

# Purchase Order Terms and Conditions

Issued July 2015

## 1 Definitions

In these Terms and Conditions the following definitions shall apply:

- We' 'Us' 'Our' and 'we' 'us' 'our' means Cambridge Consultants Inc., a Massachusetts corporation
- You' 'Your' 'Yours' and 'you' 'your' 'yours' means the company, individual, partnership or organisation to whom the Purchase Order is addressed.
- 'Purchase Order' means the purchase order placed by us with you for the Goods.
- 'Goods' means all goods and/or services to be created or supplied by you under the Contract and shall include any tools or tooling.
- 'Contract' means the contract between us and you consisting of the Purchase Order and these Terms and Conditions. In the event of a conflict, the terms in the Purchase Order shall take precedence.

## 2 Confidentiality and Data Protection

- 2.1 Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without prior written consent of the other or as may be permitted under the later provision of this Clause.
- 2.2 The obligations expressed in sub-clause 2.1 above shall not apply to any information which:
- 2.2.1 is or subsequently comes in to the public domain otherwise than by breach of this Clause
  - 2.2.2 is already in possession of the receiving party without an accompanying obligation of confidentiality
  - 2.2.3 is obtained from a third party who is free to divulge the same
  - 2.2.4 is independently and lawfully developed by the recipient or its sub-contractor outside the scope of the Contract by employees who have not had access to the confidential information.
- 2.3 So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the subject matter of the Contract each party may divulge any information to be kept confidential under sub-clause 2.1 to their employees, agents and sub-contractors solely on a 'need to know' basis but undertake that they will take all steps necessary to ensure compliance by such employees, agents and sub-contractors with the obligations as to confidentiality expressed in this Clause and will be responsible to the other party for any failure by any employee, agent or sub-contractor to comply with such obligations whether such employee, agent or sub-contractor was aware of them or not.
- 2.4 On conclusion or termination of the Contract the parties shall return or destroy all copies of confidential information obtained from the other except for a secure archive copy that may be retained solely for monitoring compliance with the obligations of confidentiality. The obligations relating to confidentiality shall continue for a period of five years from the date of Contract. Where

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personal data is transferred between the parties, both parties shall treat such data in line with the US Safe Harbor Program (see <http://www.export.gov/safeHarbor/>).

### 3 Publicity

Neither party shall advertise, publicly announce or provide to any other person information relating to the existence or details of the Contract or use the other party's name in any format for any promotion, publicity, marketing or advertising without the prior written permission of the other party.

### 4 Waiver

Any failure by us to insist at any time upon the performance of any of the terms, provisions or undertakings by you contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof. No such failure shall constitute or be construed as a relinquishment of our rights to require the future performance of any such term, provision or undertaking but the obligation by you with regard to the same shall continue in full force and effect.

### 5 Insolvency and Bankruptcy

If either party shall commence or have commenced against it proceedings under any bankruptcy, receivership, insolvency or similar type of law or regulation and such proceedings remain undismissed for a period of 60 days or more, then the other party shall have the right to terminate the Contract by written notice.

### 6 Termination

- 6.1 We may terminate this Contract without cause at any time by written notice to you. Either party may terminate this Contract forthwith by written notice to the other effective from the date of service of such notice if:
  - 6.1.1 there is a breach by the party of any provision of the Contract which expressly entitles the party not in breach to terminate the Contract.
  - 6.1.2 there is a material or persistent breach by the other party of any other term of the Contract, which is not remediable, or if it is remediable, has not been remedied within 30 days of the service of the written notice to the defaulting party specifying the breach and requiring it to be remedied.
- 6.2 On termination other than for the default by you then we shall pay to you the proportion of the Contract price payable in respect of materials supplied and/or services performed by you up to the date of termination together with costs of the commitments already entered into by you at the date of termination of the Contract less the amount of any payments already made to you up to the date of termination. If the amount of payments already made to you at the date of termination exceeds the sum due to you under this sub- clause then you shall repay the balance due to us. Any such payment shall be in full satisfaction of your rights to payment, compensation or damages in respect of the termination or breach of Contract giving rise to the right of termination.
- 6.3 On payment of the sum due under sub-clause 6.2 above you shall transfer to us the benefit of all work done and the property in all materials produced by you or your sub-contractors or sub-suppliers in the performance of the Contract up to the date of termination which benefit shall include any rights

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in any licensed or developed software and licensed firmware so far as the rights in the same have already accrued to us under the Contract or will do so on the payment under sub-clause 6.2 above.

- 6.4 If the Contract is terminated by reason of default by you then we shall be entitled to the like benefits and ownership of materials as are stated in sub-clause 6.3 above. We shall only pay to you the proportion of the Contract price payable in respect of the work done and/or services performed by you up to the date of termination after deduction of payments already made to you, the costs reasonably incurred by us in obtaining the completion of the work to be performed under the Contract by others and any damages which may be payable by you in respect of the termination or the breach of the Contract giving rise to the right to termination. If the amount due to you is less than the amount which we are entitled to deduct then you shall pay the balance to us.
- 6.5 Following the termination of the Contract neither party shall have any further rights or obligations in relation to the other party other than as stated in this Clause and in Clause 6.7 below which shall continue in full effect. Subject to sub-clause 6.2 above termination shall not however affect the rights of action and remedy of the parties which shall have accrued at the date of termination or shall thereafter accrue.
- 6.6 The exercise by either party of their rights under clauses 5 and 6 shall not prejudice any of their rights or obligations accrued prior to termination.
- 6.7 Following termination for any cause, clauses that by their nature are applicable following termination, including but not limited to the clauses relating to Confidentiality, Publicity, Waiver, Infringement Indemnity, Governing Law and Jurisdiction, property in materials, conditions and warranties relating to the Goods shall survive termination.

## 7 Terms of Payment

- 7.1 You shall be entitled to invoice us at the times and in the manner specified in the Contract or if no such times are specified then on completion of delivery and acceptance by us of the Goods.
- 7.2 Provided that the invoice was one which under the Contract you were entitled to submit then we shall pay you within the period of days specified in the Contract from the date of receipt of the invoice subject to any right of deduction which we may have by way of set-off or abatement. If no period of days is specified in the Contract then payment shall be made within 30 days. If we do make any such deduction then we shall notify you accordingly in writing with reasons.

## 8 Delivery, Quality Assurance and Description

- 8.1 All Goods shall be despatched by you to meet the specified Delivery Date in the Contract, subject to Force Majeure. The time for delivery and/or completion of the work to be performed under the Contract shall be of the essence of the Contract.
- 8.2 Where late delivery by you is deemed unacceptable to us for any reason, then we reserve the right to terminate the Contract for your breach either verbally or in writing without incurring any costs.
- 8.3 Delivery charges are your responsibility. If such charges are not included in the price of the Goods they must be quoted by you and specified separately in the Contract. If your business is outside the US, then delivery will be governed by Incoterms, CIF (Carriage Insurance and Freight) and/or DDP (Delivery Duty Paid).
- 8.4 Goods shall conform in all respects with the provisions of the Contract and in particular with any specification, drawings, descriptions or samples contained or referenced therein.

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- 8.5 Goods supplied under this Contract must conform to any relevant quoted quality standard, and a Certificate of Conformity provided where required and signed by your employee responsible for Quality Assurance.
- 8.6 If Goods are delivered in excess of the quantity specified in the Contract, then the excess quantity may be rejected and returned to you at your expense.
- 8.7 If the cost of returning any excess Goods exceeds the value of the excess Goods, then the excess Goods will be retained and only the quantity specified in the Contract will be paid for.

## 9 Rejection

- 9.1 If any of the Goods do not comply strictly with any of the terms of the Contract then we may reject them within a reasonable time after delivery and irrespective of whether such Goods have been accepted or paid for.
- 9.2 You shall forthwith replace any such rejected Goods with Goods that conform to the Contract.
- 9.3 If you do not so replace the rejected Goods forthwith then we shall have the right to purchase elsewhere replacement Goods of the same or similar description. Without prejudice to any other rights which we may have against you, we shall be entitled to recover from you:
  - 9.3.1 any payments made in respect of the rejected Goods; and
  - 9.3.2 the difference between the price of the rejected Goods and the price of the replacement Goods.
- 9.4 We may return any rejected Goods to you at your expense and at your risk.

## 10 Inspection and Testing

- 10.1 You will be responsible for inspection and testing of any Goods supplied and ensuring that they meet any quoted reference for manufacture or to specifications or drawings supplied by us as part of the Contract.
- 10.2 Notwithstanding your obligation under clause 10.1 above, we shall have the right to check the progress of work and inspect the Goods at your premises and those of your sub-contractors.
- 10.3 We may reject any of the Goods or parts thereof that are not in accordance with the Contract.
- 10.4 Any inspection, checking or approval on our behalf under this clause shall not relieve you of any of your obligations under the Contract.
- 10.5 You shall ensure that the terms of your sub-contractors provide for our rights as stated in this clause.

## 11 Title to Property

The Goods shall become our property when they have been delivered in accordance with Clause 8 above without prejudice to our right to reject the Goods under Clause 9.

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## 12 Subcontracting

- 12.1 You shall not subcontract any of the work under the Contract or any part thereof without having first obtained written permission from us which shall not be unreasonably withheld provided that this restriction shall not apply to subcontracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the subcontractor is named in the Contract.
- 12.2 You shall be responsible for the acts, defaults and omissions of your subcontractors, whether approval has been given to their appointment under this Clause or not, as if they were your own and any consent given under this Clause shall not relieve you of any of your obligations under the Contract.

## 13 Compliance with Law

Each party shall perform its obligations under this Contract in compliance with all applicable laws and regulations. The cost to each party of meeting the requirements of this Clause shall be borne by that party.

## 14 Amendments

No increase in the price specified in the Contract or any other amendment to the Contract shall be effective unless approved in writing by both parties. We shall have the right at any time to request changes to the goods and services to be provided under this Purchase Order and you shall comply with such request. If any such change results in an increase or decrease in the cost or effort involved in providing the goods or services, you and we shall agree to an equitable adjustment in the price and other terms upon which the goods and services will be provided.

## 15 Tooling

Tooling costs must be identified separately on the Contract. Any tooling produced or procured by you under the Contract shall be retained by you in good order at your premises unless otherwise stated. Such tooling shall be owned by us and shall only be used by you for us or for third parties specifically approved by us in advance and in writing.

## 16 Health, Safety and Environment

- 16.1 You undertake to ensure that you, your employees, agents and sub-contractors comply with all health, safety and environmental laws and regulations relating to the services and work associated with the Contract.
- 16.2 You undertake to ensure that when you, your employees, agents or sub-contractors are working on premises belonging to us that all such persons also comply with our rules and working practices relating to health, safety and the environment. You shall be responsible for the conduct and liable for all acts or omissions of all such persons working on the said premises.
- 16.3 You undertake to ensure that you, your employees, agents or sub-contractors provide all relevant documents as required by the requirements of paragraphs 16.1 and 16.2.

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- 16.4 Notwithstanding the generality of the previous paragraphs you undertake specifically to ensure that you, your employees, agents and sub-contractors will communicate effectively with regard to safety, health and environmental issues.

## 17 Force Majeure

- 17.1 For the purpose of the Contract the term Force Majeure shall mean any event arising after the date of Contract that was unforeseeable, irresistible, insurmountable and outside the reasonable control of the party concerned.
- 17.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 17.3 Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure.
- 17.4 If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period less than 30 days then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the Contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties. You shall use your reasonable endeavours to assist us in the performance of the Contract.
- 17.5 If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Contract shall be terminated by mutual consent and, subject to Clause 17.6 below neither party shall be liable to the other as a result of such termination.
- 17.6 If the Contract is so terminated then subject to the transfer to us of the benefit referred to in sub-clause 17.7 below then we shall pay to you such reasonable sum as may be agreed between the parties in respect of costs incurred and commitments already entered into by you at the date of the Force Majeure notice, less the amount of any payments already made to you at the date of the Force Majeure notice. If the amount of such advance payments made to you exceeds the sum due to you under this sub-clause then you shall repay the balance to us within 7 days of reaching an agreement.
- 17.7 If the Contract is so terminated then you shall transfer to us the benefit of all work done by you or your subcontractors and sub-suppliers in the performance of the Contract up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to us prior to the Force Majeure notice or will do so on the payment under sub-clause 17.6 above.

## 18 Intellectual Property Infringement

Except as given below, you shall indemnify us from and against all costs, claims, proceedings or demands in respect of any infringement of patent, registered design, trademark copyright or other intellectual property rights arising out of the sale or use of any Goods supplied under the Contract. You shall not be required to indemnify us against such infringements where the infringement is specifically caused by your compliance to a particular design or specification supplied by us to you under the Contract.

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## 19 Law and Dispute Resolution

- 19.1 The construction, performance and validity of the Contract shall in all respects be governed by the laws of the Commonwealth of Massachusetts without giving effect to the conflict of law provisions thereof.
- 19.2 If any dispute or difference whatsoever shall arise between the parties in connection with or arising out of the Contract, the parties agree prior to any litigation first to try in good faith to resolve the dispute or difference in accordance with the mediation procedures of the American Arbitration Association. The venue for any mediation shall be Boston, Massachusetts. All causes of action arising out of or relating to the Contract and the transactions contemplated by the Contract shall be decided exclusively by the state and Federal courts located in the Commonwealth of Massachusetts and the parties hereby consent to the jurisdiction of the courts located in the Commonwealth of Massachusetts.
- 19.3 You shall comply with all applicable laws and regulations in connection with this purchase order including but not limited to the Bribery Act 2010, the Foreign Corrupt Practices Act and Export Control laws and regulations. Your working environment shall be free from discrimination and harassment and you shall support the laws on the elimination of forced labour, compulsory labour, child labour and shall not be complicit in any human rights abuses.

## 20 Liability, Indemnification and Insurance

You shall indemnify us and our affiliates, directors, officers, employees and agents from and against any and all claims, demands, losses, expenses (including reasonable attorney's fees), liabilities or damages of every kind and character arising from the negligence or intentional misconduct of you or your employees or agents in connection with the Contract and the services and activities contemplated thereby or your breach of the terms of the Contract. In no event shall we or our employees or agents be liable to you for special, incidental, exemplary or consequential damages, regardless of whether we have been advised of the possibility of such damages, claims or demands.

During the time that you are providing goods or services to us, you shall maintain at your sole expense with financially responsible insurers reasonably acceptable to us (a) Commercial General Liability Insurance covering claims for bodily injury, personal injury and property damage arising out of the your performance under this Agreement with a per occurrence combined single limit of not less than \$2,000,000, which coverage shall include contractual liability and personal injury liability coverage and shall provide primary and non-contributing coverage for us as an additional insured, and (b) Workers' Compensation Insurance with statutory limits covering all of your employees performing services in connection with this Purchase Order and Employer's Liability Insurance with a limit of liability of not less than \$500,000 per occurrence.

## 21 Entire Agreement

This Contract constitutes the entire agreement between us and you. In particular, no terms and conditions of sale submitted or referred to by you in any quotation or during the course of negotiation between us and you shall form part of the Contract unless we refer specifically to any such terms in the Purchase Order.