

## 1. DEFINITIONS

The following words and phrases used within these Terms and Conditions are intended to be construed accordingly:

**GDS** means – GDS Technologies Ltd

**The Buyer** – means any person, firm or company for whom or on whose behalf GDS undertakes any business.

**The Goods** – means any articles of any type or composition, or services supplied by GDS to The Buyer.

**The Contract** – means the agreement made between the buyer and GDS for the goods or services supplied by GDS.

**The Contract Price** – means the price payable by the buyer to GDS for The Goods supplied by GDS.

**Finished Product Price** – means standard list price

**The Dispatch Point** – means the registered address of GDS

## 2. DECLARATIONS

- (1) All orders are accepted subject to these conditions and shall be incorporated into every contract made between GDS and The Buyer, and shall not be subject to variation by The Buyer without the written agreement of GDS.
- (2) These Terms and Conditions shall override any terms and conditions stipulated, incorporated in any customer order form or document, referred to or implied by The Buyer, whether in The Contract or in any negotiations, and all guarantees, warranties or conditions (including any conditions as to quality or fitness for any purpose) whether express or implied by statute, common law or otherwise are excluded and hereby negated in so far as it is reasonable to do so.
- (3) GDS Technologies Ltd, unless by special arrangement in writing do not carry public or product liability insurance for direct sales of products to the United States of America or any offshore research and drilling platforms. The Buyer shall totally and completely indemnify GDS against all risks when supplying GDS products to these markets.
- (4) The prices, specifications, delivery times or any other information concerning the products contained in any quotation given by GDS to The Buyer are commercial estimates only and are not binding on GDS and may be modified by GDS following fair notice to The Buyer.

## 3. ACCEPTANCE

The Buyer shall inspect The Goods immediately upon collection from The Dispatch Point or upon taking delivery and shall notify GDS within fourteen days in writing of any matter or thing by reason whereof it alleges The Goods are not in accordance with The Contract. If The Buyer shall fail to give such notice The Goods shall be deemed to be in accordance with The Contract in all respects and The Buyer shall be bound to accept them and to pay for the same.

## 4. INSURANCE AND RISK

- (1) The Goods supplied to The Buyer by GDS shall be at the risk of The Buyer either:
  - (a) Immediately upon delivery to The Buyer or upon being received into custody on The Buyer's behalf whichever is the sooner, or;
  - (b) Collection from The Dispatch Point by The Buyer, whichever shall be the sooner and The Buyer shall in either case thereafter keep GDS indemnified in respect of any loss or damage to The Goods howsoever arising or caused.
- (2) When The Contract requires that GDS deliver The Goods to The Buyer, GDS shall insure The Goods during transit until arrival at The Buyer's premises or other agreed destination or port, upon receipt by The Buyer, or The Buyer's agent, GDS shall accept no further responsibility for any damage incurred thereafter.

## 5. INDEMNITY

The Buyer shall indemnify GDS against all damages, penalties, costs and expenses to which GDS may become liable if any work done in accordance with The Buyer's specification involves an infringement of a registered design, patent, or similar right.

## 6. CONFIRMATION OF ORDER

- (1) Dispatch of all orders is subject to compliance with the agreed trading terms and the status of the associated account
- (2) GDS may at their absolute discretion decline to accept any order
- (3) The Contract will not become valid until The Buyer's order is confirmed by GDS, either by written acknowledgment of order or by pro forma invoice.
- (4) All ordered products will be invoiced at current prices inclusive of any agreed discounts or terms (current prices will apply at order receipt date unless otherwise agreed in writing.)
- (5) GDS do not carry out customer order price checks at the receipt stage, our acknowledgment does not confirm any price other than as stated in section 6 (4) or as provided in a written quotation.

## 7. PRICE AND PAYMENT

- (1) GDS may at its sole discretion (and subject to receipt of such satisfactory references as GDS may require) designate The Buyer as an approved account holder and in any such case unless GDS shall otherwise direct payment of the price for the products shall be made in full by The Buyer to GDS no later than 30 days (unless otherwise agreed in writing) from date of invoice or delivery of the products to The Buyer whichever is earlier or in the event that The Buyer's shipping instructions are not received as required by GDS or shipment is held on The Buyers request of notification by GDS that the products are ready for delivery.

- (2) GDS expressly reserves the right in its sole discretion to refuse to designate The Buyer as an approved account to withdraw such designation at any time without notice and to require payment in accordance with clause (3) notwithstanding such designation including with respect to future deliveries of the products where delivery is by installment.
- (3) GDS may at its sole discretion offer approved account holders the status of designated buyer which offers agreed discounts on Finished Product Prices including limited life parts (replacement parts), as itemised in the Finished Product Price list. Parts as listed in the parts price list and utilised under repair or purchased separately by The Buyer will not carry discount. Failure under section 7 will allow GDS to reduce or withdraw any agreed discount.
- (4) Unless GDS shall allow The Buyer credit payment terms as an approved account in accordance with clause (1) payment of the price for the products shall be made in full by The Buyer to GDS within 30 working days of the receipt of GDS's pro-forma invoice accepting The Buyer's order and GDS obligations under The Contract are wholly conditional upon such payment being made. Preparation of the order will not commence until payment has been received in full by GDS – see Section 9(4).
- (5) All Finished Product Prices and parts prices are available directly from GDS Technologies Ltd registered office.
- (6) The Contract Price shall be strictly net unless otherwise quoted. Duties, taxes or tariffs imposed by national governments will be liable to and the responsibility of the customer.
- (7) All payments made to GDS (the payee) should be organised in GBP £ sterling; the exchange rate must be transacted by the customer (the payer) to achieve the correct value in GBP on receipt at the payee's bank.

Subject to prior written agreement, the payment may be accepted in other currencies, on such occasions the exchange rate must reflect the rate quoted by Bloomberg.com and payments must be made within one week of the agreed payment terms, failing which GDS will expect payment in GBP £ sterling.

All bank transfer payments made to the payee must be confirmed by remittance advice to GDS accounts, clearly identifying the exchange rate and date of exchange of any transfers agreed in alternative currencies.

- (8) Without prejudice to GDS other rights in the event that any payment from The Buyer is overdue, GDS reserves the right to disallow any discount available to The Buyer thereon and to charge interest on any overdue payment to be added to the amount outstanding at an annual rate of four per cent (4%) above base lending rate of Barclays Bank Plc from time to time accruing on a day to day basis, until GDS has received payment in full.
- (9) The Buyer shall neither withhold payment of any amount due under The Contract in respect of any disputed claim for damage to the products or any other alleged breach of contract by GDS, nor shall it be entitled to exercise a right of set-off.
- (10) If any payment from The Buyer to GDS under The Contract is overdue, GDS may suspend further deliveries under the Contract or any other contract with The Buyer and if such payment shall remain in arrears for more than 14 days GDS may cancel this contract or any other contract with The Buyer in whole or in part without prejudice to its other rights and without incurring any liability to The Buyer.
- (11) Please note that individual transactions having a total order value below £50.00 will incur a £15.00 administration charge.
- (12) In order to prevent fraud, credit payment or cleared overpayments will only be paid strictly to the original customer account and in the country of origin. Large overpayments may be held by our bank and referred to the National Fraud Authority.

## 8. CONSTRUCTION

The conditions herein defined and any contract arising shall in all respects be subject to and construed in accordance with English Law.

## 9. CANCELLATION

- (1) No order accepted by the Company may be cancelled or postponed by The Buyer and therefore no returns will be accepted nor refunds made without express prior agreement in writing by GDS.
- (2) No order accepted by the Company for custom manufactured products, non OEM products or otherwise any item(s) not listed in the GDS Products Price List G082 may be cancelled or postponed by The Buyer under any circumstances and therefore no refunds will be made by the Company in lieu of the same.
- (3) A request for cancellation or postponement of any order for products listed in the GDS Products Price List G082 must be in writing and agreed in writing by GDS, if cancellation occurs before dispatch of The Goods, a charge of 40% will apply. If cancellation is requested after dispatch a cancellation charge of 60% will apply. A minimum charge of £45 per order will apply to all cancellations. No refunds will be made on electrochemical sensors. Subject to return of The Goods to GDS in as-new condition, a credit note will be issued. GDS shall reserve the right to amend the cancellation cost as appropriate where goods are not returned as new. Safe return of The Goods to GDS is the sole responsibility of The Buyer. GDS may at their absolute discretion decline to accept any request for cancellation.

- (4) A request to cancel a scheduled field service appointment must be advised in writing to the Field Service Manager.

**Notice Period Charges**

6 working days or more – no fee  
2–5 working days or more – 25% of service/commissioning quotation  
1 day or less – 50% of service/commissioning quotation

- (5) Where payment for an order is by pro forma invoice, if after 30 working days from the date of issue payment has not been received, the order will be cancelled by GDS. The minimum charge of £45 will be invoiced to The Buyer to cover administration costs.

**10. SPECIFICATION**

Specifications – performance, technical data including any reference as to colour, drawings and similar documents submitted by GDS must be regarded as approximate representations only and are not binding in detail and may be modified at any time without prior notice, whilst every effort will be made to provide specifications as accurate as possible, deviations and changes in specification shall not form the basis of a claim against GDS.

**11. DELIVERY TIME**

Any time or date specified by GDS for delivery of goods or services is deemed to be an estimate only and GDS shall not be liable to make good any damage or loss whether arising directly or indirectly from delay in delivery.

**12. TRANSFER OF PROPERTY AND RETENTION OF TITLE**

Notwithstanding delivery to The Buyer and notwithstanding incorporation into The Goods of materials supplied by The Buyer, the property in The Goods supplied by GDS shall remain the sole and absolute property of GDS as legal and equitable owner, until such time as The Buyer shall have paid to GDS The Contract Price. The source code and copyright of any software, patent, model right, trade mark, design right, registered trade name and copyright shall remain the property of GDS.

**13. LIEN**

GDS has a lien and a right to hold (in any chosen place) goods and any tools or other materials supplied by The Buyer for all sums due on any account whatsoever by The Buyer to GDS, who may exercise such lien by disposing of The Goods on any such terms as GDS may think fit after giving 28 days notice to The Buyer. The expenses of maintaining and exercising any lien shall be a debt forthwith due to GDS from The Buyer to GDS.

**14. TERMINATION OF CONTRACT/AGREEMENT**

GDS shall be entitled to terminate The Contract/agreement by notice in writing to The Buyer. If The Buyer shall make default in or commit any breach of any of his obligations to GDS, or if any distress or execution shall be levied upon The Buyer, its property or assets, or if The Buyer shall make or offer to make any arrangements or composition with creditors, or if any petition or receiving order in bankruptcy shall be presented or made against The Buyer, or if The Buyer shall be a company and any resolution or petition to wind up such company's business shall be passed or presented, or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed, or the company undergo reconstruction, amalgamation or take-over.

**15. RIGHT TO SUB-CONTRACT**

GDS shall be entitled to sub-contract the whole or any part thereof of The Contract, whether for the supply of goods or services.

**16. DIVISIBILITY CLAUSE**

This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other installment.

**17. HIMALAYA CLAUSE**

No servant or agent or sub-contractor of GDS performing the whole or part of The Contract shall in any circumstances whatsoever be under any liability whatsoever to The Buyer or The Buyers principle for any loss, damage or delay of any kind, arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment, and every exemption limitation and condition hereunder is applicable to the servant, agent, or sub-contractor and shall be available to and shall extend to protect every such servant, agent or sub-contractor as aforesaid, and for the purposes of this condition GDS shall be deemed to be acting as an agent on behalf of and for the benefit of all persons who are or may be GDS servant, agent or sub-contractor, and all such persons shall to this extent be or be deemed to be parties to The Contract.

**18. FORCE MAJEURE**

If The Contract shall become impossible of performance or otherwise frustrated by reason of war, invasion, act of terrorism, hostilities (whether war be declared or not), civil war, rebellion, revolution or civil strife, consequent upon any of the said events, GDS shall be relieved of all liabilities incurred under The Contract wherever and to the extent to which the fulfillment of such obligations is prevented, frustrated or impeded as a consequence of any such event, or by any statutes, rules, regulations, orders or requisitions issued by any Government department, Council or other duly constituted authority, or from strikes, lockouts, breakdown of plant or any other causes (whether or not of a like nature) beyond the control of GDS.

**19. CONFLICTING CONDITIONS**

In the event of any stipulation contained in these terms and conditions coming into conflict with any other stipulation herein contained, GDS shall be entitled to the benefit to that stipulation which is most favorable to GDS, any rule of law to the contrary notwithstanding.

**20. WARRANTY**

- (1) Claims made under warranty should be supported by documentary evidence that commissioning of the equipment has been completed and a commissioning certificate issued, either by GDS or any company deemed qualified to undertake the work. Failure to provide a Commissioning Certificate may invalidate the warranty claim.
- (2) Carriage charges to and from GDS for repairs under a warranty claim will be at The Buyer's expense until the warranty claim is proven at which point a carriage charge credit will be issued. Site visits are not covered under warranty, any on site work involving GDS personnel will only be undertaken at the written request and expense of The Buyer, charged at the current GDS day service rate, including any delays beyond GDS control and including travel, accommodation and living costs. For fixed systems (not portable or transportable) located in the United Kingdom, GDS at its sole option may offer on-site warranty providing that:
  - (a) The Goods supplied by GDS, have been commissioned on site by qualified personnel and that The Buyer is in receipt of a completed commissioning report
  - (b) An annual maintenance agreement has been offered and accepted.
  - (c) The Buyer has adhered to the payment provisions contained in section 7 hereof. In all cases The Goods warranty start date remains from the date of delivery.
- (3) Overseas Equipment Only – Where "time is of the essence" The Buyer will have the option to purchase replacement equipment, returning the defective items to GDS for assessment as defined in section 20, following which a credit note will be issued on establishing that the defect to the original equipment satisfies the conditions of the warranty. Where new equipment has been purchased, GDS reserve the right to make reasonable adjustment to the value of the credit note accounting for wear and tear and life expectancy of some components that may be incorporated in the returned product.
- (4) The repair or replacement of defective products during the warranty period in accordance with section 20 shall not as regards such products extend the period of warranty therein provided.
- (5) The provisions of section 20 do not extend to any products which have been subjected to misuse, accident or improper installation, maintenance, application or operation nor do they extend to products which have been repaired, modified, fitted with unapproved (not GDS supplied) parts or altered otherwise than by the employees of GDS unless previously authorised in writing by GDS.
- (6) In no circumstances shall GDS liability to The Buyer for any breach of the warranty exceed the price paid for the products with respect to which any claim is made

**21. LIMITATION OF LIABILITY**

With the exception of the terms specified in section 20, GDS shall accept no liability whatsoever to The Buyer, whether in contract, tort or otherwise for any indirect, special, consequential or incidental loss or damage of any kind suffered or incurred by The Buyer howsoever caused or arising, whether from breach or non-performance of any of its obligations under The Contract or from the supply, installation, performance, operation or use of the products, except liability for death or personal injury arising from GDS proven negligence.

**22. VARIATION**

No variation by The Buyer of any order can in any circumstances whatsoever be accepted without the consent in writing of an authorised representative of GDS.

**23. BUYER'S RESPONSIBILITIES**

The Buyer acknowledges that it is responsible for the selection of The Goods for their intended application, and for giving instructions to the seller as to the configuration of The Goods, and that the seller makes no representation and gives no warranty as to the fitness or suitability of The Goods (as configured in accordance with The Buyer's instructions) for any particular application in use.

This document is not contractual and the equipment specification may be modified at any time without prior notice.

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