

TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following phrases shall have the following meanings:

"Analytix"	Analytix Limited, a company registered in England with company number 3278252, whose registered office is at Unit 9 Boldon Court, Burford Way, Boldon Business Park, Boldon, Tyne and Wear, NE35 9PY;
"Buyer"	the person, firm or company who purchases Goods and/or Services from Analytix;
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with Clause 17.7 ;
"Contract"	the contract for the purchase and sale of the Goods and/or Services subject to these Conditions
"Force Majeure Event"	any event or circumstance preventing Analytix from performing any or all of its obligations pursuant to these Conditions which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of Analytix;
"Goods"	the goods (or any part of them) which Analytix is to supply set out in the Order;
"Intellectual Property Rights"	all patents, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, rights in computer software, rights in confidential information, and all other intellectual property rights, in each case whether registered or not;
"Order"	the Buyer's order for the supply of Goods and/or Services as set out in the Buyer's purchase order or the Buyer's acceptance of Analytix's quotation (as the case may be);
"Services"	the repair and maintenance services which Analytix is to perform, as set out in Analytix's quotation or as otherwise notified to the Buyer by Analytix;
"Service Specification"	the specification for the Services set out in Analytix's quotation or as otherwise notified to the Buyer by Analytix; and
"Third Party Licensor"	the manufacturer and licensor of the branded

Goods as set out in the Order.

1.2 In addition, in these Conditions:

- 1.2.1 a reference to a statute or statutory provision includes a reference any amendment, extension or re-enactment of it from time to time in force and includes any subordinate legislation made under it;
- 1.2.2 a reference to a person is a reference to any natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 references to Clauses are references to clauses of these Conditions; and
- 1.2.4 headings are for convenience only and shall not affect the interpretation of these Conditions.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Contract and prevail over any inconsistent terms and conditions contained, or referred to, in the Order, specification or any other document supplied by the Buyer or implied by law, trade, custom, practice or course of dealing.
- 2.2 A quotation by Analytix is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Order by Analytix.
- 2.3 Each Order constitutes a separate offer by the Buyer to purchase the Goods and/or Services subject to these Conditions which Analytix shall be free to accept or decline in its absolute discretion. No Order submitted by the Buyer by whatever means is accepted by Analytix until Analytix confirms its written acceptance on Analytix's acknowledgement of order form or (if earlier) Analytix delivers the Goods or supplies the Services to the Buyer.
- 2.4 The Buyer shall ensure that the terms of the Order are complete and accurate.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. BESPOKE GOODS

- 3.1 Where the Goods are manufactured or where standard goods of Analytix are altered, developed or enhanced (in each case) in accordance with information, drawings or instructions supplied by the Buyer:
 - 3.1.1 the Buyer shall indemnify Analytix against all liability incurred by Analytix as a result of:
 - (a) the Goods infringing any Intellectual Property Rights;
 - (b) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions;

- 3.1.2 all work (including design drawings) and any idea, invention or improvement made by or on behalf of Analytix pursuant to the Buyer's commission and all Intellectual Property Rights therein shall belong to Analytix; and
- 3.1.3 Analytix shall not be liable to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer if any Goods infringe any third party's Intellectual Property Rights.

4. DESCRIPTION

All descriptions, samples and illustrations issued by Analytix are intended merely to present a general idea of the Goods and/or Services described and do not form part of the Contract.

5. CANCELLATION

- 5.1 No order may be cancelled by the Buyer except with Analytix's written agreement and on terms that:
 - 5.1.1 the Buyer shall indemnify Analytix against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Analytix as a result of cancellation; and
 - 5.1.2 the Buyer shall pay a restocking charge which shall be a sum equivalent to 20% of the price payable for the Goods ordered.

6. PRICE

- 6.1 The price of the Goods and/or Services is Analytix's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Analytix's published price list current at the date of delivery.
- 6.2 Analytix reserves the right at any time before delivery or performance to amend the price of the Goods and/or Services to take into account any variation in cost to Analytix.
- 6.3 The price quoted by Analytix for the Goods and/or Services is inclusive of the cost of delivery to the Buyer (including transport, packaging, insurance and any taxes, duties or surcharges) and of any applicable VAT (unless stated otherwise by Analytix in its quotation).
- 6.4 In the event that the Buyer is situated in mainland Europe, 50% of the total price payable under the Contract must be paid at point of ordering and the balance of 50% must be received before any Goods are shipped. Analytix will notify the Buyer of the shipping date of the Goods, and the balance of 50% must be paid at least 1 week before the shipping date..

7. PAYMENT

- 7.1 **Subject to Clause 6.4**, payment of the price for the Goods and/or Services shall be due 30 days after the date of Analytix's invoice via BACS.
- 7.2 For the purposes of these Conditions, payment is received when Analytix receives it in cleared funds.

- 7.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay Analytix on the due date, Analytix may:
- 7.3.1 charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 whether before or after any judgment and the Buyer shall pay the interest immediately on demand, plus an administration charge of £15.00 per reminder; and/or
 - 7.3.2 suspend all services or future deliveries to the Buyer until payment of all sums due to Analytix (including any interest accrued or accruing) from the Buyer on any account with Analytix has been received in full.
- 7.4 Analytix may, without prejudice to any other rights or remedies it may have, set off any liability of the Buyer against any liability of Analytix to the Buyer.
- 7.5 The Buyer shall pay all amounts due under the Contract in full without any set off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 7.6 A £15 handling fee shall be charged for processing any cheques.

8. DELIVERY

- 8.1 Any dates for delivery of the Goods and/or performance of the Services are approximate only and time of delivery and/or performance is not of the essence.
- 8.2 Analytix shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing.
- 8.3 The time of delivery shall be on completion of the unloading of the Goods at the delivery location referred in in **Clause 8.2**.
- 8.4 No claim for damage or shortages will be considered unless Analytix is given written notice within 24 hours of delivery. If no such notice is received by Analytix, the Buyer is deemed to have accepted the Goods. Any claim for damages, shortages or non-delivery must also be notified to the carrier by the Buyer in the manner and within the appropriate time limits prescribed by the carrier's terms and conditions.
- 8.5 In the event of failure by the Buyer to give the appropriate notices as specified by **Clause 8.4** any claim by the Buyer is deemed to have been waived.
- 8.6 Where the Goods are to be delivered or Services are to be performed in instalments, each delivery or performance shall be a separate contract and failure by Analytix to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 8.7 If the Buyer fails to take delivery of the Goods or Analytix is unable to deliver the Goods on time because the Buyer has not provided adequate instructions, documents, licences or authorisations, then the Goods are deemed delivered and Analytix may:
- 8.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

8.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

8.8 If Analytix fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

9. RISK AND PROPERTY

9.1 The Goods remain the property of Analytix until:

9.1.1 their full price has been received by Analytix; and

9.1.2 all other sums which are or which become due from the Buyer on any account with Analytix have been received by Analytix.

9.2 The Goods are at the risk of the Buyer from the time of delivery.

9.3 Until ownership of the Goods passes to the Buyer, the Buyer must:

9.3.1 store them at its own cost on its premises separately from any other goods and in a manner which makes them readily identifiable as the goods of Analytix;

9.3.2 not destroy, deface or obscure any identifying mark or packaging of the Goods;

9.3.3 maintain the Goods in a satisfactory condition insured on Analytix's behalf for their full price against all risks; and

9.3.4 hold the proceeds of insurance referred to in **Clause 9.3.3** on trust for Analytix and not mix them with any other money, nor pay the proceeds into an overdrawn account.

9.4 Analytix may, so as to discharge any overdue payment under the Contract, recover or resell the Goods.

9.5 In order to verify the Buyer's compliance with its obligations under **Clause 9.3** and to exercise its rights under **Clause 9.4**, Analytix shall be entitled by its employees or agents without notice to enter the Buyer's premises or such other premises where the Goods are stored.

9.6 If the Goods have been sold by the Buyer before payment for them has been made, that part of the proceeds of sale which represents or is equivalent to the amount owed by the Buyer to Analytix shall be held by the Buyer upon trust for Analytix and shall be paid into a separate bank account designated for that purpose. Analytix shall be entitled to trace the proceeds of any such sale(s) into such bank account (or wherever such proceeds may in fact be located) and the Buyer authorises Analytix to make enquiries of its bankers (or otherwise as appropriate) relating to such proceeds.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Buyer acknowledges that:

- 10.1.1 the Intellectual Property Rights in or arising out of or in connection with the Goods are the Third Party Licensors' property;
 - 10.1.2 nothing in this Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights; and
 - 10.1.3 any reputation in any trade marks affixed or applied to the Goods ("Trade Marks") shall accrue to the sole benefit of the Third Party Licensors or any other owner of the Trade Marks from time to time.
- 10.2 The Buyer shall advertise, market and sell the Goods only under the Trade Marks, and not in association with any other trade mark, brand or trade name, and only as permitted in any branding manual issued by Analytix and/or the Third Party Licensor.
- 10.3 The Buyer shall not, without the prior written consent of Analytix, alter or make any addition to the labelling or packaging of the Goods displaying the Trade Marks and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods.
- 10.4 The Buyer shall not use or seek to register any trade mark or trade name (including any company name) or domain name which is identical to, confusingly similar to or incorporates any trade mark or trade name which Analytix or its Third Party Licensors owns or claims rights in anywhere in the world.

11. SUPPLY OF SERVICES

- 11.1 Analytix shall supply the Services to the Buyer in accordance with the Service Specification in all material respects.
- 11.2 Analytix reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Analytix shall notify the Buyer in any such event.
- 11.3 Analytix warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 11.4 The Buyer shall:
- 11.4.1 co-operate with Analytix in all matters relating to the Services;
 - 11.4.2 provide Analytix, its employees and agents with access to the Buyer's premises, office accommodation and other facilities as reasonably required by Analytix to provide the Services;
 - 11.4.3 provide Analytix with such information and materials as Analytix may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 11.4.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

12. LIEN

Analytix shall have a general lien (together with a power of sale) on all property owned by the Buyer in Analytix's possession in satisfaction of any payment due or owing from the Buyer.

13. WARRANTY AND DEFECTS

- 13.1 Analytix warrants to the Buyer that the Goods correspond with their specification at the time of delivery and will be free from material defects in material and workmanship for a period of 12 months from the date of delivery.
- 13.2 Analytix shall not be liable under this warranty (or any other warranty, condition or guarantee) if:
- 13.2.1 the total price for the Goods has not been paid by the due date for payment;
 - 13.2.2 any defect in the Goods arises from any information, drawing or specification supplied by the Buyer;
 - 13.2.3 any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Analytix's instructions (whether oral or written) or maintenance requirements, misuse or alteration or repair of the Goods without Analytix's prior approval; or
 - 13.2.4 the Goods have been improperly installed or connected (unless Analytix carried out the installation and connection).
- 13.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with the specification must (whether or not delivery is refused by the Buyer) be notified to Analytix within seven days from the date of delivery or performance or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.
- 13.4 In no event shall the Buyer be entitled to reject the Goods and/or Services on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.
- 13.5 If the Buyer does not notify claims in accordance with **Clause 13.3** then:
- 13.5.1 the Buyer shall not be entitled to reject the Goods and/or Services;
 - 13.5.2 Analytix shall have no liability for such defect or failure; and
 - 13.5.3 the Buyer shall be bound to pay the full price for the Goods and/or Services.
- 13.6 In the event the Buyer has a valid claim which has been notified to Analytix pursuant to **Clause 13.3**, Analytix shall be entitled to repair the Goods or carry out the Services again (or the part or element in question) free of charge but Analytix shall have no further liability to the Buyer.
- 13.7 Except as provided in this **Clause 13**, Analytix shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty as set out in **Clause 13.1**.

14. LIMITATION OF LIABILITY - THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE:

14.1 Subject to Clause 13, the following sets out the entire liability of Analytix (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Buyer in respect of any breach of these Conditions, any representation or statement made or act or omission relating to or done in connection with the Contract and in respect of any contemplated performance or lack of performance including breach of statutory duty, misrepresentation, negligence and other tortious liability.

14.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

14.3 Nothing in these Conditions excludes or limits Analytix's liability for death or personal injury caused by Analytix's negligence or for fraudulent misrepresentation or excludes or limits any other liability to the extent such liability may not be excluded or limited as a matter of law.

14.4 Subject to Clauses 14.2 and 14.3, Analytix shall not be liable to the Buyer for any:

14.4.1 loss of profit;

14.4.2 loss of production;

14.4.3 financial loss;

14.4.4 depletion of goodwill; or

14.4.5 indirect loss, damage, costs or expenses whatsoever;

in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance even if Analytix is advised in advance of the possibility of any such losses or damages. .

14.5 Subject to Clauses 14.2, 14.3 and 14.4, Analytix's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the amounts paid by the Buyer for the Goods and/or Services under this Contract.

15. TERMINATION

15.1 Analytix shall be entitled, without prejudice to any other rights or remedies available to it under or in connection with these Conditions, to terminate the Contract immediately by notice in writing to the Buyer for any of the following reasons:

15.1.1 the Buyer commits a material breach of any of its obligations under the Contract or under any other contract with the Analytix and that breach cannot be remedied;

15.1.2 the Buyer is dissolved or struck off;

- 15.1.3 any action, legal proceedings or any other procedure or step is taken by any person in any jurisdiction in relation or with a view to:
- (a) the winding up, dissolution, administration or re-organisation of the Buyer;
 - (b) a composition, assignment or arrangement with any creditor of the Buyer;
 - (c) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Buyer or of any of its assets;
 - (d) the enforcement of any security over the assets of the Buyer; or
 - (e) the commencement of any analogous procedure or step in relation to the Buyer in any jurisdiction other than England and Wales;
- 15.1.4 the Buyer suspends making payments on any of its debts or announces its intention to do so;
- 15.1.5 the Buyer is unable to pay its debts as they fall due or is insolvent; or
- 15.1.6 the Buyer ceases or threatens to cease to trade.
- 15.2 Without limiting its other rights or remedies, Analytix may terminate the Contract with immediate effect by signing written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 15.3 Termination of the Contract for whatever reason shall not affect any rights or liabilities which have accrued on or before the date of termination and the termination of the Contract shall not relieve any party of any obligation under these Conditions which is expressed or which by implication is intended to continue after such termination.
- 15.4 On termination of the Contract for any reason:
- 15.4.1 the Buyer shall immediately pay Analytix all of Analytix's outstanding unpaid invoices and interest and, in respect of Goods and/or Services for which no invoice has been submitted, Analytix may submit an invoice which shall be payable immediately on receipt; and
 - 15.4.2 if the Buyer has not yet paid all outstanding sums for the Goods, Analytix may enter the Buyer's premises and take possession of the Goods. Until the Goods have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping.

16. FORCE MAJEURE

If Analytix is prevented or delayed in its performance of any of its obligations under these Conditions by a Force Majeure Event, it may notify the Buyer of the circumstances giving rise to the Force Majeure Event. Analytix shall not be liable for delay in performing or failure to perform its obligations under these Conditions if such a delay or failure results from a Force Majeure Event. Such delay or failure shall not

constitute a breach of these Conditions and the time for performances shall be extended by a reasonable period of time agreed between the parties.

17. GENERAL

- 17.1 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect.
- 17.2 Failure or delay by Analytix in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract. Any waiver by Analytix of any breach by the Buyer is not a waiver of any subsequent breach.
- 17.3 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address (including email address) as may have been notified for these purposes.
- 17.4 Notices shall be delivered personally or sent by first class post or sent by e-mail.
- 17.5 A notice is deemed to have been received:
- 17.5.1 if delivered personally, at the time of delivery;
 - 17.5.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting); and
 - 17.5.3 if sent by email, one working day after transmission.
- 17.6 The Contract constitutes the entire agreement between the Buyer and Analytix for the supply of Goods and/or Services.
- 17.7 No amendment or variation of these Conditions shall be valid unless it is previously agreed in writing between Analytix and the Buyer.
- 17.8 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 17.9 The Contract shall be personal to the Buyer. The Buyer shall not assign, novate, sub-contract or otherwise dispose of the Contract or any part thereof without the prior written consent of Analytix which may be withheld at Analytix's discretion. Analytix may assign or sub-contract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 17.10 These Conditions shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with these Conditions.