

## COMMERCIAL-IN-CONFIDENCE

### TERMS AND CONDITIONS OF CONTRACT

- (A) These Terms and Conditions shall be deemed to be incorporated into every Contract entered into between the University of Newcastle upon Tyne (“the University”) and a Company on acceptance by the Company of a proposal issued by the University in relation to the applicable Contract (“the Proposal”).
- (B) These Terms and Conditions shall (subject to any variations set out in writing in the Proposal) govern the Contract to the exclusion of any other terms, conditions of purchase or other trading conditions of the Company and any such conditions whether already drawn to the attention of the University or not shall be of no binding effect unless the University shall expressly agree in writing.
- (C) These Terms and Conditions may only be varied by agreement in writing signed by a duly authorised signatory of the University and a duly authorised signatory of the Company, such authorisation itself to be incorporated into the Proposal.
- (D) INEX™ is a wholly owned commercial Business Unit and also a Trade Mark of The University.
- (E) INEX™ is a microsystems and specialist electronic device manufacturer performing research into, and development of, bespoke components, often involving bespoke processes, and production of the resulting components or products, under contract to customers (“Contract Manufacturer”)

#### 1 Extent of Contract

- 1.1 In these Terms and Conditions, “the Work” shall mean both the work to be done as specified in the Proposal and any part thereof and any work done in substitution therefore or in addition thereto and shall extend to all goods, services, documents and information, including software and data, supplied by the University in connection therewith.
- 1.2 Any acceptance or purported acceptance of the Proposal shall have effect as an acceptance of the offer therein contained and the Company shall thereby be deemed to have waived any term or condition of the acceptance which is in addition to or in derogation of variation of these Terms and Conditions.
- 1.3 Other than the University's authorised signatories, the employees or agents of the University are not authorised to make any representation with regard to the subject matter of the Contract. In entering into the Contract the Company acknowledges that if it relies on any representation, advice or recommendation given by the University, its employees or agents to the Company as to the Works it does so entirely at the Company's own risk.

#### 2 Variations and Additions

- 2.1 The Company shall notify the University in writing in the event that any variation or addition to the Work is required by the Company. However, nothing in these Terms and Conditions shall oblige the University to agree to effect any such variation and/or addition.
- 2.2 Before carrying out any work in variation of or in addition to the Work the University will advise the Company of the estimated additional cost thereof and the effect on the programme and the completion date of the Work and will proceed with such variation or addition to the Work upon receiving the written authority of the Company to do so.

#### 3 Price

- 3.1 The University will make reasonable efforts to complete the Work for the price set out in the Proposal (“the Price”). In the event of any postponement, interruption or suspension of the Work due to instructions from, or lack of instruction, information or decision on the part of the Company or in the event that the Company authorises any variation or addition in accordance with Clause 2.2 of these Terms and Conditions then the University shall be entitled to require the Company to pay an additional reasonable sum to cover any expenses or increase in cost incurred by the University. The Price shall be deemed to be increased by such additional sums and payable by the Company accordingly.
- 3.2 The Price excludes Value Added Tax, which shall be charged at the prevailing rate and which the Company agrees to pay the University in addition.
- 3.3 In the event that the Price excludes expenses, the Company will, in accordance with the provisions of these Terms and Conditions, reimburse the University with all reasonable expenses incurred by the University in carrying out the Work,

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including travel, petrol, accommodation, meals and subsistence, on vouchers relating to such expenses being provided by the University to the Company.

### 4 Terms of Payment

- 4.1 Payment for the Work shall be made by the Company in GBP, or other currency stated in the Proposal. The University shall be entitled to invoice the Company for the Price in accordance with the payment schedule set out in the proposal and the Company agrees to pay the same within 30 days of the date of the University's invoice. Time is of the essence with regard to all payments.
- 4.2 In the event of any payments not being made when due or if the University at its reasonable discretion at any time considers the financial circumstances of the Company have ceased to justify the terms allowed, the University reserves the right to suspend further Work, to cancel allowance of further credit or to demand security for payment before continuing with the Work.

### 5 Delivery

- 5.1 For production Contracts. The University shall deliver in accordance with the Proposal.
- 5.2 For all other activities. The University will make reasonable efforts to meet the estimated date for completion of the Work referred to in the Proposal but will in no circumstances be liable for any loss, damage or expense incurred directly or indirectly by the Company by any non-delivery or delay in completion of the Work. Any period, date or time for delivery provided by the University is given and intended as an estimate only.

### 6 Performance

- 6.1 The University will use its reasonable endeavours to ensure that staff with the appropriate knowledge and skill will be assigned to the Work and that the execution of the Work will conform to appropriate professional standards, but all Work undertaken by the University is experimental in nature and/or in the nature of research. The University gives no undertaking, express or implied, as to the results obtained from the Work or that the Work is capable of completion or, when complete, will fulfil all or any particular purpose made known by the Company. The contractual obligations of the University shall be deemed to be satisfied by the use of all due diligence to attempt to accomplish the objects of the Work.
- 6.2 Unless otherwise agreed or where the Work is supplied to a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by law are excluded to the extent permitted by law.

### 7 Liability

- 7.1 The University shall indemnify the Company against personal injury to or the death of any person or loss or damage to any property, real or personal, insofar as such injury, death, loss or damage arises in the course of or by reason of the University carrying out its obligations under the Contract incorporating these Terms and Conditions and provided always and only to the extent that the same is due to the negligence on the part of the University, its employees, servants or agents.
- 7.2 Except in respect of death or personal injury caused by the University's negligence, the aggregate liability of the University to the Company in respects of loss or damage to any property, real or personal (whether such liability arises under the indemnity in this Clause 7, in contract, in tort (including negligence) or otherwise) shall not exceed £1,000,000.
- 7.3 Save as otherwise provided in this Clause 7, the University, its employees, servants and agents shall not be liable to the Company in contract, tort, for breach of statutory duty, by reason of any representation (unless fraudulent) or otherwise including any liability for negligence, or for any loss of revenue, business, anticipated savings and profits or any loss of use or value of any equipment or for any indirect, special or consequential loss howsoever arising and the entire liability of the University under or in connection with the Contract shall not (save as otherwise expressly provided in these Terms and Conditions) exceed the price.
- 7.4 Where any valid claim in respect of any of the Works (which is based on any defect in the quality or condition of the Works or their failure to meet the agreed specification) is notified to the University in accordance with these Terms and Conditions, the University shall be entitled to replace the Works (or the part(s) in question) free of charge or, at the University's sole discretion, refund to the Company the Price (or a proportionate part of the Price in relation to the applicable part of the Works), but the University shall have no further liability to the Company.

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### 8 Company's Property

The University will take all reasonable precautions for the security of property supplied by or belonging to the Company but the same will only be held by the University at the risk of the Company and no liability is accepted by the University for the loss, destruction or disposal thereof or damage thereto. It is the responsibility of the Company to insure the same.

### 9 Confidential Information

The University will take all reasonable precautions to ensure that no person engaged upon the Work on behalf of the University shall disclose to any third party details of the Work, information obtained by the University from the Company which relates in any way to the Work or any reports to the Company, unless the Company gives consent to such disclosure or the University is required to disclose the same by law. The Company shall not unreasonably withhold consent to disclosure of the fact that the University has agreed to carry out the Work for the Company.

### 10 Reservation of Title and IPR

The risk in the Work passes to the Company upon delivery. Full legal and equitable title in the Work and (where it is agreed that the Intellectual Property Rights shall pass to the Company), the Intellectual Property Rights in the Work remains vested in the University and shall only pass from the University to the Company upon full payment being made by the Company of all sums (due on whatsoever account or grounds) to the University.

### 11 Acceptance of the Work

Upon delivery of the Work the Company shall inspect the Work and report any defects or non-conformity to the University within 30 days. If a response is not received within this time the Company shall be deemed to have unconditionally accepted the Work.

### 12 Intellectual Property Rights

- 12.1 Nothing in these Terms and Conditions shall affect the ownership of Intellectual Property Rights existing prior to the date of the Contract.
- 12.2 Nothing in these Terms and Conditions shall affect the ownership of any Intellectual Property Rights developed independently of the Contract.
- 12.3 With the exception of Process Intellectual Property and unless otherwise stated in the Proposal, all Intellectual Property Rights (including patent, copyright, design or trade mark rights) that are created or arise as a result of the Contract shall vest in the Company.
- 12.4 Further to 12.3, rights in respect of Process Intellectual Property created by or arising from the Contract shall vest in the University.
- 12.5 Process Intellectual Property is defined as the individual process steps, actions, chemical recipes, machine and tool selections and settings and other activities common to Foundry applications.
- (a) In this context "chemical recipes" refers to gases and other chemicals and elements common to a Foundry.
  - (b) Further to Clause 12.3, and for the avoidance of doubt, where part of the Process Intellectual Property is novel and worthy of Patent, then the Intellectual Property Rights shall vest in the Company.
  - (c) In the event that Clause 12.5 (b) applies then pursuant to INEX™ operations as a Contract Manufacturer the University requests access to that Intellectual Property where access may not be unreasonably withheld but under such fair and reasonable conditions as the Company and the University negotiate in good faith.
- 12.6 If full payment for the Work in accordance with Clause 4 is not made, INEX may treat the results of the Work as its own and be free to use or otherwise exploit the said results without further reference to the Company

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### 13 Infringement of Patents, Designs, Copyright and Trade Marks

The University, its employees, servants and agents shall not in any circumstances be liable for any loss, liability, penalty or expense suffered or incurred by the Company by reason of any sale, disposition, use or adoption of the Work which constitutes an alleged or actual infringement of a patent, design, copyright or trade mark, foreign or domestic, vested in a third party and the University gives no warranty that the Works will not infringe as aforesaid. The Company shall indemnify the University, its employees, servants and agents against any loss, liability, penalty or expense suffered or incurred by the University, its employees, servants or agents by reason of any work requiring to be done in accordance with the Company's instructions or the Proposal which constitutes or is alleged to constitute such an infringement.

### 14 Termination of Contract

14.1 The University may at any time by written notice given to the Company terminate the Contract if in the opinion of the University bona fide formed upon reasonable grounds the objects of the Work shall:-

- (a) prove to be impossible or impractical of completion; or
- (b) prove impossible to achieve within the Price provided that such impossibility is not due to any fault or default on the part of the University.

14.2 Either party shall be entitled forthwith to terminate the Contract by written notice to the other if that other party fails to perform or commits any breach of any of the provisions of these Terms and Conditions or the Contract and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

14.3 The University shall be entitled forthwith to terminate the Contract if:-

- (a) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Company;
- (b) the Company makes any voluntary arrangement with its Creditors or becomes subject to an Administration Order;
- (c) the Company goes into Liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the Company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under these Terms and Conditions) or (if an individual) has a Bankruptcy Order made against him;

or

- (d) the Company ceases, or threatens to cease, to carry on business.

14.4 Further to the entitlements of Clauses 14.1 through 14.3, the parties are entitled to terminate the contract by mutual agreement, such agreement not being unreasonably withheld.

### 15 Consequences of Termination

15.1 Immediately following termination of the Contract, the University shall be entitled to be paid a fair proportion of the Price pro-rata to the proportion of the total amount of the Work which has been completed at the date of termination, the amount of which in the absence of agreement will be determined by an Arbitrator appointed under Clause 20.

15.2 Termination shall not affect or discharge any rights or liability of the University or the Company arising prior to the date of termination.

15.3 As soon as practicable after the date of termination the Company shall return to the University any equipment, documents or other property of whatever kind belonging to the University which is then in its possession and, subject to all outstanding sums being paid, the University shall return to the Company any such equipment, document or other products as are in its possession belonging to the Company.

### 16 Assignment

Neither party shall assign or otherwise transfer, nor purport to assign or transfer, all or any of its rights, interests, or obligations under the Contract without the prior written consent of the other party, such consent not unreasonably withheld.

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### 17 **Waiver**

No exercise, or failure to exercise, or delay in exercising any right or remedy by either Party shall constitute a waiver by that party of that or any other right or remedy.

### 18 **English Law and Jurisdiction**

The formation, construction and performance of the Contract shall be governed in all respects by English Law. The Company and the University hereby agree to submit to the jurisdiction of the English Courts.

### 19 **Whole Agreement**

Each party acknowledges that the Contract contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

### 20 **Arbitration**

If at any time any question, dispute or difference whatsoever shall arise as to the formation, meaning, operation, validity or effect of the Contract or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties or, in default of agreement within 14 days of such notice, to be nominated by the President for the time being of the Law Society of England and Wales such arbitration to be conducted in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

### 21 **Rights of Third Parties**

No term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

### 22 **Severability**

If any part of the Contract is held to be unlawful or unenforceable then the part shall be severed and the validity or enforceability of the remainder of this contract shall not be affected thereby. The parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative in place of the severed part.

### 23 **Headings**

The headings in these Terms and Conditions are for convenience only and are not intended to have any legal effect.

### 24 **Force Majeure**

Neither party shall be liable to the other for delays in performance attributable to acts, occurrences, events or illnesses beyond the reasonable control of such party.

### 25 **Notices**

All notices shall be in writing and shall be delivered by hand, posted by recorded delivery post or sent by fax or email to the intended recipient at the address, fax number or email address stated in the Proposal or as otherwise notified. Notices delivered by hand shall be deemed received on the day of delivery. Notices sent by fax shall be deemed received on the first working day following sending. Notices posted as above shall be deemed received on the second working day following posting. Notices sent by email shall be deemed received on the first working day following sending.