

Purchase Terms



It is agreed as follows:

1 Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

"Agreement"	these Terms and any Purchase Order issued by Amalga;
"Amalga"	Amalga Limited (company registration number 4197644) with its registered office address at Unit 1, Polar Park, Bath Road, West Drayton, Middlesex, UB7 0EX.
"Delivery Location"	the location(s) as stated in the Purchase Order, to which the Supplier will deliver the Goods and/or where the Supplier will perform the Services;
"Delivery Date"	the date(s) as stated in the Purchase Order, on which the Supplier will deliver the Goods and/or perform the Services;
"Goods"	the goods as stated in the Purchase Order, to be supplied by the Supplier;
"Price"	the total amount payable for the Goods and/or Services by Amalga as stated on the Purchase Order;
"Purchase Order"	a purchase order validly executed by a statutory registered director of Amalga and an authorised representative of the Supplier;
"Services"	the services to be supplied by the Supplier as stated on the Purchase Order;
"Specification"	means the specification for the Goods and/or Services set out in the Purchase Order;
"Supplier"	means the person or organisation supplying the Goods and/or Services as stated on the Purchase Order; and
"Terms"	means these terms and conditions.

2. Contract

- 2.1 These Terms shall apply to the provision by the Supplier to Amalga of the Goods and/or Services specified in all Purchase Orders issued by Amalga and accepted by the Supplier and shall be deemed to be incorporated into all such Purchase Orders.
- 2.2 A Purchase Order shall become binding on the date when it is signed by the Supplier. If the Supplier does not wish to enter into the contract with Amalga, then this should be done in writing within 24 hours. If Amalga does not receive such written notice within 24 hours, these conditions will have been agreed.
- 2.3 No conduct by Amalga shall amount to acceptance of any terms put forward by the Supplier.
- 2.4 In the event of any conflict between these Terms and a provision of a Purchase Order, the provisions of the Purchase Order shall prevail.
- 2.5 Nothing in this Agreement shall prevent Amalga from obtaining the same or similar Goods and/or Services from any other source.
- 2.6 Amalga may amend these Terms at any time in relation to Purchase Orders which have not yet been accepted by the Supplier on written notice to the Supplier signed by a statutory registered director of Amalga.
- 2.7 Subject to clause 2.6 above, these Terms may only be amended by express agreement in writing signed by a statutory registered director of Amalga and an authorised representative of the Supplier.

3. Delivery of Goods

- 3.1 The Supplier shall deliver the Goods to the Delivery Location by the Delivery Date. Delivery of the Goods to the Delivery Location by the Delivery Date shall amount to effective delivery to Amalga.
- 3.2 The Goods shall be identified and accompanied by a delivery note which shall state the Purchase Order number.
- 3.3 The Supplier shall send a delivery advice note to the person named on the Purchase Order, stating the Purchase Order number and any other reference number the day before the day of despatch of the Goods unless otherwise stated on the Purchase Order.
- 3.4 Where the date of delivery of the Goods is to be specified after the placing of the Purchase Order, the Supplier shall give Amalga reasonable notice of the specified date.
- 3.5 The Supplier shall deliver the Goods appropriately packaged and secured so as to reach the Delivery Location in undamaged condition. Hazardous Goods shall be marked with the appropriate international danger symbols and the name of the Goods in English.
- 3.6 The Supplier shall observe and comply with all United Kingdom and international agreements, codes of practice, legislative and regulatory requirements relating to packaging, labelling and carriage of the Goods.
- 3.7 The Supplier shall notify Amalga in advance if specialist handling equipment is required to receive the Goods and shall supply Amalga in good time with any instructions or other information required to enable Amalga to accept delivery of the Goods.
- 3.8 In the event that Amalga is unable to accept delivery of any Consignment of Goods on the required Delivery Date, the Supplier shall keep such consignment properly stored, secured and insured against all normal risks pending delivery to Amalga, the cost of such insurance to be payable by Amalga except where Amalga's inability to accept delivery was due to a breach of this Agreement on the part of the Supplier.
- 3.9 The Supplier's failure to effect delivery on the Delivery Date specified shall entitle the Purchaser to purchase substitute goods and to hold the supplier accountable for any and all loss and/or additional costs incurred as a result of such failure.
- 3.10 The Goods shall conform to the quantity, quality and description stated on the Purchase Order and Amalga shall be entitled to reject any Goods delivered which are not in accordance with the Purchase Order, and shall not be deemed to have accepted any Goods until Amalga has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

4. Title

- 4.1 The Supplier warrants and represents that it has good title to the Goods and that the Goods are free and clear of any lien, encumbrance or rights of any third party. The Supplier shall indemnify and keep Amalga indemnified against losses or costs incurred or claims suffered by Amalga as a result of the breach of this clause.
- 4.2 Notwithstanding time for delivery and the passing of risk in the Goods or any other provision of this Agreement, the title to the Goods shall pass to Amalga on delivery of the Goods in accordance with clause 3.1.
- 4.3 Risk of damage to or loss of the Goods shall remain with the Supplier until delivery and unloading of those Goods to Amalga in accordance with this Agreement.
- 4.4 Until delivery of the Goods in accordance with the Agreement the Supplier shall insure the Goods and Services for all reasonable risks. The expenses incurred by the Supplier in respect of this insurance shall be paid by the Supplier.

5. Supply of Services

- 5.1 The Supplier will provide Amalga with the Services by the Delivery Date(s) specified in the Purchase Order at the Delivery Location(s) specified in the Purchase Order.

- 5.2 The Supplier shall comply with all applicable codes of practice, legislative and regulatory requirements affecting the Services and their provision by the Supplier.
- 5.3 The Supplier warrants that:
- 5.3.1 it shall provide the Services with reasonable care and skill;
 - 5.3.2 it shall provide the Services in accordance with the best practice within the Supplier's industry;
 - 5.3.3 the Services shall comply with any Specifications stated in the Purchase Order;
 - 5.3.4 the Supplier's employees and agents shall have the necessary skills, professional qualifications and experience to perform the Services in accordance with this Agreement;
 - 5.3.5 it has obtained all necessary and required licences, consents and permits to perform the Services.
- 5.4 Where the Purchase Order specifies named employees of the Supplier to perform the Services ("**Key Personnel**"), the Services shall be performed by the Key Personnel.
- 5.5 The Supplier shall not make any changes to the Key Personnel without the prior written consent of Amalga.
- 5.6 Amalga may, at its sole discretion and at the Supplier's sole cost and expense, require that any employee, contractor, representative or agent of the Supplier has his or her involvement in the performance of the Services terminated. Amalga shall provide written notice of such requirement to the Supplier. The notice shall take effect immediately upon receipt of the notice and the Supplier shall supply a replacement who is acceptable to Amalga.
- 5.7 The Supplier shall ensure, and shall instruct its employees, contractors, representatives and agents accordingly, that such persons must take all reasonable steps to safeguard their safety and the safety of other persons who may be affected by their acts or omissions.
- 5.8 Equipment used by the Supplier to provide the Services is at the Supplier's risk.
- 5.9 The Services shall be performed by the Supplier as safely, quietly, efficiently and quickly as possible and with the minimum of disruption and disturbance to Amalga.
- 5.10 The Supplier shall perform any Services to be carried out at the Delivery Location in conformity with any code of conduct, health and safety policy and other instructions reasonably notified to the Supplier by Amalga and, if the Delivery Location is an airport, in accordance with the relevant airport Byelaws.
- 5.11 The Supplier shall clear all rubbish, debris and surplus materials from the Delivery Location after each delivery and leave the Delivery Location tidy at the end of each day.

6. Security Requirements

- 6.1 The Supplier shall, and shall procure that its employees, agents and sub-contractors shall, comply with all security requirements notified to it by Amalga in respect of access to the Delivery Location, including (without limitation) producing upon request such identity documentation and vehicle documentation as may be notified to the Supplier;
- 6.2 The Supplier shall, and shall procure that its employees, agents and sub-contractors shall, upon request and as soon as possible, provide such information and documentation as Amalga may require in order to obtain security passes on behalf of the Supplier, its employees, agents and sub-contractors.
- 6.3 The Supplier shall, and shall procure that its employees, agents and sub-contractors shall, when issued with a security pass by Amalga, keep such security pass safe and secure at all times and shall not allow any person other than the person to whom the security pass is issued to use the security pass.
- 6.4 If the Supplier, or any of its employees, agents or sub-contractors, loses any security pass issued by Amalga, the Supplier shall notify Amalga immediately and the Supplier shall pay Amalga £500.00 for each security pass lost. The

parties agree that this amount is a fair and reasonable representation of the costs which Amalga will incur in dealing with the lost pass and if necessary obtaining a replacement.

7 Confidentiality

7.1 The Supplier shall at all times during the period of this Agreement and after termination:

7.1.1 keep all Confidential Information confidential and shall not disclose any Confidential Information to any other person; and

7.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.

7.2 Any Confidential Information may be disclosed by the Supplier to:

7.2.1 any governmental or other authority or regulatory body; or

7.2.2 any employees, agents or sub-contractors of it to such extent only as is necessary for the purposes contemplated by this Agreement or as is required by law and subject in each case to the Supplier ensuring that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure was made.

7.3 Confidential Information shall not include:

7.3.1 any information in the public domain at the time of the disclosure (other than that arising from a breach of this clause 9); or

7.3.2 any information required to be disclosed by law.

7.4 The Supplier agrees to take all necessary precautions to keep safe any Confidential Information affecting the safe operation of an airport, of airport users and government agencies. Any information required by the Supplier to perform the Agreement shall be released on a need to know basis and under strict restrictions on use.

7.5 The Supplier shall not take any photographs of any equipment, property or people at the Delivery Location(s) or at any of Amalga's premises.

7.6 The Supplier agrees not to make any public announcement or media release in relation to anything connected with this Agreement or Amalga without the written agreement of Amalga.

8. Intellectual Property

8.1 It is acknowledged that when performing the Services the Supplier may supply bespoke Goods, software or hardware, or create, adapt or modify manuals, reports, studies, processes, designs, images or other materials which have been commissioned by Amalga ("**the Works**").

8.2 Subject to Clause 10.3 and unless otherwise stated on the Purchase Order, the Works and any existing and future copyright, trade marks, design rights, database rights, patents, confidential information and all other intellectual property rights ("**the Intellectual Property Rights**") arising in the Works shall be owned exclusively by Amalga. The Supplier hereby waives its right to be identified as the author of the Works and its right to object to derogatory treatment of the Works.

8.3 As part of providing the Services and supplying the Goods, the Supplier may provide Works which are not commissioned by Amalga including (but without limitation) third party goods, or software ("**Non-Commissioned Works**"). The Supplier shall inform Amalga in writing prior to the supply of the Non-Commissioned Works of this fact and shall procure that Amalga is granted such rights as may be necessary to allow the Non-Commissioned Works to be used for the purposes specified in, or reasonably apparent from, the Purchase Order.

- 8.4 The Supplier warrants and represents that receipt of and use of the Goods and/or the Services (including the Works and the Non-Commissioned Works) do not infringe any patent, trademark, copyright, registered design or any other intellectual property right of any third party.
- 8.5 The Supplier hereby gives an irrevocable non-exclusive royalty free licence to copy and use any drawings, information, specification, record or other document or information in whatever media it is produced and/or stored for any purposes connected with the receipt and use of the Goods and/or the Services. The licence granted by this clause includes a licence for Amalga to grant a sub-licence to any person or persons who need the same for any purposes connected with the use of the Goods and/or the performance of Services.
- 8.6 The price of the Goods/Services shall include royalties or other charges which may be claimed or required to be paid in respect of intellectual property rights to enable Amalga to use anything supplied under this Agreement.
- 8.7 The Supplier shall indemnify and keep Amalga indemnified against all claims, costs and demands which may arise due to any infringement of intellectual property rights belonging to any third party in respect of the Goods/Services.

4. Variations to Order

- 9.1 Amalga may at any time prior to completion of the Services, or delivery of the Goods, request in writing the Supplier to modify or extend the Goods or Services specified in the Purchase Order, Amalga shall provide the Supplier with particulars of requested modification/extension as the Supplier may reasonably require ("**Variation Notice**").
- 9.2 As soon as reasonably practicable following receipt by the Supplier of the Variation Notice the Supplier shall inform Amalga whether such modification or extension is technically feasible and shall inform Amalga of any alterations to the Price and any Delivery Date(s) that it shall judge necessary to make as a result of such request.
- 9.3 Amalga may within 30 days of receipt of the proposed alteration to the Price and completion/delivery dates, accept such alterations whereupon the Purchase Order shall be deemed to be amended to incorporate the modified or extended Goods and/or Services requested in the Variation Notice and the altered Price and Delivery Dates put forward by the Supplier.

9. Termination

- 10.1 Without prejudice to any other remedy which it may have, Amalga may terminate this Agreement immediately by giving written notice to the Supplier in the event that:
 - 10.1.1 the Supplier commits any breach of this Agreement and (if capable of remedy) fails to remedy such breach within 30 days after being given written notice to do so; or
 - 10.1.2 if there is any change in the control of the Supplier which makes continuation of this Agreement unacceptable to Amalga and "control" for the purposes of this clause shall have the meaning given to it in section 840 of the Income and Corporation Taxes Act 1988; or
 - 10.1.3 the Supplier makes any voluntary arrangement with its creditors, or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order or goes into liquidation (other than for the purposes of amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed, over any of its property or assets, or anything analogous to any of the foregoing occurs to the Supplier under the law of any jurisdiction.

10. Indemnity and Liability

- 11.1 The Supplier shall indemnify and keep indemnified Amalga from and against all costs, expenses (including, but not limited to, legal and other professional fees and expenses) losses, damages and other liabilities (of whatever nature, whether contractual, tortious or otherwise) suffered or incurred by Amalga and arising out of or in connection with any breach of this Agreement by the Supplier, any activities of the Supplier under or in connection with this Agreement, any claims, actions or demands made against Amalga by any third party as a result of any breach or alleged breach of this Agreement by the Supplier, save to the extent that any such costs, expenses, losses, damages or other liabilities were caused or contributed to by any negligence or breach of this Agreement by Amalga.

- 11.2 Without prejudice to the indemnity given by the Supplier at clause 13.1 above or any other indemnity given by the Supplier under this Agreement, the Supplier shall indemnify and keep indemnified Amalga from and against all costs, expenses (including but not limited to legal and other professional fees and expenses) loss, damages and other liabilities including, without limitation, claims, actions or demands made against Amalga by a third party (of whatever nature, whether contractual, tortious or otherwise) suffered or incurred by Amalga and arising in connection with a breach of clause 7 above by the Supplier.
- 11.3 The Supplier undertakes and agrees to obtain and maintain and pay all premiums in respect of a comprehensive insurance policy to the value of £10,000,000 (ten million pounds), or such other amount stated in the Purchase Order (in terms approved by Amalga issued by an insurer nominated or approved by Amalga) in respect of the Supplier's liabilities arising out of or in connection with this Agreement including for the avoidance of doubt, the Supplier's liabilities arising under any indemnity given by the Supplier under this Agreement, and to note on such policy that:
- 11.3.1 Amalga shall be covered by such policy in respect of all claims arising from the risks covered by such policy;
- 11.3.2 the insurer shall notify Amalga in the event of any late premium payment by, or any breach of the terms of such insurance on the part of, the Supplier.
- 11.4 The Supplier shall put in place and maintain in force policies of insurance in respect of the Goods and Services to their full reinstatement value and against all other risks and liabilities (including but not limited to products liability and consequential loss of profits) usually covered by insurance by persons carrying on business of the same type as the Supplier. The Supplier undertakes to maintain such policies in force with appropriate increases in the sums insured throughout the term of this Agreement.
- 11.5 The Supplier shall if requested to do so from time to time by Amalga provide to Amalga copies of the relevant policy terms and conditions and policy schedule in relation to such insurance, together with such further evidence as Amalga may reasonably require to show that all premiums have been paid up to date and that the policy otherwise remains in full force and effect.
- 11.6 The Supplier warrants that to the best of the Supplier's knowledge, information and belief there are no circumstances which could lead to any such insurance being revoked, vitiated or not renewed in the ordinary course.

12. Restrictive Covenant

- 12.1 In order to protect the business connections of Amalga (to which the Supplier has access as a result of the provision of the Services), the Supplier covenants with Amalga that, during the course of this Agreement and for a period of 12 months after termination of this Agreement, it shall not, either directly or indirectly, on its own account or for any other person, firm, company or other organisation:
- 12.1.1 solicit or endeavour to entice away from Amalga the business or custom of any customer of Amalga with a view to providing goods or services to that customer in competition with the business of Amalga;
- 12.1.2 solicit any employee of Amalga with whom the Supplier has worked during the course of the Agreement to leave the employment of Amalga whether or not by leaving the employee would be in breach of his contract of employment with Amalga (provided that the Supplier shall not be in breach of this clause if it employs an employee of Amalga as a result of a national advertising campaign open to all-comers and not specifically targeted at the staff of Amalga);
- 12.1.3 solicit any self-employed sub-contractor or other supplier of goods or services of Amalga with whom the Supplier has worked during the course of the Agreement to end its relationship with Amalga or alter its terms of supply to the detriment of Amalga.

Each of the clauses 12.1.1 to 12.1.3 above is intended to be separately enforceable. The invalidity or unenforceability of any one of those clauses shall not affect the validity and enforceability of the remainder.

13. **General**

- 13.1 Materials provided by Amalga to the Supplier to provide the Goods and/or Services, are
- 13.1.1 the property of Amalga; and
 - 13.1.2 at the risk of the Supplier, for their full replacement value until returned to Amalga.
 - 13.1.3 and shall be returned to Amalga in the normal course of supplying the goods/services, or on request
- 13.2 No delay or failure on the part of either party in enforcing any provision in this Agreement shall be deemed to operate as a waiver or create a precedent or in any way prejudice that party's rights under this Agreement, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy.
- 13.3 The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.
- 13.4 If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same commercial effect as would have been achieved by the invalid or unenforceable provision.
- 13.5 The Supplier shall not be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of Amalga.
- 13.6 This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and the terms of this Agreement shall supersede any previous agreements.
- 13.7 Each of the parties acknowledge and agree that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty term condition or understanding (whether negligently or innocently made, whether express or implied) of any person (whether a party to this Agreement or not) other than as may be expressly set out in this Agreement.
- 13.8 Nothing in this Agreement shall operate to limit or exclude any liability for fraud.
- 13.9 Any notice under this Agreement shall be in writing and shall be sent by email, first class post, or hand delivery for the relevant party as stated in this Agreement or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address/number):
- 13.9.1 if despatched by email - 24 hours after the time of the despatch.
 - 13.9.2 if despatched by first class post - 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
 - 13.9.3 if delivered by hand - at the time of actual delivery;
- 13.10 Unless expressly stated in this Agreement, nothing in this Agreement shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 13.11 This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.