



AVALLE

AVALLE LLP CONDITIONS OF PURCHASE

1 DEFINITIONS

1.1 In these conditions of purchase the following words will (unless the context otherwise requires) have the following meanings:

"Conditions" means the conditions set out below and in the Order. Where any terms below conflict with any terms in the Order the terms in the Order will take precedence.

"Contract" means any contract between the Supplier and Avalle for the purchase of any Works.

"Goods" means any goods or materials to be purchased by Avalle from the Supplier pursuant to an Order.

"Order" means any order relating to any Works issued by Avalle to the Supplier.

"Services" means any works and/or services to be performed by the Supplier for Avalle pursuant to an Order.

"Supplier" means the company, firm, body, or person to whom the Order is addressed. "Works" means Goods and/or Services (as appropriate).

1.2 The words "agreed in writing" will mean agreed in writing and signed by a director of Avalle.

1.3 The headings are for reference only and will not affect the interpretation of these Conditions.

1.4 Avalle reserves the right at any time without liability to correct any clerical, typographical or other similar errors or omissions made by its employees.

2 APPLICATION OF TERMS

2.1 (Subject to clause 2.4) these Conditions are the only conditions on which Avalle is prepared to deal with the Supplier and they will govern the Contract and all Avalle's future purchases from the Supplier.

2.2 No terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in any quotation or other similar document delivered or sent by the Supplier to Avalle will form part of the Contract.

2.3 Any reference in the Order to the Supplier's quotation or other similar document will not be deemed to imply that any terms, conditions or warranties endorsed upon, delivered with, referred to or stipulated or contained in such quotation or other similar document will have effect to the exclusion or amendment of these Conditions.

2.4 No variation to, waiver of or addition to these Conditions will have any effect unless expressly agreed in writing and contains a specific reference to these Conditions.

2.5 The Supplier will be deemed to have accepted these Conditions if the Supplier supplies any Works to Avalle or otherwise acts in accordance with the Order.



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3 DELIVERY

3.1 (Subject to clause 3.3) the Supplier will deliver the Works to Avalle and the date for the delivery of the Works will be specified in the Order or (if no such date is specified) delivery of the Works will take place within 28 days of the date of issue of the Order and time will be of the essence of the Contract. Unless otherwise agreed in writing Avalle is not obliged to accept the delivery of any Works otherwise than on the due delivery date. The Supplier will promptly notify Avalle of any anticipated delay in the delivery of the Works.

3.2 (Subject to clause 3.3) the Supplier will deliver the Works to the address specified in the Order or to such other place of delivery as is notified by Avalle to the Supplier in writing. The Supplier will arrange for the carriage of the Works to the place of delivery and delivery to any carrier will not be deemed to be delivery to Avalle (for the avoidance of doubt, unless otherwise agreed, any such carrier will be deemed to be an agent of the Supplier and not of Avalle). Delivery will be completed when the Works have been unloaded at the place of delivery and signed for by a duly authorised officer of Avalle.

3.3 (Where agreed between the parties in writing) Avalle will collect the Works from the address specified in the Order or from such other place of collection as may be otherwise agreed. The Supplier will ensure that the Works are available for collection from the date specified in the Order or (if no such date is specified) within 28 days of the date of issue of the Order and time will be of the essence of the Contract. The Supplier will notify Avalle when the Works are ready for collection and Avalle will use its reasonable endeavours to collect the Works within the times agreed or if no time is agreed collection will take place within a reasonable time and the time for the collection of the Works by Avalle will not be of the essence of the Contract. Collection will be completed when the Works have been loaded onto Avalle's nominated transport at the place of collection and signed for by a duly authorised officer or nominated representative of Avalle.

3.4 Unless otherwise agreed in writing deliveries (under clause 3.2) will only be made during Avalle's normal business hours and collections (under clause 3.3) will only be made during the Supplier's normal business hours.

3.5 The Supplier will ensure that each delivery note or collection note (as appropriate) shows the Order number, date and number of the Order and any relevant delivery schedule, consignment quantity, contents and (in the case of part delivery or collection (as appropriate)) the outstanding balance remaining to be delivered or collected (as appropriate).

3.6 The packaging of the Works must be in accordance with normal industry standards and (save where otherwise agreed) must bear the description and quantity of the contents and Avalle's Order number. All palletised Works must have protective wrap round the pallet covered with shrink wrap.

3.7 If the Supplier does not comply with the provisions of the clauses 3.5 or 3.6 Avalle may reject the Works.

3.8 If the Goods have a life expectancy of a fixed duration or if there are any circumstances known to the Supplier which would adversely affect the life span of the Goods the Supplier will promptly advise Avalle in writing of all such necessary and appropriate information relating to the Goods and this will form part of the



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description of the Goods.

3.9 The Supplier will ensure (at its own cost) that all Works are properly packed in a manner suitable for transit and storage. The Supplier will also ensure that individual packages are packed to comply with reasonable safety standards and to enable handling by mechanical means.

3.10 The Supplier will not make and Avalle will not accept any charge whatsoever for any packing, packaging or containers of any description supplied with the Works.

3.11 If (for any reason) Avalle is unable to take delivery or make collection (as appropriate) of the Goods and/or is unable to take delivery of the performance of the Services on the due delivery or collection (as appropriate) date the Supplier will store or arrange for the storage of the Goods for a reasonable time (at Avalle's reasonable expense), will arrange for the re-performance of the Services and will safeguard the Works and take all reasonable steps to prevent their deterioration until actual delivery or collection (as appropriate).

3.12 Unless otherwise agreed in writing Avalle will not be responsible for any Works provided in excess of the Order and any excess will be and will remain at the Supplier's risk.

3.13 Avalle will not be responsible for any failure to give notice to any carrier of any loss, damage, delay, detention or non-delivery.

3.14 The Supplier agrees to supply to Avalle (on request) any and all necessary declarations and documents relating to the Works.

4 RISK AND OWNERSHIP

4.1 The Goods will remain at the risk of the Supplier until delivery is completed in accordance with clause 3.2 or until collection is completed in accordance with clause 3.3 (as appropriate).

4.2 Notwithstanding clause 4.1 ownership in the Goods will pass to Avalle on payment or when delivery is completed in accordance with clause 3.2 or when collection is completed in accordance with clause 3.3 (as appropriate) (whichever is the earlier) (without prejudice to any right of rejection or other right which may accrue or have accrued to Avalle).

5 PRICE AND PAYMENT

5.1 The price for the Works will be stated in the Order and (unless otherwise agreed in writing) will be fixed for the duration of the Contract and will be exclusive of value added tax but inclusive of all other charges (including but not limited to charges for packaging, delivery and insurance requested by Avalle).

5.2 The Supplier may invoice Avalle for the Works at any time after the delivery or collection (as appropriate) of the Works. Invoices must show Avalle's order number, delivery or collection (as appropriate) number, the date and number of any relevant delivery schedule and such other sufficiently detailed description as may be necessary to enable the Works to be identified.

5.3 Where the invoice includes any charge for value added tax the invoice must be in the form as laid down from time to time by HM Customs and Excise.

5.4 Avalle will use reasonable endeavours to pay the price for the Works within 30



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days of the end of the month in which Avalle receives a valid invoice but time for payment will not be of the essence of the Contract.

5.5 All payments will be made by Avalle without prejudice to Avalle's rights should the Works prove unsatisfactory.

5.6 Any failure by the Supplier to comply with the instructions set out in the Contract may delay payment.

5.7 Avalle may (but will not be obliged to) at any time or times without notice to the Supplier set off any liability of Avalle to Supplier against any liability of Supplier to Avalle (in either case howsoever arising and whether such liability is present, future, liquidated or unliquidated). Avalle and Supplier agree that in exercising this right to set off, Avalle shall be doing no more than discharging its own liability by the application of its own asset. Any exercise by Avalle of its rights under these Conditions will be without prejudice to any other rights or remedies available to Avalle under these Conditions or otherwise.

6 CHANGES IN SPECIFICATION ETC

Avalle may at any time make written changes to the Contract including but not limited to changes in the designs, compositions, specifications, method of shipment, quantities, packaging or time or place of delivery or collection (as appropriate). If any such change results in any increase or decrease in the cost of, or the time required for, the performance of the Contract an equitable adjustment will be made to the price, delivery or collection (as appropriate) date or both unless such changes are envisaged by the parties at the time the Contract was entered into. Any claim or adjustment by the Supplier must be approved by Avalle in writing before the Supplier proceeds with such a change. For the avoidance of doubt nothing in this clause 6 will relieve the Supplier from the obligation of proceeding without delay in the performance of the Contract.

7 QUALITY

7.1 Avalle is relying on the Supplier's skill and judgment in relation to the Works and the Supplier undertakes, warrants and represents to Avalle and agrees as a condition of this Contract that the Works and any and all labelling and packaging will:

- (a) conform in all respects to the quantity, quality, design, functionality, performance criteria, description, specification, stipulation or standard stated or referred to in the Order, any literature (whether of a promotional character or otherwise) issued or representations made in connection with the Works;
- (b) be capable of any standard of performance specified in the Order;
- (c) be of first-class materials and workmanship and be executed with reasonable skill and care by properly qualified and experienced persons;
- (d) be equal in all respects to any sample, pattern, drawings, demonstration or specification provided or given by either party (which has been accepted in writing by Avalle);
- (e) be fit and sufficient for any purpose for which they are commonly supplied or used and for any purpose indicated (either expressly or by implication) in the Order or as may be made known by Avalle to the Supplier prior to the Contract being entered



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into;

(f) be so designed, tested, constructed and manufactured as to be safe and without risk to health or property when properly used;

(g) include all necessary information about the use of the Works and all instructions and warnings relating to the Works as may be necessary for the safe use of the Works and for Avalle to comply with its statutory obligations under the Health and Safety at Work Act 1974;

(h) be packaged in accordance with the Contract;

(i) be of satisfactory quality and be free from defects (whether latent or patent) in design, materials or workmanship;

(j) comply with all relevant laws, regulations, orders, rules and codes of practice that may be in force in the United Kingdom and such other territories which Avalle has informed the Supplier that the Works will be supplied from time to time; and

(k) be freely available for resale within the European Economic Area without infringing the rights of any third party.

7.2 The Supplier will promptly provide all necessary information in connection with the design, resale and use of the Works (whether or not such information is requested by Avalle).

7.3 The Supplier consents to Avalle transferring any guarantee or similar rights given by the Supplier to Avalle in relation to the Works supplied to any third party to whom Avalle sells, hires or otherwise disposes of such Works with the intent that such guarantee or similar rights may be enforced against the Supplier not only by Avalle but also by any third party claiming through Avalle.

7.4 Avalle's rights under these Conditions are in addition to the statutory conditions implied in favour of a purchaser by the Sale of Goods Act 1979 (as amended).

8 INDEMNITY AND INSURANCE

8.1 The Supplier will keep Avalle indemnified in full against any and all loss (including direct, indirect, or economic loss (including but not limited to loss of profits)), liability, damage, injury, claim, action, demand, expense or proceeding awarded against, suffered, incurred or paid by Avalle as a result of or in connection with:

(a) any breach by the Supplier of any term of the Contract;

(b) any infringement or alleged infringement of any third party intellectual property rights caused by the resale, supply or use of the Works in the European Economic Area;

(c) any contract entered into by Avalle the performance of which has been delayed or rendered impossible by the Supplier's breach of its obligations under the Contract;

(d) (in the event of delays, defaults or non-deliveries arising other than as a result of Avalle's negligence) any increase in the cost of any item which would not have been incurred but for such delay, default or non-delivery; and/or

(e) any claim made against Avalle by any customer or third party to the extent that such was caused by, relates to or arises from the Works.

8.2 The Supplier will at all times during the continuance of the Order and thereafter carry adequate insurances in an amount not less than £2 million to cover product liability and will make the policy and premium receipts available for inspection by



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Avalle at any reasonable time.

8.3 The provisions of this clause 8 shall survive the termination or expiry of this Contract (howsoever arising).

9 CONFIDENTIALITY

9.1 The Supplier will keep in strict confidence all technical and commercial know-how, specifications, processes or initiatives which are of a confidential nature and which have been disclosed to the Supplier by Avalle or its agents and any other confidential information concerning Avalle's business or its products which the Supplier may obtain as a result of the Contract ("Confidential Information").

9.2 The Supplier will use the Confidential Information solely for the purposes of complying with its obligations under the Contract.

9.3 The Supplier will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Supplier's obligations to Avalle under the Contract and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Supplier.

9.4 The Supplier will not (except to the extent necessary to fulfil its obligations under the Contract) without the prior written consent of Avalle advertise or publish the fact that the Supplier has contracted to supply the Works to Avalle.

9.5 The Supplier will notify Avalle of any breaches of this clause 9 and will co-operate with any reasonable steps which Avalle may decide to take in relation to such breach.

10 LICENCES

If the performance of the Order requires Avalle to have any permit or licence from any government or other authority at home or overseas, the Order will be conditional on such permit or licence being available at the required time.

11 WEEE REGULATIONS AND ENVIRONMENTAL COMPLIANCE

The Supplier shall accept all "producer responsibilities" for the goods, as defined by any separate or supplemental implementation of the European Parliament and Council Directive on Waste Electrical and Electronic Equipment. All goods must be appropriately marked and conform with such implementations.

12 TERMINATION

12.1 Avalle may at any time (in its absolute discretion) terminate the Contract in whole or in part by giving the Supplier written notice. On receipt of such notice the Supplier will discontinue all work (or as the case may be the relevant part) on the Contract. Avalle will (on terminating the Contract in accordance with the provisions of this clause 12.1) pay to the Supplier a fair and reasonable sum for any work in progress which the Supplier will be unable to reuse for any other customer but Avalle will not be liable to the Supplier for any economic loss and except as set out in this clause will have no further liability to the Supplier in relation to such termination.



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12.2 Avalle may terminate the Contract immediately if:

- (a) the Supplier fails to provide the Works on the due date;
- (b) the Works supplied do not conform in every respect with the Contract;
- (c) the Supplier is in breach of any term of the Contract and (where remediable) has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (d) there is a material change in the ownership or control of the Supplier; or
- (e) the Supplier is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs in any jurisdiction.

12.3 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

12.4 Any Conditions which expressly or impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

13 FORCE MAJEURE

Avalle will not be liable to the Supplier or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond Avalle's reasonable control. If Avalle is unable to perform its obligations under these Conditions in accordance with this clause 13 it will promptly notify the Supplier of the nature and extent of the circumstances in question.

14 GENERAL

14.1 The Supplier will not without the prior written consent of Avalle assign or transfer the Contract or any part of it to any other person.

14.2 The Supplier will not without the written consent of Avalle subcontract the Order or any part of it other than for materials, minor details or for the part of the Goods of which the manufacturers are named in the Order or the specification. Any such consent by Avalle will not relieve the Supplier of any of its obligations under the Contract.

14.3 Each right or remedy of Avalle under these Conditions is without prejudice to any other right or remedy which Avalle may have under these Conditions or otherwise.

14.4 Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission. Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.

14.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall



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continue in full force and effect.

14.6 Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

14.7 Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.8 (Except as provided in clause 7.3) a person who is not party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 14.8 does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

14.9 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.