase order form;

the "**Purchase Order Requirements**" means the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Peak NDT, expressly or by implication, and in this respect Peak NDT relies on the Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery;
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) be delivered complete with all instructions, warnings and other data for safe and proper use.

the "**Receiving Party**" has the meaning set out in clause 13; the "**Services**" means the services (if any), including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification; the "**Service Specification**" means the description or specification for Services agreed in writing by Peak NDT and the Supplier;

the "**Supplier**" means the person or firm from whom Peak NDT purchases the Goods and/or Services.

#### 1.2 Construction

In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- (b) a reference to a party includes its personal representatives, successors or permitted assigns.

### 2. BASIS OF CONTRACT

2.1 The Purchase Order constitutes an offer by Peak NDT to purchase Goods and/or to procure Services from the Supplier in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted when Peak NDT provides the Supplier with formal notification to start the work set out in the Purchase order at which point and on which date the Contract shall come into existence (the "**Commencement**

**Date**").

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### 3. AMENDMENTS TO GOODS/SERVICES SPECIFICATION

3.1 Peak NDT may alter, amend, omit, add to or otherwise vary the Goods/Services Specification at any time.

3.2 The Supplier shall not alter, amend, omit, add to or otherwise vary the Goods/Services Specification unless it has Peak NDT's prior written approval.

3.3 Where Peak NDT agrees to a change in value or delivery date, this will be effected only by a written amendment to the Purchase Order.

### 4. WARRANTIES

4.1 The Supplier warrants that:

- (a) The Goods shall comply with the Goods Specification and Purchase Order Requirements;
- (b) Time of delivery of the Goods and performance of the Services is of the essence; and
- (c) it has at all times and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods and Services.

4.2 In providing the Services, the Supplier shall:

- (a) meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by Peak NDT;
- (b) co-operate with Peak NDT in all matters relating to the Services, and comply with all instructions of Peak NDT;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (e) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Purchase Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Peak NDT;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Peak NDT, will be free from defects in workmanship, installation and design;
- (h) ensure that no counterfeit goods are delivered to Peak NDT. The supplier shall only purchase products to be delivered or incorporated as goods directly from the Original Component Manufacturer ("OCM") or Original Equipment Manufacturer ("OEM"), or through an OCM or OEM distributor chain.
- (i) Immediately notify Peak NDT if it becomes aware or suspects that it has acquired or delivered Counterfeit goods and shall thereafter immediately quarantine any suspect or known Counterfeit Goods.
- (j) observe all health and safety rules and regulations, comply with all environmental laws, statutes, regulations, common law and guidance which relate to the environment (as appropriate) and observe any other security requirements that apply at any of Peak NDT's premises or other premises as specified by Peak NDT;
- (k) hold Peak NDT's Free Issue Materials in safe custody at its own risk, maintain Peak NDT's Free Issue Materials in good condition until returned to Peak NDT, and not dispose or use Peak NDT's Free Issue Materials other than in accordance with Peak NDT's written instructions or authorisation; and
- (l) not do or omit to do anything which may cause

Peak NDT to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Peak NDT may rely or act on the Services.

### 5. INSPECTION, DELIVERY, WARRANTY AND REJECTION

5.1 Peak NDT shall have the right to inspect and test the Goods at any time before delivery.

5.2 If following such inspection or testing Peak NDT considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, Peak NDT shall:

- (a) be entitled to reject the Goods; or
- (b) inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

5.3 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.4 The Supplier shall deliver the Goods:

- (a) on the date specified in the Purchase Order;
- (b) to the place named on the Purchase Order or as instructed by Peak NDT before delivery (the "**Delivery Location**"); and
- (c) during Peak NDT's normal hours of business, or as instructed by Peak NDT.

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

5.6 If there is a shortfall or excess in the quantity of any Goods that are delivered to Peak NDT, Peak NDT may, at its sole discretion, reject the Goods. If Peak NDT rejects the Goods pursuant to this clause 5.6, any rejected Goods shall be returned to the Supplier at the Supplier's risk and expense.

5.7 The Supplier shall not deliver the Goods in instalments without Peak NDT'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 the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Peak NDT to the remedies set out in clause 8.1.

5.8 The Supplier shall pass on to Peak NDT the benefit of any manufacturer's warranty (if any) in respect of the Goods insofar as possible.

### 6. TITLE AND RISK

The Goods shall remain at the risk of the Supplier until delivery to Peak NDT is complete. Title of the Goods shall pass to Peak NDT on delivery.

### 7. PEAK NDT'S FREE ISSUE MATERIALS

Title in Peak NDT's Free Issue Materials shall remain with Peak NDT but the risk shall be with the Supplier until delivery is complete.

### 8. PEAK NDT'S REMEDIES

8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Peak NDT shall, without limiting its other rights or remedies, have one or more of the following rights:

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

- 8.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, Peak NDT shall have one or more of the following rights, whether or not it has accepted the Goods:
- to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - to require the Supplier at its own cost and with all speed 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 expenditure incurred by Peak NDT in obtaining substitute goods from a third party; and
  - to claim damages for any additional costs, loss or expenses incurred by Peak NDT arising from the Supplier's failure to supply Goods in accordance with clause 4.1.
- 8.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 8.4 Peak NDT's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 9. PEAK NDT'S OBLIGATIONS**  
Peak NDT shall:
- provide the Supplier with reasonable access at reasonable times to Peak NDT's premises (or other premises as specified by Peak NDT) for the purpose of providing the Services; and
  - provide such information as the Supplier may reasonably request for the provision of the Services and Peak NDT considers reasonably necessary for the purpose of providing the Services.
- 10. CHARGES AND PAYMENT**
- 10.1 The price for the Goods and/or Services shall be the price set out in the Purchase Order and shall be exclusive of value added tax (which shall be payable by Peak NDT subject to receipt by Peak NDT of a value added tax invoice) and inclusive of the costs of packaging, insurance and carriage of the Goods, except where otherwise notified to Peak NDT in accordance with clause 16.3.
- 10.2 No increase will be accepted by Peak NDT, unless agreed by it in writing before the execution of the Purchase Order.
- 10.3 In respect of Goods, the Supplier shall invoice Peak NDT on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Peak NDT on completion of the Services. Each invoice shall include such supporting information required by the Peak NDT to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 10.4 In consideration of the supply of Goods and/or Services by the Supplier, Peak NDT shall pay the invoiced amounts within 30 days from Peak NDT's month end by cheque to a payee nominated in writing by the Supplier or by such other method as otherwise agreed by the Supplier and Peak NDT.
- 10.5 Where Services are provided by the Supplier on a time and materials basis, the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Peak NDT to inspect such records at all reasonable times on request.
- 10.6 Peak NDT may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under the Contract against any amount payable by Peak NDT to the Supplier under the Contract.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 In respect of the Goods transferred to Peak NDT as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Peak NDT, it will have full and unrestricted rights to sell and transfer all such items to Peak NDT.
- 11.2 The Supplier assigns to Peak NDT, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 11.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 11.4 The Supplier shall, promptly at Peak NDT's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Peak NDT may from time to time require for the purpose of securing for Peak NDT the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Peak NDT's in accordance with clause 11.2.
- 11.5 All Peak NDT's Free Issue Materials are the exclusive property of Peak NDT.
- 11.6 Where Peak NDT engages the Supplier to produce the Goods and/or undertake Services in accordance with Peak NDT's Goods Specification, all Intellectual Property Rights in or arising out of or in connection with manufacture of the Goods and/or provision of the Services shall be owned by Peak NDT.
- 12. INDEMNITY**
- 12.1 The Supplier shall keep Peak NDT indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Peak NDT as a result of or in connection with:
- any claim made against Peak NDT 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 defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - any claim made against Peak NDT by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - any claim made against Peak NDT 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, or receipt, use or supply of the Services.
- 12.2 For the duration of the Contract and for a period of no less than 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employee liability insurance and public liability insurance (as appropriate) to cover the liabilities that may arise under or in connection with the Contract.
- 12.3 This clause 12 shall survive termination of the Contract.
- 13. CONFIDENTIALITY**  
A party (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.
- 14. TERMINATION**
- 14.1 Without limiting its other rights or remedies, Peak NDT may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- the Supplier commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
  - the Supplier shall make a voluntary arrangement with its creditors or shall become bankrupt (being an individual or company) or shall become subject to an administration order or shall go into liquidation or shall have a receiver appointed over some or all of its assets; or
  - the Supplier shall cease for any reason to carry on business; or
- it is reasonably anticipated by peak NDT that any of the events described in clause 14.1(a) to (c) are likely to occur.
- 14.2 Without limiting its other rights or remedies, Peak NDT may terminate the Contract:
- in respect of the supply of Services, by giving the Supplier 3 months' written notice; and
  - in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case Peak NDT shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.3 In any of the circumstances in these Conditions in which Peak NDT may terminate the Contract, where both Goods and Services are supplied, Peak NDT may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 15. CONSEQUENCES OF TERMINATION**  
On termination of the Contract or any part of it for any reason:
- where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Peak NDT's Free Issue Materials. If the Supplier fails to do so, then Peak NDT may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
  - clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 16. GENERAL**
- 16.1 **Force Majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party (i.e. a force majeure event).
- 16.2 **Assignment and other dealings:** The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Peak NDT. Peak NDT may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 16.3 **Notices:** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by signed for recorded delivery or by commercial courier, at its registered office or its principal place of business, as appropriate. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by signed for recorded delivery or if delivered by commercial courier, on the date and at the time that the courier's or Royal Mail's delivery receipt or royal mail is signed. This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.4 **Waiver:** No waiver by Peak NDT of any breach of the Agreement shall be deemed to be a waiver of any subsequent breach or default. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.5 **Severance:** In the event that a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable (in whole or part) then this Contract shall be construed in the absence of such offending provisions (or the offending part thereof).
- 16.6 **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of

another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Peak NDT.
- 16.9 **Governing law and jurisdiction:** The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 16.10 **Resolving disputes:** Peak NDT shall, in its absolute discretion, opt to resolve any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by the Contract, by arbitration. It is agreed that:
- (a) the tribunal shall consist of one arbitrator (who is to be a practising barrister);
  - (b) in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London;
  - (c) the seat of the arbitration shall be Derby;
  - (d) the law governing this arbitration agreement shall be English; and
  - (e) the language of the arbitration shall be English.