



**Nuvia Limited Standard Terms and Conditions of Purchase for Goods and Services**

**Revision history:**

**Form: STD/GS/0001 Rev: 2 Revised (Bribery Act) January 2012.**



## 1 DEFINITIONS

1.1 In these Conditions:

**'Conditions'** means the terms and conditions contained herein;

**'Contract'** means the agreement between the Purchaser and the Supplier comprising these Conditions, the Purchase Order and the documents listed therein;

**'Deliverables'** means all documents, products and materials developed by the Supplier or its agents, subcontractors and employees in relation to the Services in any form, including, without limitation, all results, reports, drawings, designs, computer software, semiconductor topography, inventions, trade and service marks;

**'Delivery Address'** means the address at which the Purchaser is to take delivery of the Goods or the Services are to be performed;

**'Delivery Date'** means the date on which the Supplier shall deliver the Goods;

**'Good Industry Practice'** means the use of standards, practices, methods and procedures conforming to the law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar services to an organisation of a similar size and nature as the Purchaser under the same or similar circumstances;

**'Goods'** means the goods (including, without limitation, any Deliverables) which the Supplier is to supply to the Purchaser as agreed in the Contract;

**'Intellectual Property'** means all current and future copyright, patents, trade marks, rights in databases, inventions, trade secrets, know-how, rights in respect of confidential information, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection subsisting at any time in any part the world;

**'Price'** means the price of the Goods and/or Services;

**'Project Manager'** or **'PM'** or the **'Supervising Officer'** or **'SO'** means the person identified in the Contract (if any) and authorised by the Purchaser to act as the technical representative for the purposes of the Contract;

**'Purchase Order'** means the Purchaser's purchase order for goods and/or services incorporating these Conditions;

**'Purchaser'** means Nuvia Limited;

**'Purchaser Materials'** means any and all items, documents, specifications, plans, drawings, patterns, samples, materials, component parts and equipment from time to time provided to Supplier by the Purchaser in connection with and/or for the purpose of delivery of the Goods and/or Services.

**'Services'** means the services to be provided by the Supplier as agreed in the Contract; and

**'Supplier'** means the person or persons or firm or company or corporation who agrees to sell the Goods and Services to the Purchaser subject to these Conditions.

1.2 The Delivery Address, Delivery Date, Goods, Price and Services and any other information relating to the subject matter of the Contract shall be as specified on the Purchase Order or, if not so specified, as otherwise advised by the Purchaser or agreed in writing between the parties.

## 2 BASIS OF PURCHASE

2.1 Subject to Condition 2.2 below, these Conditions apply to all contracts for the purchase of Goods and/or Services entered into by the Purchaser and all orders placed by the Purchaser are subject to these Conditions. The Supplier agrees to deal with the Purchaser on these Conditions to the exclusion of all other terms, conditions, warranties or representations with the exception of any terms specified on the Purchase Order. In particular, but without limitation, any terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgment or acceptance of order are expressly excluded.

2.2 If the Purchaser and Supplier have entered into a written and signed "Master Order Agreement", the terms and conditions of the Master Order Agreement shall apply to this Purchase unless otherwise agreed.

2.3 The Contract incorporates these Conditions, the Purchase Order and any other document listed therein. In the event of any conflict, the following order of precedence will apply: (1) the Purchase Order; (2) these Conditions or the terms of the Master Order Agreement (if applicable); and (3) any other document referenced in the Contract.



### **3 PURCHASE OF THE GOODS**

3.1 The Purchaser agrees to purchase the Goods from the Supplier and the Supplier agrees to sell the Goods to the Purchaser.

3.2 The Supplier shall comply (and, where the Goods are re-sold, shall ensure that the manufacturer shall comply) with all applicable regulations, legal requirements and codes of practice and Good Industry Practice concerning the manufacture, labelling, packaging, packing, storage, transport and delivery of the Goods.

### **4 DELIVERY**

4.1 The Supplier shall deliver the Goods to the Purchaser at the Delivery Address on the Delivery Date during the Purchaser's business hours. For the purposes of this Condition 4.1 above, the Purchaser's business hours shall be Monday-Thursday between 08:30-17:00 and on Friday between 08:30-15:00.

4.2 If, through no fault of the Purchaser, the Goods are not delivered in full on the Delivery Date then, without prejudice to any other rights which it may have, the Purchaser reserves the right to:

4.2.1cancel the Contract in whole or in part without liability to Supplier;

4.2.2refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

4.2.3recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining substitute goods from another supplier;

4.2.4claim damages for any costs, liabilities, loss and/or expense suffered or incurred by the Purchaser which are in any way attributable to the Supplier's failure to deliver the Goods on the Delivery Date; and

4.2.5have all sums previously paid by the Purchaser to the Supplier under the Contract refunded by the Supplier.

4.3 In the event that the Purchaser cannot accept delivery of the Goods on the Delivery Date, the Supplier shall store the Goods without charge for the Purchaser until such time as the Purchaser shall notify the Supplier that it is able to accept delivery.

4.4 The Purchaser shall be entitled to alter the Delivery Date upon not less than five days' written notice to Supplier.

4.5 The Supplier may only make delivery of Goods by instalments with the prior written approval of the Purchaser.

4.6 If the Goods are delivered to the Purchaser in excess of the quantities ordered, the

Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

4.7 In the event of any occurrence which may cause the Delivery Date to be missed, the Supplier shall notify the Purchaser immediately. Notification of any potential delay is a condition precedent to any extension in the period of time for delivery (which shall only be granted by the Purchaser acting in its absolute discretion).

4.8 In delivering Goods, the Supplier shall observe and comply with, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the delivery of the Goods shall observe and comply with, all applicable laws and statutes (including, without limitation, The Health and Safety at Work etc Act 1974 (as amended from time to time)) and all health and safety rules and regulations and security requirements that apply at the premises at which the Goods are being delivered (including, without limitation, any requirements relating to the relevant premises owner's status as a "Nuclear Site Licence Holder" (if applicable)) and any and all further reasonable instructions or warnings given by Purchaser or the relevant premises owner orally or in writing from time to time; and

4.9 Ownership of the Goods shall pass to the Purchaser upon delivery to the Purchaser or, if earlier, payment of the Price. Risk of damage to or loss of the Goods shall pass to the Purchaser upon delivery to the Purchaser. Any Goods in respect of which the Purchaser has paid the Price but which have not been delivered to the Purchaser shall be stored separately from the goods of the Supplier and/or any third party, clearly identified as the property of the Purchaser and stored in safe and suitable conditions.

### **5 INSPECTION AND ACCEPTANCE**

5.1 The Purchaser shall be entitled, at any reasonable time and upon reasonable notice, to inspect and test the Goods in the course of manufacture, processing or storage at the premises of the Supplier or any third party prior to dispatch. Inspection and/or testing under this Condition shall not relieve the Supplier of any of his obligations under the Contract.

5.2 If as a result of inspection or testing the Purchaser is not satisfied that the Goods will comply in all respects with the Contract, and the Purchaser so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance and any such inspection or testing



shall not diminish or otherwise affect the Supplier's obligations under the Contract.

5.3 The Purchaser may reject any Goods which are not in accordance the Contract and shall be entitled to a full refund of any sums paid in respect of such Goods.

5.4 The Purchaser shall notify the Supplier of its rejection of any Goods and, upon receipt of such notification, the Supplier shall at his own expense collect the rejected Goods within five (5) working days.

## **6 INSTALLATION**

6.1 If required by the Contract or specified in the Purchase Order, the Supplier shall install the Goods at the Delivery Address and demonstrate to the Supplier that the Goods operate in accordance with the Contract to the satisfaction of the Purchaser.

6.2 The Supplier shall procure that its employees and agents who install the Goods shall comply with all safety, security and other regulations which are in force or apply at the Delivery Address and the Supplier shall indemnify and hold the Purchaser harmless against any loss, damage, liability, cost and/or expense which the Purchaser may suffer or incur as a result of their failing to do so or as a result of any negligence on the part of the Supplier during installation.

## **7 PACKAGING AND IDENTIFICATION**

7.1 Each consignment of Goods must be accompanied by an "Advice Note" setting out, as a minimum: Purchase Order number, Delivery Address and the name of the person to whom the Goods should be delivered along with the individual's internal delivery address (if different from the Delivery Address) to the extent that this information is contained on the Purchase Order.

7.2 Failure by the Supplier to supply an Advice Note containing the information set out above may result in the Goods being rejected. Any costs associated with resulting rejected deliveries shall be borne in full by the Supplier.

7.3 Unless otherwise provided by the Contract all containers (including packing cases, boxes, tins, drums and wrappings of whatever description) supplied by the Supplier shall be considered as non-returnable, and their charge as having been included in the Contract Price.

7.4 The Supplier shall ensure that all Goods are properly packed, labelled and secured so as to reach their destination in an undamaged condition and in accordance with the Contract.

## **8 RECOVERY OF SUMS DUE / RIGHT OF SET OFF**

The Purchaser may at any time or times, without notice to the Supplier, set off any liability of the Purchaser to the Supplier against any liability of the Supplier to the Purchaser, whether any such liability is present or future (whensoever arising), liquidated or unliquidated, under a Contract or not and irrespective of the currency of its denomination. Any exercise by the Purchaser of its rights under this Condition shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Purchaser in order to justify withholding payment of any such amount in whole or in part.

## **9 INTELLECTUAL PROPERTY AND PURCHASER MATERIAL**

9.1 Subject always to condition 9.2 below the Supplier grants to the Purchaser a world-wide, royalty free, perpetual and irrevocable licence to use any and all Intellectual Property in the Goods to the fullest extent necessary for use and enjoyment of the Goods.

9.2 Any and all Intellectual Property supplied and/or arising from or produced in the course of the Services shall vest in the Purchaser upon creation and shall be the Purchaser's exclusive property.

9.3 The Intellectual Property and other rights in any and all Purchaser Materials belong to the Purchaser or its licensors and, except solely to the extent necessary to perform Supplier's obligations under the Contract, Supplier shall have no right or title to the same.

9.4 Nothing in the Contract grants any right to Supplier to apply any trade mark, logo or name of the Purchaser to any Goods or use any such trade mark, logo or name in the course of the performance of the Services. Any such use shall be subject to a separate agreement between the parties.

9.5 The Supplier shall:

9.5.1 only be entitled to use the Purchaser Materials in the performance of its obligations under the Contract;

9.5.2 maintain such Purchaser Materials in good working order whilst in the Supplier's possession or control;

9.5.3 be liable to the Purchaser for any damage and/or loss arising in connection with the possession and/or use of the Purchaser Materials by the Supplier and shall reimburse to the Purchaser the full replacement value of any



Purchaser Materials which are damaged due to any act or omission of the Supplier;

9.5.4 unless the Supplier notifies the Purchaser in writing within three working days from receipt thereof, be deemed to have satisfied himself as to the suitability and good order of each item of Purchaser Materials.

9.6 Promptly following completion of the Contract, the Supplier shall, at the request of the PM or SO or other authorised representatives of the Purchaser, return or dispose of the Purchaser Materials.

## **10 PERFORMANCE OF THE SERVICES**

10.1 The Supplier shall perform the Services in accordance with the Contract.

10.2 The Supplier shall:

10.2.1 perform the Services in accordance with the highest professional standards and ethics which are consistent with those of the Purchaser and in accordance with all applicable regulation, legal requirements and codes of practice and Good Industry Practice;

10.2.2 devote all the time and attention to the performance of the Services which is necessary for their satisfactory completion in accordance with the Contract;

10.2.3 advise and assist the Purchaser with respect to all aspects of the Services and comply with the reasonable requests of the Purchaser with respect to their performance;

10.2.4 keep the Purchaser informed of the progress of the Services on a regular basis and, in any event, as and when reasonably required by the Purchaser;

10.2.5 whilst on the Purchaser's premises observe and comply with, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Services shall observe and comply with, all applicable laws and statutes (including, without limitation, The Health and Safety at Work etc Act 1974 (as amended from time to time)) and all health and safety rules and regulations and security requirements that apply at the Purchaser's premises and any and all further reasonable instructions or warnings given by the Purchaser (including without limitation to PM and SO orally or in writing from time to time). A copy of the Purchaser's current Health & Safety Policy is published on [www.nuvia.co.uk](http://www.nuvia.co.uk);

10.2.6 where the Services (or any part of them) are to be performed on the premises of any third party observe and comply with, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the

Services shall observe and comply with, all applicable laws and statutes (including, without limitation, The Health and Safety at Work etc Act 1974 (as amended from time to time)) and all health and safety rules and regulations and security requirements that apply at that third party's premises (including, without limitation, any requirements relating to that third party's status as a "Nuclear Site Licence Holder" (if applicable)) and any and all further reasonable instructions or warnings given by that third party orally or in writing from time to time; and

10.2.7 operate a quality system in accordance with the relevant parts of BS EN ISO 9000 or equivalent. The Supplier hereby acknowledges receipt of a copy of the Purchaser's Quality Policy, published on [www.nuvia.co.uk](http://www.nuvia.co.uk), and undertakes to act in accordance with this policy (as amended from time to time).

10.3 The Supplier shall meet (and, in this respect, time is of the essence) any performance dates specified in the Purchase Order or agreed in writing between the parties. If the Supplier fails to do so, the Purchaser may (without prejudice to any other rights it may have):

10.3.1 terminate the Contract in whole or in part without liability to the Supplier;

10.3.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

10.3.3 recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining substitute services from another supplier;

10.3.4 claim damages for any costs, liabilities, loss and/or expense suffered or incurred by the Supplier which are in any way attributable to the Supplier's failure to perform the Services on time; and

10.3.5 have all sums previously paid by the Purchaser to the Supplier under the Contract refunded by the Supplier.

10.4 In the event that the Purchaser cannot accept performance of the Services on the agreed date, the Supplier shall postpone the performance of the Services without charge to the Purchaser until such time as the Purchaser shall notify the Supplier that it is able to accept performance.

10.5 Subject to Condition 10.2.5 above, the Purchaser shall grant the Supplier and its employees such access to its premises, offices and facilities as is reasonably necessary for the performance of the Services. The Purchaser reserves the right to refuse to admit to its premises any person independent of or directly or indirectly employed or engaged by the Supplier



whose admission would be, in the opinion of the Purchaser, undesirable.

10.6 Promptly following the performance of the Services (or any part thereof, as relevant) the Supplier shall remove all surplus material and rubbish arising from the performance of the Services and shall leave the premises at which the Services were performed clean and tidy to the reasonable satisfaction of the Purchaser.

## **11 PRICE AND PAYMENT**

11.1 The Price shall be inclusive of the Supplier's charges for transport, packaging, packing, insurance, delivery to the Delivery Address and any customs or other duties. In the event that the Purchaser makes its own arrangements for the carriage of and/or packaging for the Goods an amount equivalent to the cost to the Supplier of carriage of and/or packaging for the Goods shall be deducted from the Price.

11.2 The Price is exclusive of any applicable UK value added tax, which the Purchaser shall be additionally liable to pay to the Supplier subject to receipt of a VAT invoice.

11.3 The Supplier shall not be entitled to increase the Price or levy extra charges or expenses, howsoever arising, against the Purchaser.

11.4 The Supplier shall be entitled to invoice the Purchaser for all amounts due under the Contract on or at any time after the later of delivery of the Goods and/or completion of the Services or at such other time as the Purchase Order states or the parties have agreed in writing. Each invoice shall quote the Purchaser's applicable Purchase Order number. If the Contract provides for a discount on invoices paid within a specified time, this shall be clearly stated on the invoice.

11.5 Unless otherwise set out in the Purchase Order, the Purchaser shall make payment to the Supplier in respect of each invoice validly issued and properly submitted by the Supplier (subject to any deduction or set off of any sums owed to the Purchaser by the Supplier) by the end of the month following the month in which the Purchaser received such invoice, but time for payment shall not be of the essence of the Contract.

11.6 The Supplier shall provide the Purchaser with such invoices, advice notes, delivery notes, timesheets and other documentation as the Purchaser shall from time to time specify.

11.7 If payment of an undisputed invoice properly submitted by the Supplier is not made

by the Purchaser within fourteen days following the due date for payment, Supplier shall be entitled to simple interest on undisputed overdue sums at the rate of three percent (3%) per annum above the base lending rate for the time being of Barclays Bank plc.

## **12 ASSIGNMENT AND SUB-CONTRACTING**

12.1 This Contract is personal to the Supplier and the Supplier may not assign, transfer, sub-contract or otherwise part with the Contract or any part thereof without the prior written consent in writing of the Purchaser. In the event that the Purchaser does give written consent to any sub-contract of all or part of the Contract, the Supplier shall remain liable for the performance of its obligations under the Contract and shall be liable for the acts and omissions of the relevant sub-contractor as if they were the acts and omissions of the Supplier.

12.2 The Purchaser may, without the consent of the Supplier, assign, novate, charge, sub-license and/or sub-contract to any third party: (i) the Contract; (ii) the benefit and/or burden of the Contract or of any of its provisions; and/or (iii) any of the Purchaser's rights (including any right of action against the Supplier) and/or obligations under the Contract.

## **13 ANTI BRIBERY COMPLIANCE**

13.1 The Supplier shall:-

13.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

13.1.2 comply with the Purchaser's ethics, anti-bribery and anti-corruption policies (as communicated and updated from time to time by the Purchaser);

13.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act and will enforce them where appropriate;

13.1.4 promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;

13.1.5 immediately notify the Purchaser (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers,



employees or direct or indirect owners at the date of the Contract;

13.1.6 on request, certify to the Purchaser, in writing, signed by an officer of the Supplier, compliance with this condition 13 by the Supplier. The Supplier shall provide such supporting evidence of compliance as the Purchaser may reasonably require;

13.2 The Supplier shall ensure that any person howsoever associated with the Supplier who is howsoever involved in performing any Services or the provision of any Goods pursuant to the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier pursuant to this condition 13.

13.3 The Supplier shall indemnify and hold harmless the Purchaser against any loss, damage, liability, cost and/or expense which the Purchaser may suffer or incur as a result of any breach of this condition 13 by the Supplier or by any of those persons referred to in condition 13.2 above (the Supplier being liable for all acts and omissions of such persons as if such acts or omissions were its own).

13.4 For the purposes of this condition 13 the meaning of "adequate procedures" and "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 7(2) (and any guidance issued under section 9 of that Act), 6(5), 6(6) and 8 of the Bribery Act 2010. For the purposes of this condition, a person associated with the Supplier includes (without prejudice to condition 13.2 above) but is not limited to any sub-contractor of the Supplier.

13.5 Without prejudice to any other right or remedy that the Purchaser may have in respect of the Contract, the purchaser may with immediate effect by notice in writing to the Supplier, terminate the Contract in the event that the Supplier breaches any of the provisions of this condition 13.

#### **14 WARRANTIES**

14.1 The Supplier warrants and represents to the Purchaser that:

14.1.1 the Goods, when delivered and for a period of twenty-four (24) months thereafter, will:

14.1.2 be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier before the Contract was entered into;

14.1.3 be free from defects in design, material and workmanship;

14.1.4 correspond with any relevant specifications, samples or descriptions provided by or to the Supplier;

14.1.5 comply with all statutory requirements and regulations (including, without limitation, the Supply of Machinery (Safety) Regulations 2008 and the Construction (Design and Management) Regulations 2007 and the relevant British Standard and/or ISO Specifications then current);

14.1.6 not infringe the rights of any third party; and

14.1.7 the representations made by it during any tender process (including, without limitation, those contained within any tender documentation) are true, materially accurate and not misleading.

14.2 Where the Supplier is providing electrical and electronic equipment, the Supplier warrants that either it is, or the producer of the electrical and electronic equipment is, a member of a scheme and the Supplier shall promptly provide the Purchaser with the appropriate producer registration number under such scheme in accordance with the Waste Electrical and Electronic Equipment Regulations (2006) ("WEEER") (where "electrical and electronic equipment", "producer" and "scheme" shall have the meanings given to them in the WEEER).

14.3 The Supplier warrants and represents to the Purchaser that the Services will be performed by appropriately qualified and experienced personnel with reasonable care and skill, in accordance with the highest professional standards and ethics which are consistent with those of the Purchaser and in accordance with all applicable regulation, legal requirements (including, without limitation, the Supply of Machinery (Safety) Regulations 2008 and the Construction (Design and Management) Regulations 2007 and the relevant British Standard and/or ISO Specifications then current) and codes of practice and Good Industry Practice.

14.4 Without prejudice to any other right or remedy which the Purchaser may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Purchaser:

14.4.1 to rescind the Contract;



14.4.2 to reject the Goods and/or Services (in whole or in part) and, in the case of Goods, return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

14.4.3 at the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods or re-perform the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

14.4.4 to refuse to accept any further deliveries of the Goods and/or performance of the Services;

14.4.5 to carry out (or to appoint a third party to carry out) at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract; and

14.4.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

14.5 The Supplier shall indemnify and hold the Purchaser harmless in full against all liability, loss, damages, costs and expenses whether direct, indirect or consequential (including without limit legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:

14.5.1 defective workmanship, quality or materials;

14.5.2 the breach of any warranty given by the Supplier;

14.5.3 any claim that any Goods and/or Services infringe, or their importation, use or resale infringes the Intellectual Property right(s) or other rights of any other person or that the manufacture or supply of the Goods or the performance of the Services misuses any confidential information belonging to any other person, except to the extent that the claim arises from compliance with any specifications supplied by the Purchaser;

14.5.4 any liability under the Consumer Protection Act 1987 or otherwise in respect of injury or death caused to persons or damage caused to property in connection with the Goods and/or Services;

14.5.5 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering, performing and installing (as applicable) the Goods and/or Services.

14.6 The Supplier shall take out and maintain in full force and effect, with an insurer of repute, insurance against all insurable liabilities under this Condition 14 and shall produce documentary

evidence of such insurance policies on request by the Purchaser.

## **15 THIRD PARTY RIGHTS**

15.1 Save as otherwise expressly stated herein, a person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any of its term of the Contract.

## **16 CONFIDENTIALITY**

16.1 Supplier shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes and initiatives and any other information regarding the Purchaser and/or its business which have been disclosed to it by the Purchaser, and any other information concerning the Purchaser and/or its business of the Purchaser which it may obtain. Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging Supplier's obligations to the Purchaser. This Condition shall not apply to information which is in or which comes into the public domain (other than as a result of Supplier's breach of confidence) in substantially the same form in which it is disclosed to Supplier.

## **17 PURCASER'S REPRESENTATIONS**

**18** The Supplier acknowledges and agrees that, save where fraudulently made by the Purchaser, it may not rely upon and shall have no right of action in respect of any representation and/or promise and/or warranty made and/or given by the Purchaser which is not contained in the Contract and the Purchaser shall no liability in respect of such representations and/or promises and/or warranties.

## **CANCELLATION AND TERMINATION**

18.1 The Purchaser shall be entitled, at any time and without liability to the Supplier, to cancel the whole and/or any part of its offer to purchase the Goods and/or Services and to terminate the Contract in whole and/or in part by giving notice to the Supplier at any time prior to delivery or performance, in which event:

18.1.1 the Contract shall continue in full force and effect in respect of Goods and/or Services already delivered or paid for by the Purchaser (if any); and

18.1.2 the Supplier shall, if so required by the Purchaser and notwithstanding the Purchaser having indicated that it wishes



to cancel its order to purchase any of the Goods and/or Services, complete and deliver any partially completed and/or delivered Goods and all the terms of the Contract shall apply to such Goods and/or Services

18.2 Without prejudice to any other right or remedy of the Purchaser, the Purchaser shall be entitled to terminate the Contract forthwith by notice in writing to the Supplier if:

18.2.1 the Supplier commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within ten days of receipt of notice of the breach requiring remedy of the same; or

18.2.2 the Supplier makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise; or

18.2.3 the Supplier ceases or threatens to cease to carry on business; or

18.2.4 there is at any time a material change in the management, membership or control of the Supplier; or

18.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Purchaser the capability of the Supplier to adequately fulfil its obligations under the Contract has been jeopardised; or

18.2.6 if the Purchaser reasonably apprehends that any of the events specified in Conditions 18.2.2 to 18.2.5 is about to occur in relation to the Supplier and notifies the Supplier accordingly.

18.3 In the event of termination pursuant to this Condition 18 then, without prejudice to any other right or remedy available to it, the Purchaser shall be entitled to deduct by way of set-off any sums paid to the Supplier for Goods and/or Services which have not yet been delivered. All accrued rights and liabilities of the parties shall survive termination or expiration of the Contract.

## **19 SUSTAINABILITY/ENVIRONMENTAL IMPACT**

19.1 The Supplier will actively promote and develop sustainability and environmental enhancements, and ensure that its actions relating to this Contract are in accordance with the Purchaser's business policies (as amended from time to time).

19.2 The Supplier hereby acknowledges receipt of a copy of the Purchaser's Corporate Social Responsibility Policy, published on [www.nuvia.co.uk](http://www.nuvia.co.uk), and undertakes to act in accordance with this policy (as amended from time to time).

19.3 The Supplier hereby acknowledges receipt of a copy of the Purchaser's Procurement Policy, published on [www.nuvia.co.uk](http://www.nuvia.co.uk), and undertakes to act in accordance with this policy (as amended from time to time).

19.4 The Supplier hereby acknowledges receipt of a copy of the Purchaser's Environmental Policy, published on [www.nuvia.co.uk](http://www.nuvia.co.uk), and undertakes to act in accordance with this policy (as amended from time to time).

## **20 DISPUTE RESOLUTION**

20.1 The Parties will for a period of 20 days following a dispute arising, attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract by negotiations between senior executives of the parties who have authority to resolve such disputes or claims but nothing in this Condition 20 will prevent either party from seeking injunctive or similar relief or commencing court proceedings at any time.

## **21 GENERAL**

21.1 Subject to clause 21.3, the Purchaser's total aggregate liability to the Supplier in respect of all causes of action arising out of or in connection with the Contract (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed the Price.

21.2 Subject to clause 21.3 below, the Purchaser shall have no liability whatsoever for any indirect, special, consequential or exemplary damages arising out of the making of the Purchase Order, the purchase of the Goods and/or Services or any breach of the Contract whether or not the Purchaser knew or should have known of the possibility of such loss.

21.3 Nothing in this Contract shall limit or exclude the Purchaser's liability for: i) death or personal injury caused by its negligence; ii)



fraudulent misrepresentation; and iii) any matter the exclusion and/or limitation of liability for which is prohibited by law.

21.4 The remedies available to the Purchaser under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Supplier.

21.5 The Purchaser's rights and remedies are cumulative and no failure or delay by the Purchaser in enforcing its rights or remedies shall be construed as a waiver of such rights or remedies unless stated by the Purchaser in writing to be so, nor shall any partial exercise of a right or remedy preclude or limit the further exercise of that or any other right or remedy.

21.6 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

21.7 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its registered office address in the UK (and, in the case of any notice to be given to the Purchaser, marked "For The Attention of Head of Procurement"), or, if the Supplier does not have a registered office in the UK (whether by reason of the type of entity it is or otherwise) its principal place of business within the UK, or to such other address which it has previously notified to the sending party and shall be deemed to have been given on the day of delivery.

21.8 Nothing in the Contract creates a joint venture or relationship of partnership or agency between the parties.

21.9 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.

21.10 Save where expressly permitted under the Contract, no variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the

21.11 The Contract and all disputes in connection with it (including, without limitation, all non-contractual disputes) shall be governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.