

STANDARD TERMS AND CONDITIONS OF PURCHASE

1. Definitions

In these terms and conditions the following expressions have the following meanings:

"the Purchaser"	means Landis+Gyr (Pty) Limited which places the Purchase Order;
"Conditions"	means these terms and conditions for the purchase of Products and/or Services which are incorporated into and form part of the Purchase Order;
"Issued Material"	means any property issued to the Seller by the Purchaser to be used in fulfillment of the Seller's obligations;
"Products"	means the products, goods or items which are the subject of the Contract and which may (without limitation) comprise or include Software;
"Purchase Order"	means the purchase order (in the Purchaser's standard form) overleaf together with the Conditions;
"Seller"	means the person, firm or company referred to on the face of the Purchase Order with whom the Contract is made by the Purchaser;
"Services"	means work and/or services which are the subject of the Contract and which may (without limitation) comprise, include or relate to Software or other intangibles;
"Software"	means the software items which are comprised or included in or related to the Products and/or Services;
"Contract"	means the contract between the Seller and the Purchaser for the supply of the Products and/or Services comprising:- (i) The Seller's offer (subject to the provisions of Clause 2) and acceptance thereof by the Purchaser by an authorised representative; or (ii) the Purchase Order and (subject to the provisions of Clause 2) the Seller's acceptance thereof together with the Conditions and the documents (if any) incorporated by express reference on the face of the Purchase Order and the documents (if any) referred to in Clause 3.

2. Application

2.1 For the avoidance of doubt, the Conditions shall apply to and be incorporated into the Contract. Any offer by the Seller and/or acceptance of a Purchase Order by the Seller shall be deemed to constitute an acceptance of and agreement to comply with the Conditions. The Conditions shall be in substitution for any other express or implied, written or oral terms, conditions, arrangements, customs or practices. All terms, conditions, arrangements, customs or practices as aforesaid conflicting with the Conditions are hereby excluded.

3. Quality and Description

3.1 All Products and Services supplied shall:
 3.1.1 conform with the quantity, quality, description and any other particulars contained in the Contract;
 3.1.2 conform with any sample, drawing, description and specification furnished;
 3.1.3 be of satisfactory quality (as defined in the Sale of Goods Act 1979 as amended), fit for any intended use expressly or impliedly made known to the Seller and free from defect;
 3.1.4 comply with all performance specifications in the Contract;
 3.1.5 comply with the appropriate British Standard or equivalent best industry standard.
 3.2 All Services supplied shall be in full accordance with the terms of the Contract and shall be executed in a proper and skilful manner

by properly qualified and experienced personnel and conform to the best industry standards.
 3.3 Testing, inspection and acceptance by the Purchaser or end user under Clause 5 shall not be deemed a waiver of the Seller's obligations under this Clause 3.

3.4 This Clause 3 shall include and apply to any replacement, repaired, substituted or remedial Products or substituted or remedial Services provided by the Seller.

4. Statutory Obligations

4.1 The Seller shall comply with all relevant statutes, rules and regulations, and bye-laws affecting its obligations and the performance of the Contract.

4.2 While on Purchaser's Premises, the Seller shall abide by any written or verbal instructions in relation to safety and security issued by the Purchaser and will at all times respect confidentiality..

5. Inspection and Rejection

5.1 The Seller warrants that it has inspected and tested the Products for compliance with the Contract prior to delivery and shall, if requested, supply the Purchaser with certificates of origin and/or testing. Such certificates must state the Purchaser's order numbers together with any item numbers.

5.2 If the Products and/or Services do not comply with the Contract the Purchaser shall within a reasonable time give notice of rejection to the Seller and without prejudice to any of its other rights the Purchaser may at its discretion require the Seller to comply with the Contract by expeditiously replacing or repairing as appropriate any rejected Products and replacing or otherwise righting any rejected Services. The rejected Products shall be returned to the Seller at its own risk and expense.

5.3 Any reference to "Seller" in this clause includes any sub-contractor of the Seller permitted under Clause 20.2. Where the Seller repairs or replaces Products or Services under these clauses, the Conditions shall apply to the repaired or replaced Products or Services.

5.4 The Purchaser reserves the right at reasonable times to inspect or test the Products or the Services at any stage before delivery and the Seller shall give rights of access to premises and such facilities as the Purchaser may reasonably require for such inspection.

6. Delivery and Risk

6.1 Products and Services shall be delivered on the dates and at the rates and at the places specified in the Contract. Delivery may be direct to the Purchaser's end user if so specified on the Purchase Order. The Purchaser acting reasonably may delay or alter such dates, rates and places upon giving the Seller reasonable notice in writing of such alterations.

6.2 Time of delivery is of the essence of the Contract.

6.3 The Seller shall ensure that all Products are marked in accordance with the provisions of the Contract and instructions of the Purchaser. Products shall be packed so as to reach the places of delivery undamaged and in good condition. The Seller shall provide in respect of each consignment of Products a packaging note detailing the Purchaser's order number, description, code number (if any) and the quantity of Products consigned.

6.4 If the Seller fails to deliver in accordance with the Contract, then the Purchaser may cancel the Contract or any part of it and reserves all rights in damages and otherwise arising including but not limited to the right to purchase substitute Products or Services elsewhere and to hold the Seller liable for any loss, expense or additional cost incurred.

6.5 Any Seller's property brought onto Purchaser's premises will be at and will remain at the risk of the Seller.

6.6 Any Issued Material will be at the Seller's risk whilst in his possession.

7. Marked Products

7.1 Products marked with any mark used or owned by the Purchaser or its customers shall not be disposed of to any third party without the prior written consent of the Purchaser.

8. Title

8.1 The Seller warrants that it has good title to the Products it is selling to the Purchaser. Title to Products shall pass to the Purchaser on delivery without prejudice to any right of rejection to which the Purchaser may be entitled under Clauses 5 and 6. The Seller acknowledges that the Products or Services may be sold on to an end user by the Purchaser and warrants that the Purchaser will be able to supply the end user with good title.

8.2 Clause 8.1 is without prejudice to Clause 11 in respect of any Software.

9. Prices

9.1 All prices shall be as stated in the Contract. The prices are fixed and include delivery and all other charges which shall not be adjusted save as provided for in these Conditions.

9.2 Prices do not include VAT which shall be added by the Seller at the rate and in the manner from time to time prescribed by law.

10. Payment

10.1 The Seller shall send to the Purchaser a detailed invoice stating the Purchase Order and Products or Services reference number. Terms of payment are 60 days from the end of month from invoice, unless otherwise stated on the front of the Purchase Order.

11. Software

11.1 If Products and/or Services include Software the Seller acknowledges that the Purchaser may be selling the same on to end users and warrants that it has good title to license the Software.

11.2 The Seller permits the Purchaser to market and resell the Software and any accompanying hardware either alone or as part of a package.

11.3 The Seller undertakes to supply the Purchaser with all updates of the Software and to allow it to copy them to those of its customers who hold an original copy version.

11.4 The Seller shall provide the Purchaser with such technical advice, assistance, data and documentation, including source code where necessary, to enable the Purchaser to maintain the Software if it so wishes.

12. Confidentiality

12.1 The Contract and any other information supplied by the Purchaser is confidential. Issued Material is also confidential. Use of information and Issued Material is permitted solely for the purpose of carrying out the Contract. The Seller shall not without the prior written consent of the Purchaser (such consent not to be unreasonably withheld) copy or disclose them to anyone other than those employees or agents of the Seller who need to know.

12.2 The Seller shall not without the Purchaser's written consent advertise or otherwise make known that the Seller supplies or has supplied Products or Services to the Purchaser.

13. Equipment and other Facilities

13.1 Issued Material shall be and remain the property of the Purchaser even if charged for. The Seller hereby undertakes to maintain Issued Material in good order and condition, to keep it separate from the Seller's property and to identify it as the property of the Purchaser. The Seller shall not use it except in respect of Contracts with the Purchaser. Risk in Issued Material shall be with the Seller who shall effect comprehensive insurance against all risks of its loss or damage of an amount equal to its replacement cost and with the Purchaser's interest noted on the policy and with the Purchaser as loss payees.

14. Variation of Services/Goods

14.1 If at any time during the course of the Contract, the Purchaser wishes to vary the Services and/or Products ordered, it shall notify the Seller and the Seller shall within 14 days provide a written statement of the amount by which such variation would increase or decrease:

a) the dates, timescales or milestones, and
 b) the charges;

which have been agreed in the Contract, and such other information as the Purchaser may reasonably require.

14.2 The implementation of any variation to the Services and/or Products shall be subject to the agreement of the parties. The Seller shall not undertake any such variations unless specifically instructed to do so by the Purchaser.

14.3 All variations must be confirmed in writing.

15. Warranty

15.1 Without prejudice to the Purchaser's rights under the Contract and Statute the Seller warrants the Products and Services against defects (other than those arising from a design furnished by the Purchaser) arising for a period of 12 months (or as may

be otherwise stated in the Contract) from the date of delivery of any Products or the completion of any of the Services or from the date of delivery of any defective Products repaired or replaced under the provision of Clause 5.

15.2 Breach of the warranty in Clause 15.1 shall, without prejudice to its other rights, allow the Purchaser to terminate this Contract and claim damages, costs and expenses from the Seller.

16. Indemnity

16.1 The Seller shall fully indemnify the Purchaser against any claims, liabilities, actions, damages, costs or expenses.

16.1.1 in respect of any alleged or actual infringement by any of the Products or Services of any intellectual property right including but not limited to patents, copyright, trademarks, service marks, registered designs, design rights or other third party rights and the Seller shall at its own cost defend or settle all such claims or actions and proceedings brought or threatened to be brought against the Purchaser;

16.1.2 sustained by the Purchaser or for which the Purchaser may be liable as a result of the Seller's failure to perform its obligations under the Contract;

16.1.3 resulting from death, injury, loss or damage to persons or property caused or contributed to by negligence of the Seller, its employees, sub-suppliers (if permitted) or agents.

16.2 The Seller accepts liability for all other loss or damage incurred by the Purchaser and which is attributable to negligence on the part of the Seller, its employees, sub-suppliers (if permitted) or agents or otherwise results from a breach of the Contract.

16.3 If Software is held to be infringing third party intellectual property rights then the Seller undertakes at its own expense to replace or amend the Software expeditiously so that it is no longer infringing.

17. Force Majeure

17.1 Neither party shall be liable to the other for any loss or damage which may be suffered by the other as a direct or indirect result of the performance of its obligations under the Contract being prevented, hindered or delayed by reason of circumstances or events beyond its reasonable control including but not limited to acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, explosion, epidemic or government action.

18. Licences

18.1 If the Products or Services supplied under the Contract require the Purchaser to have any permit or licence from any governmental or other regulatory authority the Contract shall be deemed conditional upon such permit or licence being granted at the required time. The Seller warrants that it has all necessary permits and licences to allow it to sell the Products and Services to the Purchaser.

19. Termination

19.1 Either party may end this Contract with immediate effect by notice in writing in the following situations:

19.1.1 if the other party is in breach of it and, in the case of breach capable of remedy, fails to remedy the breach within 14 days of being asked to do so in writing. If the breach cannot be remedied, the party not in breach can end the Contract immediately;

19.1.2 if the other party ceases or threatens to cease business, or commits an act of bankruptcy, or it or a third party takes action for it to go into liquidation unless this is to reconstruct or merge the company, or if an administrator, administrative receiver, receiver or manager is appointed of any part of its business;

19.1.3 if in the reasonable opinion of one party there occurs a material change in the financial position of the other which is likely to affect the other's ability to perform its obligations under the Contract; or

19.1.4 if there is a change in control of the other party which in the reasonable opinion of the party terminating adversely affects the position, rights or interests of the party terminating;

19.2 For the purposes of Clause 19.1.4 "control" means the ability to direct the affairs of another whether by virtue of contract, ownership of shares or otherwise howsoever.

19.3 Termination of this Contract shall not discharge either party from any existing obligation accrued due on or prior to the date of termination.

19.4 The Purchaser may cancel this Contract at any time by notice in writing. It will pay for and accept delivery of all finished Products manufactured by the Seller at the date of cancellation and shall pay the Seller a fair and reasonable sum in respect of all work in progress at the date of cancellation subject to work in progress being transferred to the Purchaser.

19.5 For the avoidance of doubt, any termination or cancellation of this Contract shall not affect the continuance in force of Software licences granted to the Purchaser or its customers.

20. Miscellaneous

20.1 All Intellectual Property in the work carried out under the Contract is hereby assigned to and shall vest in the Purchaser absolutely. This includes any copyright or design rights which will vest in and become the property of the Purchaser as and when such rights come into existence.

20.2 Without written consent from the Purchaser, the Seller must not sub-contract or assign the whole or any part of the Contract. If given Purchaser consent, the Seller is not relieved of any of its obligations under the Contract. The Purchaser may attach conditions to the giving of its consent.

20.3 If either party delays, forgets or chooses not to enforce their rights under the Contract it shall not affect their rights to do so at a later date.

20.4 The Contract is the entire agreement between the parties and may not be changed unless agreed in writing by properly authorised representatives of both parties.

20.5 All notices must be in writing and sent to the address or fax number set out in the Contract. They may be delivered by hand, or by first class post or by facsimile and shall be deemed to have been served:

- if by hand, at time of delivery;
- if by first class post, two working days after posting;
- if by facsimile, on the date printed on the facsimile advice note produced by the sender's machine.

20.6 Headings do not affect interpretation.

20.7 The Contract shall be governed and construed in accordance with South African Law and the parties agree to submit to the exclusive jurisdiction of the South African Courts.

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