

SALES TERMS AND CONDITIONS

The following are the sales terms and conditions upon which the Customer (as shown on the Order) agrees to purchase the goods detailed on the Order and any subsequent order from the Customer. The communication of a request by the Customer to GMC-I PROSYS Limited ("the Supplier") for the supply of goods in accordance with the Order shall amount to the Customer's acceptance of these terms. These terms shall take precedence over any terms and conditions of the Customer, whether attached to, enclosed with or referred to in any purchase order of the Customer or elsewhere.

1) Definitions

Any terms referred to in the Order shall have the same meaning as in these Terms and the following words shall have the following meanings:
 'Goods' means the goods to be purchased by the Customer in accordance with the Order.
 'Order' means the order overleaf and any subsequent order
 'Terms' means these sales terms and conditions and the details contained in the Order

2) Order

The Supplier has agreed to provide the Goods to the Customer subject to the provisions of the Terms and the terms contained in the Order. The Supplier shall deliver the Goods to the address of the Customer on the date that the Supplier shall specify for the delivery ('the Delivery Date').

3) Performance of the Order

Time shall not be of the essence: for ordering of the Goods; for the delivery of the Goods; or such other date as agreed by the Parties.

4) Sums to be paid and payment

The Supplier shall invoice the Customer for the price specified in the Order and the Customer shall pay the invoice within 30 days of the date of the invoice unless otherwise agreed in writing by the Supplier
 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Customer.

If payment of any sum due under the Order is not received by any due date specified for that sum, the Supplier shall be entitled to: charge interest on the outstanding amount at the rate of 8% per annum above the base lending rate of Barclays plc, accruing daily; require that the Customer make a payment in advance of any Goods or part of the Goods not yet supplied; not provide any further Goods or part of the Goods; or terminate the Order as provided for in Clause 12.

5) Risk

The risk in the Goods shall pass to the Customer on the despatch date (date the Goods leave the Supplier)

6) Property

The property in the Goods shall not pass to the Customer until the Supplier has received the payment of the sums due in regard to the Goods (and any other sums that are due or owing to the Supplier) in full, whether or not delivery has been made.

7) Acknowledgment of examination

The Customer acknowledges and agrees that:

- the Supplier has given the Customer a reasonable opportunity to inspect the Goods;
- the Customer has inspected the Goods and satisfied itself as to the condition of the Goods;
- Other than the warranty under Clause 9, the Supplier has not given any warranty or condition as to the quality or fitness for any purpose of the Goods, and all other conditions or warranties, express or implied (whether by statute or otherwise), are expressly excluded;

8) Protection of confidential information

Each Party shall keep the Confidential Information of the other Party confidential and secret.

The obligations of Clause 9 shall not apply to any information which was known before it was received; is, or becomes, publicly available; or is required to be disclosed by order of a court of competent jurisdiction.

This Clause 9 shall survive termination of the Order for a period of 2 years.

9) Defects in the Goods

The Supplier will, at its option, either make good by repair or by the supply of a replacement, where defects which, under proper use, appear in the Goods within a period of 12 months after the Goods have been delivered provided that:

- the Customer notifies the Supplier in writing of the claimed defects immediately on their appearance; and
- the Supplier is satisfied that the defects arise solely from faulty design; and
- if required by the Supplier, the Goods (or) any part of the Goods claimed to be defective are returned to the Supplier at the expense of the Customer.
- The repaired or replacement Goods will be delivered to the Customer to the original place of delivery, but otherwise subject to the provisions of the Terms.

As an alternative remedy to Clause 9, the Supplier shall be, in its absolute discretion, entitled to return the sums paid by the Customer for the Goods to the Customer if the Customer has already paid such sums when the claimed defect is notified by the Customer to the Supplier.

The remedy provided in this Clause 9 is without prejudice to the other provisions of the Terms, including, without limitation, Clause 10 below.

10) Liability for the Goods

The Supplier shall not incur or accept any liability concerning any representation made by the Supplier (or on its behalf) to the Customer (or its representative) prior to the Order where such representation was made in relation to the description, quality or fitness for purpose of the goods;
 All terms, conditions or warranties implied by statutory or common law relating to the description, quality or fitness for purpose of the goods are excluded from the Agreement to the fullest extent permitted by law;

11) Liability generally

Except in the case of death or personal injury caused by the Supplier's negligence, the Supplier's liability under or in connection with the Order whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the sums paid to the Supplier under the Order.

Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.

12) Termination

The Supplier may terminate the Order if the Customer does not pay the amount(s) specified in the invoice(s) for the Goods.

Without prejudice to any other remedies or rights, either Party may terminate the Order at any time by written notice to the other Party ('Other Party') and the notice taking effect as specified in the notice:

- if the Other Party is in material breach of its obligations under the Order, and where a breach is capable of remedy within 14 days, the breach is not remedied with 14 days by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
- if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction),
- or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

If the Order is terminated, then the Customer shall pay for all sums due for payment after the date of termination which arise from commitments entered by the Supplier for the performance of the Order prior to the date of termination.

13) Cancellation

The Customer is not entitled to cancel the Order, however, in the event that the Customer wishes to vary the amount of the Goods then the Supplier will consider this request on the provision that the Customer pays for any work in progress and any reasonable additional expenses incurred by the Supplier in amending the Order.

14) General

Force majeure: Neither Party shall have any liability under or be deemed to be in breach of the Order for any delays or failures in performance of the Order which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate the Order by written notice to the other Party.
Amendments: The Order or the Terms may only be amended in writing signed by duly authorised representatives of the Parties.

Waiver: No failure or delay by the Supplier in exercising any right, power or privilege under the Order or the Terms shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in the Terms are cumulative and not exclusive of any rights and remedies provided by law.

Agency, partnership etc: The Order shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Terms. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

Severance: If any provision of the Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Terms and rendered ineffective as far as possible without modifying the remaining provisions of the Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of the Terms.

15) Notices

Any notice to be given under the Terms shall be in writing and shall be sent by first class mail or air mail, or by facsimile or email (confirmed by first class mail or air mail), to the address of the relevant Party set out on the Order, or such other address or facsimile number as that Party may from time to time notify to the other.

Notices sent as above shall be deemed to have been received three working days after the day of posting (in the case of inland first class mail), or seven working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile messages, but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted).

In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

16) Law and jurisdiction

The validity, construction and performance of the Terms shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

17) Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of the Terms the Order is not intended to, and does not, give any person who is not a party to it, any right to enforce any of its provisions.

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