

Ascott Analytical Equipment Limited Terms and Conditions of Purchase

- 1 **Interpretation**
- 1.1 **Definitions.** In these Conditions, the following definitions apply:
- "Ascott" Ascott Analytical Equipment Limited (registered in England and Wales with company number 02590442);
- "Ascott Materials" has the meaning given in clause 5.3.9;
- "Business Day" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- "Conditions" the terms and conditions set out in this document as amended from time to time in accordance with clause 15.6;
- "Contract" the contract between Ascott and the Supplier for the sale and purchase of the Goods in accordance with these Conditions;
- "Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
- "Goods" the goods (or any part of them) set out in the Order;
- "Goods Specification" any specification for the Goods, including any related plans and drawings, that is agreed in writing by Ascott and the Supplier;
- "Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- "Order" Ascott's order for the Goods and/or Services, as set out in Ascott's purchase order form or Ascott's written acceptance of the Supplier's quotation or in any blanket order form, as the case may be;
- "Services" the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Services Specification;
- "Services Specification" the description or specification for Services agreed in writing by Ascott and the Supplier;
- "Supplier" the person or firm from whom Ascott purchases the Goods.
- 1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:
- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes faxes and e-mails.
- 2 **Basis of Contract**
- 2.1 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 unless the parties agree otherwise in writing.
- 2.2 The Order constitutes an offer by Ascott to purchase the Goods and/or Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing a written acceptance of the Order; or
- 2.3.2 the Supplier doing any act consistent with fulfilling the Order at which point the Contract shall come into existence.
- 3 **The Goods**
- 3.1 The Supplier shall ensure that the Goods shall:
- 3.1.1 correspond with their description and any applicable Goods Specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Ascott expressly or by implication, and in this respect Ascott relies on the Supplier's skill and judgement;
- 3.1.3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, packaging, storage, handling and delivery of the Goods;
- 3.1.5 be clearly marked or labelled with an order number as provided for in the Order.
- 3.2 There shall be no variation, alternation or amendment to any Goods Specification prior to delivery of the Goods without Ascott's prior written consent.
- 3.3 The Supplier shall ensure that in the case of repeat Orders for the same Goods, the Goods supplied to Ascott shall match in all respects those supplied in previous Orders unless Ascott's prior written consent to any such variation has been obtained.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.5 Ascott shall have the right to inspect and test the Goods at any time before or within a reasonable time after delivery.
- 3.6 If following such inspection or testing Ascott considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Ascott shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Ascott shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4 **Delivery**
- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 each delivery of the Goods is accompanied by:
- (a) an un-priced delivery note which shows the date of the Order;
- (b) the Order number (if any);
- (c) the type and quantity of the Goods (including the code number of the Goods, where applicable);
- (d) special storage instructions (if any); and
- (e) if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.3 if the Supplier requires Ascott to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order or such date as is otherwise agreed between the parties;
- 4.2.2 to Ascott's premises at Unit 6, Gerard, Lichfield Road, Industrial Estate, Tamworth, Staffs, B79 7UW or such other location as is set out in the Order, or as instructed by Ascott prior to delivery ("**Delivery Location**"); and
- 4.2.3 during Ascott's normal business hours, or as instructed by Ascott.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 If the Supplier:
- 4.4.1 delivers less than 95% of the quantity of Goods ordered, Ascott may reject the Goods; or
- 4.4.2 delivers more than 105% of the quantity of Goods ordered, Ascott may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Ascott accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without Ascott's prior written consent. Where it is agreed that the Goods are to be 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 Ascott to the remedies set out in clause 6.
- 4.6 On delivery the Supplier shall provide Ascott with such export documents as are necessary and which Ascott is unable to prepare.
- 4.7 The Supplier is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Ascott shall make these licences and consents available to Ascott prior to the relevant shipment.
- 5 **Supply of Services**
- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract provide the Services to Ascott in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Ascott.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with Ascott in all matters relating to the Services, and comply with all instructions of Ascott;
- 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with these Conditions;

- 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Services Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Ascott;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 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 Ascott, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of Ascott's premises;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Ascott to the Supplier ("**Ascott Materials**") in safe custody at its own risk until returned to Ascott, and not dispose or use Ascott Materials other than in accordance with Ascott's written instructions or authorisation; and
- 5.3.10 not do or omit to do anything which may cause Ascott to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Ascott may rely or act on the Services.
- 6 **Remedies**
- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable dates as referred to in clause 4.2.1 and/or 5.2 (as the case may be), Ascott, shall without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; and
- 6.1.3 where Ascott 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.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1 then, without limiting any of its other rights or remedies, Ascott shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
- 6.2.1 to terminate the Contract with immediate effect;
- 6.2.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid); and
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make.
- 6.3 Ascott's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 7 **Ascott's Obligations**
- 7.1 Ascott shall:
- 7.1.1 provide the Supplier with reasonable access at reasonable times to Ascott's premises for the purpose of providing the Services; and
- 7.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and Ascott considers reasonably necessary for the purpose of providing the Services.
- 8 **Title and risk**
- 8.1 Title in the Goods shall pass to Ascott on payment in full of the purchase price for those Goods as set out in the Order.
- 8.2 Risk in the Goods shall pass to Ascott on completion of delivery of the Goods to Ascott.
- 9 **Price and payment**
- 9.1 The price of the Goods shall:
- 9.1.1 be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence; and
- 9.1.2 include the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Ascott.
- 9.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Ascott, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services
- 9.3 All amounts payable by Ascott under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Ascott, Ascott shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 9.4 In respect of Goods, the Supplier shall invoice Ascott for the Goods as soon as reasonably practicable after the despatch of the Goods to Ascott but Ascott shall only be liable to pay the invoice subject to clause 9.5 after completion of delivery. In respect of Services, the Supplier shall invoice Ascott on completion of the Services.
- 9.5 Ascott shall pay correctly rendered invoices by the last day of the month following the one in which the invoice is dated. A correctly rendered invoice shall contain the order number, date of order and any relevant purchase order number. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.6 If a party fails to make any payment due to the other under the Contract by the due date for payment ("**due date**"), then the defaulting party shall pay interest on the overdue amount at the rate of 2.5% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 9.7 The Supplier shall maintain complete and accurate records of the time spent (in respect of services which are charged on an hourly rate) and materials used by the Supplier in providing the Services, and the Supplier shall allow Ascott to inspect such records at all reasonable times on request.
- 10 **Ascott's property**
- 10.1 The Supplier acknowledges that all rights in the Ascott Materials are and shall remain the exclusive property of Ascott. The Supplier shall keep the Ascott Materials in safe custody at its own risk until returned to Ascott, and not dispose or use the same other than in accordance with Ascott's written instructions or authorisation.
- 10.2 In circumstances where Goods and/or Services are provided in accordance with a bespoke specification provided by Ascott, the Supplier assigns to Ascott 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.
- 10.3 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.
- 10.4 The Supplier shall, promptly at Ascott's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Ascott may from time to time require for the purpose of securing for Ascott the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Ascott in accordance with clause 10.2.
- 10.5 The Supplier warrants that the Goods and/or Deliverables (to the extent not provided in accordance with a specification provided by Ascott) shall not infringe any third party's Intellectual Property Rights.
- 11 **Insurance**
- During the term of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance (where it is providing Services), product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Ascott's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 12 **Confidential information**
- A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
- 13 **Termination**
- 13.1 Ascott may terminate the Contract in whole or in part at any time before delivery of the Goods and/or performance of the Services with immediate effect by giving the Supplier not less than 3 month's written notice, whereupon the Supplier shall discontinue all work on the Contract. Ascott shall pay the Supplier fair and reasonable compensation for work-in-progress in respect of the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 Ascott may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:
- 13.2.1 the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.2.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 13.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 13.2.4 (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- 13.2.5 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 13.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- 13.2.7 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- 13.2.8 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- 13.2.9 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 inclusive;
- 13.2.10 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 13.2.11 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 14 **Force majeure**
Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, Ascott may terminate this Contract immediately by giving written notice to the Supplier.
- 15 **General**
- 15.1 **Assignment and subcontracting.**
15.1.1 Either party may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract..
- 15.2 **Notices.**
15.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
15.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
15.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 15.3 **Severance.**
15.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
15.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by a director of both parties (which shall include electronic signature by email).
- 15.7 **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.