

# CONDITIONS OF PURCHASE

## 1. Definitions

In these conditions

“**Contract**” -means the contract for the sale and purchase of goods and supply and acquisition of services comprised in the Order (including specifications and any other documents attached) these conditions of purchase and any variation of either agreed in writing by an authorised officer of Aggreko.

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

“**Order**” -means the foregoing purchase order, to which these conditions of purchase are annexed, and any attachments thereto.

“**Aggreko**” -means Aggreko U.K. Ltd. based at P.O. Box 17576, Jebel Ali Free Zone, Dubai, United Arab Emirates.

“**Services**” -means the services (if any) described in the Order.

“**Site**” -means the site at which the Goods or Services are to be delivered or performed.

“**Vendor**” -means the party specified as such in the Order.

Any references in these Conditions of Purchase to a statute or provision thereof shall be deemed to be a reference to that statute or provision as amended, re-enacted or extended at the relevant time and the paragraph headings contained in these conditions of purchase shall be ignored.

## 2. Contract

The Order constitutes an offer to purchase the Goods and/or acquire the Services subject to the terms and conditions of the Contract and will lapse unless unconditionally accepted by the Vendor within the time limit specified therein. The Contract contains the whole agreement between Aggreko and the Vendor to the exclusion of any other terms and conditions howsoever referred to.

## 3. Confidentiality

Any specification or piece of equipment supplied by Aggreko to Vendor or specifically produced for Aggreko by Vendor together with ideas, copyright, design rights or any other intellectual property rights relating thereto shall be exclusive property of Aggreko and the Vendor, or as required for the purpose of the Contract and the Vendor shall hold such third parties similarly bound. All inventions patentable or otherwise made during or as a result of research and development by the Vendor on behalf of Aggreko are the sole property of Aggreko.

## 4. Compliance with Laws

The Vendor shall comply with all relevant regulations or legal requirements in the country in which the Goods are to be manufactured or used or the Services rendered with regard to the manufacture, packaging, packing and delivery of the Goods or the performance of the Services and will supply prior to delivery all necessary authorisation documents and procure that all Goods are marked with such authority as may be required for the operation of the Goods.

## 5. Inspection

The Vendor shall not unreasonably refuse any request by Aggreko to inspect and test the Goods at any time during their manufacture, testing or subsequent storage under the control of the Vendor and the Vendor shall provide such facilities as Aggreko may reasonably require for such inspection and testing. If the Contract provides for inspection at any stage or stages the Vendor shall give Aggreko seven days notice of readiness for such inspection. If as result of such inspection Aggreko is not satisfied that the Goods comply with the terms of the Contract and Aggreko so informs the Vendor within seven days of inspection or testing or failure to inspect and shall not be deemed to be a waiver by Aggreko of any of the Vendors obligations or Aggreko's rights under the Contract.

## 6. Price

The price of the Goods and the Services shall be as stated in the Order and unless otherwise stated shall be exclusive of value added tax (payable if due by Aggreko subject to production of a VAT invoice) and inclusive of all other charges which shall include without prejudice to the foregoing generality charges for packing, packaging, shipping, carriage, insurance and delivery of the Goods to the Site and any duties, imposts or levies other than value added tax. No increase in the price may be made for whatever reason without the prior consent of Aggreko in writing. Aggreko shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Vendor.

## 7. Terms of Payment

Vendor's invoices shall be paid according to the Terms of Payment stated in the Order and time shall be calculated from the date of Aggreko's receipt of the Goods or the Services in a satisfactory form to which the invoice relates or date of receipt of the invoice whichever is later provided such invoice is properly drawn and accompanied by required supporting documents.

## 8. Delivery

The Goods shall be delivered to and the Services shall be performed at the Site on the date or within the period stated in the Order in either case within Aggreko's normal business hours. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. The Vendor acknowledges that if it fails to deliver the Goods or perform the Services by or on the time specified in the Order the price therein specified will be reduced by one percent as liquidated damages for each week or part thereof that delivery or performance are delayed up to a maximum of twenty five per cent and the Vendor agrees that this is a reasonable recompense for such a delay and is not a penalty and is without prejudice to any other remedy which Aggreko may have. If the Vendor becomes aware of any matter or thing which might lead to a delay in delivery of the Goods or performance of the Services the Vendor shall immediately advise Aggreko in writing. If the Goods are to be delivered or the Services performed, by instalments, the Contract will be treated as a single contract and not severable.

## 9. Acceptance

Aggreko shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until Aggreko has had a reasonable time to have inspected them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Aggreko shall not be obliged to return to the Vendor any packaging or packing materials for the Goods whether or not the Goods are accepted by Aggreko and the Vendor shall remove rejected Goods from the Site expeditiously causing the minimum inconvenience to Aggreko.

## 10. Manuals, Drawings etc.

The Vendor shall supply to Aggreko at no additional cost and in good time any instructions, drawings, maintenance manuals, information, mill certificates giving chemical compositions and mechanical properties fabrication reports and the like as may be reasonably requires to enable Aggreko to accept delivery of the Goods or performance of the Services and as may be specified in the Order (“information”) which without prejudice to the foregoing generality shall include such information regarding the use of the Goods or provision of the Services as will enable Aggreko to comply with the Health and Safety at Work Act 1974 or any other relevant applicable regulations or legislation by acceptance of information Aggreko do not acknowledge its accuracy nor does information form part of the Contract unless otherwise specifically stated.

## 11. Risk and Property

Risk of damage to or loss of the Goods shall pass to Aggreko upon delivery to Aggreko in accordance with the Contract. Property in the Goods shall pass to Aggreko on delivery to Aggreko unless payment or part payment has been made prior to delivery when it shall pass to Aggreko once payment has been made and the Goods have been appropriated to the Contract.

## 12. Compliance with Order

The Goods will be made of merchantable quality and fit for any purpose held out by Aggreko or made known to the Vendor at or before the date of the Order and shall be of sufficient size and capacity and of proper materials to enable operation in the conditions specified or as might reasonably be anticipated. The quantity, nature and description of the Goods shall be as specified in the Contract and will be free from defects in design material and workmanship. The Goods shall be manufactured and the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to the highest standard of quality.

## 13. Vendor on Site

If the Vendor or any of its employees, agents or sub contractors should be on the Site for any reason in connection with the Contract then the Vendor shall be responsible for its or their acts and omissions (including negligent act or omissions) as if they were in the Vendors direct employ. At all times when the Vendor or its foresaids are on the Site they shall comply with Aggreko's health and safety regulations which are available on request and shall avoid hindrance to other activities on the Site.

## 14. Remedies

Without prejudice to any other remedy if any Goods or Services are not delivered, supplied or performed in accordance with the Contract then Aggreko may: Require the Vendor to repair the Goods or supply replacement Goods or Services in accordance with the Contract within 7 days; or at Aggreko's sole option and whether or not Aggreko may previously have requested repair or replacement as aforesaid to treat the Contract as discharged by the Vendor's breach and require repayment of any part of the price which has been paid.

## 15. Indemnity

The Vendor shall indemnify Aggreko in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Aggreko as a result of or in connection with

(a) breach of any warranty given by the Vendor in relation to the Goods or the Services

(b) any breach of any other obligation to the Vendor under the Contract

(c) any claim that the Goods impinge or their importation use or resale, infringes, the patent, copyright design right, trade mark or other intellectual property rights of any other party, except to the extent that such a claim arises from compliance with a specification prepared and supplied by Aggreko.

(d) any liability under the Consumer Protection Act 1987 in respect of the Goods.

(e) any act or omission of the Vendor or its employees agents or sub-contractors in supplying, delivering and installing the Goods and

(f) any act or omission of any of the Vendors personnel in connection with the performance of the Services.

## 16. Termination

Without prejudice to Aggreko's rights on the Vendor's default, Aggreko shall be entitled to cancel the Order in respect of all or any part of the Goods and/or the Services by giving notice to the Vendor at any time in which event Aggreko's sole liability shall be to pay the Vendor the price for the Goods and /or the Services actually produced or carried out less any disposal or retention value. Aggreko shall be entitled to terminate the Contract without the liability to the Vendor at any time if:-

(a) the Vendor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of reconstruction or amalgamation) or

(b) an encumbrancer or heritable creditor takes possession or a redeiver is appointed of any of the property or assets of the Vendor or

(c) the Vendor ceased or threatens to cease carrying on business or

(d) Aggreko reasonably apprehends that any of the events mentioned at (a) to (c) above is about to occur and notifies the Vendor

(e) control of the Vendor is transferred and for this purpose “control” means the ability to require directly or indirectly, compliance in another where by the exercise of voting rights, contractual rights or otherwise howsoever.

## 17. Assignment/Sub-contracting

The Order is personal to the Vendor and the Vendor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract, save the sub-contracting may be permitted by Aggreko subject to:-

(i) Aggreko's prior written consent and

(ii) Aggreko having obtained suitable warranties and/or indemnities direct from such sub-contractor.

## 18. Notices

Any notice required in accordance with the Contract shall be in writing addressed to the recipient at the address shown in the Order and shall be deemed to have been received 48 hours after posting a hard copy by recorded delivery post or equivalent.

## 19. Waiver

No waiver by Aggreko of any breach of the Contract by the Vendor shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 20. Severability

If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of any other of the provision in question shall not be affected.

## 21. Arbitration

If during the continuance of the Contract or at any time thereafter any dispute, difference or question shall arise between Aggreko and the Vendor in regard to the Contract or the construction of these Conditions of Purchase or anything therein contained or the rights or liabilities of Aggreko or the Vendor such dispute, difference or question shall be referred to a sole Arbiter to be agreed upon by Aggreko and the Vendor and failing agreement to be appointed at the request of either Aggreko or the Vendor by the President for the time being of the Institution of Mechanical Engineers. The decision of the Arbiter shall be final and binding, no appeal shall lie from his decision on any point of law or fact to any court and the Arbiter shall not be entitled to state for the opinion of any court any question of law or fact.

## 22. Law

The Contract will be governed by the Law of England.