

Terms and Conditions for the Supply of Services

V1.00

Please read these Terms and Conditions for the Supply of Services carefully, as they set out our and your legal rights and obligations in relation to our services.

1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement:

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company or firm;

"Agreement" means the agreement between the Supplier and the Customer incorporating these Terms and Conditions for the Supply of Services, and any amendments to it from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Background Materials" means all works and materials in existence before the date of the Agreement (excluding Customer Materials);

"Business Hours" means between 09:00 and 17:30 on a Business Day;

"Charges" means the charges specified in the Proposal payable by the Customer to the Supplier, which may be varied in accordance with Clause 7;

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential;

"Control" means:

- A. the legal power to directly or indirectly control the management of a company, firm or other entity;
- B. the right to select the majority of the directors (or their equivalent) of a company, firm or other entity; and/or
- C. ownership of more than 50% of the voting shares in a company;

and **"Controlled"** will be construed accordingly;

"Customer" means the customer for Services under the Agreement as specified in the Proposal or in the Supplier's order confirmation;

"Customer Materials" means works and materials provided by the Customer to the Supplier for incorporation into the Deliverables;

"Customer Representatives" means:

- A. any persons specified as such in the Proposal; or
- B. specified as such by the Customer;

"Deliverables" means the deliverables specified in the Proposal;

"End Product" means any physical and/or software and/or data based product or products specified in the Proposal for which the Supplier provides Services;

"Effective Date" means the earlier of:

- A. the date when the Supplier sends to the Customer its written confirmation that the Agreement is agreed; or
- B. the date when the Supplier begins supplying the Services to the Customer;

in each case following the Customer's acceptance of the Proposal and these Terms and Conditions for the Supply of Services;

"Electronic Design" means all the electronic circuit schematic design elements, files and data and programmable logic or gate array device design elements, including scripts to control those activities (excluding printed circuit board component layout and Customer Materials);

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Mechanical Design" means all mechanical design elements files and data, including scripts to control those activities (excluding the overall visual appearance of physical products and Customer Materials);

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Customer's Premises" means the premises of the Customer where the Services may be provided, in whole or part, by the Supplier, as specified in the Proposal;

"Proposal" means a proposal or quotation document issued by the Supplier to the Customer detailing the

scope of the Services and other matters relating to the Agreement;

“**Services**” means the services supplied by the Supplier to the Customer under the Agreement, details of which are set out in the Proposal;

“**Software**” means processor implementable instructions including all the source code needed to modify, generate, install, and (for an executable work) run any non source form of the software, including scripts to control those activities (excluding Customer Materials);

“**Supplier**” means Dyena Ltd, a limited company incorporated in England and Wales (registration number 07940390);

“**Supplier Representatives**” means the persons specified as such in the Proposal;

“**Term**” means the term of the Agreement; and

“**Visual Design Elements**” means the overall visual appearance of any physical product, distinct graphical user interface designs, print artwork, graphics and printed circuit board component layout (excluding Background Materials and Customer Materials);

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- A. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- B. any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 In the Agreement, “persons” include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

1.6 Words in the singular include the plural and in the plural include the singular.

2. APPOINTMENT AND TERM

2.1 The Customer appoints the Supplier as its supplier of the Services during the Term.

2.2 The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 15.

2.3 The Agreement and the Proposal contain the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions unless specifically stated in the Proposal.

2.4 Without prejudice to the generality of Clause 2.3, any reference to any of the Customer’s terms and conditions in any document forming part of or evidencing a Contract will not have the effect of incorporating any such terms and conditions into the Contract, nor of forming any other contract between the parties for the purchase of the Products.

2.5 The Customer hereby waives any right it might otherwise have to rely upon the Customer’s terms and conditions referred to in Clause 2.4 and the other terms and conditions referred to in Clause 2.3.

3. SERVICES

3.1 The Supplier will supply the Services to the Customer in accordance with the terms of the Agreement.

3.2 The Supplier will use reasonable endeavours to meet any timetable for the provision of the Services set out in the Proposal; and the time for delivery of the Services will not be of the essence of the Agreement.

3.3 The Supplier may sub-contract the provision of the Services without the prior written consent of the Customer; providing that if the Supplier does sub-contract the provision of the Services, the Supplier will

remain liable to the Customer for the performance of the sub-contracted obligations.

3.4 Where requested by the Customer the Supplier will provide copies of all design files which are specified as purchasable by the Customer in the Proposal to an adjudicator at a legal entity or organization known to, and accepted by the Supplier, to be held at the expense of the Customer.

4. DELIVERABLES

4.1 The Supplier will deliver the Deliverables to the Customer in accordance with the terms of the Agreement.

4.2 The Supplier will use reasonable endeavours to meet any timetable for the delivery of the Deliverables set out in the Proposal; and the time for delivery of the Deliverables will not be of the essence of the Agreement.

4.3 Within 15 Business Days following delivery of the Deliverables, the Customer will run acceptance tests to determine whether the Deliverables supplied by the Supplier:

- A. meet the specification of the Deliverables set out in the Proposal;
- B. operate without defect or error; and
- C. are of a good professional standard.

4.4 Acceptance of Deliverables supplied to the Customer will occur upon the earlier of:

- A. the Customer informing the Supplier that the tests under Clause 4.3 have been passed; or
- B. the period specified in Clause 4.3 passing without the Customer giving a written notice of rejection of the Deliverables to the Supplier.

4.5 If the Customer rejects the Deliverables supplied by the Supplier, the Customer will allow the Supplier a further reasonable period to remedy the problems, following which the Customer will repeat the acceptance tests.

4.6 Where the Deliverables include new software or adapted existing software the Supplier will author and test the software to the practical limits of the time allocated to the Customer's project. The Supplier will only take responsibility for the update and correction of errors or bugs within the software and excludes all liability for any expense howsoever incurred by the Customer in the upgrading of existing software. The Customer should exhaustively test all software supplied by the Supplier before using the software for any production, commercial or critical purposes.

4.7 Where the Deliverables include new hardware or adapted existing hardware the Supplier will test the hardware to the practical limits of the time allocated to the Customer's project. The Supplier will only take responsibility for the update and correction of errors within the hardware design and excludes all liability for any expense howsoever incurred by the Customer in the upgrading of existing hardware. The Customer should exhaustively test all hardware supplied by the Supplier prior to placing production orders or using the hardware for any commercial or critical purposes.

5. CUSTOMER OBLIGATIONS

5.1 The Customer will provide to, or procure for, the Supplier any:

- A. support and advice;
- B. information and documentation;
- C. third party co-operation;
- D. licences of third party software; and
- E. governmental, legal or regulatory licences, consents or permits;

reasonably necessary to enable the Supplier to discharge its obligations under the Agreement.

5.2 The Customer will:

- A. be responsible for ensuring the health and safety of the Supplier's personnel, agents and subcontractors whilst they are at the Customer's Premises;
- B. inform the Supplier of all health and safety rules and regulations and any reasonable security requirements that apply at the Customer's Premises; and

- C. maintain reasonable insurance cover for the Supplier's personnel, agents and subcontractors whilst they are working at the Customer's Premises (including reasonable public liability insurance);

or, where the Premises are occupied by a third party, the Customer will use reasonable endeavours to seek to ensure that the third party will comply with the preceding provisions of this Clause 5.2 as if the third party were the Customer.

5.3 The Customer will not take any action or do anything which would or would be likely to damage the reputation or goodwill of the Supplier, or bring the Supplier into disrepute.

6. PROJECT MANAGEMENT

6.1 The Customer will ensure that all instructions in relation to the Agreement will be given by a Customer Representative to a Supplier Representative, and the Supplier may treat all such instructions as the fully authorised instructions of the Customer;

6.2 The parties will hold project management meetings at the Suppliers Premises, and by telephone and via the internet at the reasonable request of either party.

6.3 A party requesting a project management meeting to be held in person will give to the other at least 5 Business Days' notice of the meeting.

6.4 Wherever necessary to enable the efficient conduct of business, the Customer will be represented at the project management meetings by at least one Customer Representative and the Supplier will be represented at the project management meetings by at least one Supplier Representative.

7. CHARGES AND PAYMENT

7.1 The Customer will pay the Charges to the Supplier in accordance with the provisions of this Clause 7.

7.2 The Supplier may issue an invoice for the Charges to the Customer:

- A. on or after the dates or times set out in the Proposal; and
- B. at any time after the relevant Services have been delivered to the Customer;

7.3 The Customer will pay the Charges to the Supplier on receipt of an invoice issued in accordance with Clause 7.2.

7.4 All amounts payable under the Agreement are exclusive of all sales, value-added, withholding and other taxes and duties which will be payable by the Customer (except for taxes payable on the Supplier's net income, which will be payable by the Supplier).

7.5 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Supplier to the Customer from time to time).

7.6 If the Customer does not pay any amount properly due to the Supplier under or in connection with the Agreement, the Supplier may:

- A. charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
- B. claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

7.7 The Supplier may elect to vary the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring at the end of any Year of the Agreement, providing that any such variation shall not result in the Charges increasing by more than the increase, during the 12 month period immediately preceding the notice of variation, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

7.8 The Supplier reserves the right to suspend Services work in the event of any payment not being made when due (except where it is reasonably disputed by the Customer in good faith) or if the Supplier at any time reasonably considers that the financial circumstances of the Customer have ceased to justify the terms stated.

7.9 If the Supplier is unable to deliver all the Services ordered by the Customer for reasons beyond the Supplier's control the Customer shall pay for such of the Services as are delivered.

8. WARRANTIES

8.1 The Customer warrants to the Supplier that it has the legal right and authority to enter into and perform its obligations under the Agreement.

8.2 The Supplier warrants to the Customer that:

- A. it has the legal right and authority to enter into and perform its obligations under the Agreement.
- B. the Services will be performed with reasonable care and skill.

8.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 If the Proposal includes the statement "This quotation includes the supply of Intellectual Property licence and rights" the Supplier hereby:

- A. grants to the Customer a non-exclusive and royalty-free licence under the Intellectual Property Rights in the Background Materials included within the Deliverables to utilise them as required for the End Product, which can be manufactured in any quantity spanning the life of the End Product;
- B. grants to the Customer a non-exclusive and royalty-free licence under the Intellectual Property Rights in the Electronic Design included within the Deliverables to utilise it as required for the End Product, which can be manufactured in any quantity spanning the life of the End Product;
- C. grants to the Customer a non-exclusive and royalty-free licence under the Intellectual Property Rights in the Software included within the Deliverables to utilise it as required for the End Product, which can be manufactured in any quantity spanning the life of the End Product;
- D. grants to the Customer a non-exclusive and royalty-free licence under the Intellectual Property Rights in the Mechanical Design included within the Deliverables to utilise it as required for the End Product, which can be manufactured in any quantity spanning the life of the End Product;
- E. assigns to the Customer all of its existing and future Intellectual Property Rights in the Visual Design Elements included within the Deliverables (excluding the Customer Materials); and
- F. agrees not to utilise the supplied aggregate Electronic Design, aggregate Software Design or aggregate Mechanical Design included within the Deliverables for any other purpose or for any other customer; This shall not restrict the supplier from utilising individual elements of the supplied aggregate designs both in previous and future development work and for any customer.

9.2 If the Proposal does not include the statement "This quotation includes the supply of Intellectual Property licence and rights" the Customer acknowledges that no Intellectual Property Rights shall pass to the Customer unless specifically stated in the Proposal.

9.3 The Customer acknowledges that all pre-existing rights in respect of Intellectual Property Rights of the Supplier will remain the property of the Supplier and shall not pass to the Customer.

9.4 The Supplier acknowledges that all pre-existing rights in respect of Intellectual Property Rights of the Customer will remain the property of the Customer and shall not pass to the Supplier.

9.5 The Customer shall indemnify the Supplier against any and all liabilities, claims and costs incurred by or made against the Supplier as a direct or indirect result of carrying out of any of the work required to be done in accordance with the requirements or specifications of the Customer involving the infringement of any Intellectual Property rights of any third party.

9.6 The Customer will:

- A. upon becoming aware of an actual or potential IPR Infringement Claim, notify the Supplier;
- B. provide to the Supplier all reasonable assistance in relation to the IPR Infringement Claim;
- C. allow the Supplier the exclusive conduct of the IPR Infringement Claim and all related disputes, proceedings, negotiations and settlements; and
- D. not admit liability in connection with any IPR Infringement Claim or settle any IPR Infringement Claim without the prior written consent of the Supplier.

9.7 Works and materials comprised in the Deliverables, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Materials) will be (at the option of the Supplier):

- A. supplied in accordance with the relevant licensor's standard terms for use;
- B. supplied on licence terms notified by the Supplier to the Customer;
- C. sub-licensed by the Supplier to the Customer on terms notified by the Supplier to the Customer;
- D. and/or sub-licensed by the Supplier to the Customer on the basis of a non-exclusive, worldwide, royalty free licence to use the works and materials in connection with the Deliverables.

10. LIMITATIONS OF LIABILITY

10.1 Nothing in the Agreement will exclude or limit the liability of either party for:

- A. death or personal injury caused by that party's negligence;
- B. fraud or fraudulent misrepresentation on the part of that party; or
- C. any other liability which may not be excluded or limited under applicable law.

10.2 Subject to Clause 10.1 and without prejudice to the express indemnities in the Agreement, the Supplier's liability to the Customer under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

- a. the Supplier will not be liable for any:
 - i. loss of profits, income or anticipated savings;
 - ii. loss or corruption of any data, database or software;
 - iii. reputational damage or damage to goodwill;
 - iv. loss of any commercial opportunity; or
 - v. indirect or consequential loss or damage;
- b. Neither party will be liable for any losses arising out of a Force Majeure Event;
- c. The Supplier's liability in relation to any event or series of related events will not exceed the total amount paid or (if greater) payable by the Customer to the Supplier under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

11. DATA PROTECTION

11.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Supplier under the Agreement, and that the processing of that Personal Data by the Supplier for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

11.2 The Supplier warrants that:

- a. it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Supplier on behalf of the Customer; and
- b. it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Supplier on behalf of the Customer.

12. CONFIDENTIALITY

12.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 12.

12.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least the same degree of care with which it protects and safeguards its own confidential information.

12.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

12.4 These obligations of confidentiality will not apply to Confidential Information that:

- a. has been published or is known to the public (other than as a result of a breach of the Agreement);
- b. is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
- c. is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

13. RECYCLING

13.1 Where the Customer is a business the costs of collection, treatment, recovery and recycling of products or equipment supplied in the Deliverables shall be borne by the Customer.

14. FORCE MAJEURE EVENT

14.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

14.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

- a. forthwith notify the other; and
- b. will inform the other of the period for which it is estimated that such failure or delay will continue.

14.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

15. TERMINATION

15.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- a. commits any material breach of any term of the Agreement, and:
 - i. the breach is not remediable; or
 - ii. the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- b. persistently breaches the terms of the Agreement.

15.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- a. the other party:
 - i. is dissolved;
 - ii. ceases to conduct all (or substantially all) of its business;
 - iii. is or becomes unable to pay its debts as they fall due;
 - iv. is or becomes insolvent or is declared insolvent; or
 - v. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- b. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- c. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company)

reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);

- d. (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

15.3 The Supplier may terminate the Agreement immediately at any time by giving written notice to the Customer if:

- a. the Customer fails to pay in full and on time any amount due to the Supplier whether due under the Agreement or otherwise;

16. EFFECTS OF TERMINATION

16.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7.6, 9.1, 9.2, 10, 12, 16, 17 and 19.

16.2 If termination is caused by the Supplier ceasing trading any options to obtain source design files or data specified in the Proposal shall survive and continue to have effect.

16.3 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

17. NON-SOLICITATION

17.1 The Customer will not, without the Supplier's prior written consent, either during the term of the Agreement or within 6 months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the Supplier who has been involved in the Agreement or the performance of the Agreement.

18. NOTICES

18.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post for the attention of the relevant person, and to the relevant address given below (or as notified by one party to the other in accordance with this Clause).

The Supplier
Dyena Ltd, 115 South Western House, Southampton, Hampshire, SO14 3AL, UK

The Customer
The addressee, address and email given in the Proposal or displayed on the Customers web site.

18.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- a. where the notice is delivered personally, at the time of delivery;
- b. where the notice is sent by first class post, 48 hours after posting.

19. GENERAL

19.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

19.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

19.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

19.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

19.5 Either party may freely assign their rights and obligations under the Agreement without the other party's consent to any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.

19.6 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.

19.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

19.8 Subject to Clause 10.1:

- A. Excluding any Clauses specified as excluded in the Suppliers Proposal, the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
- B. neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
- C. neither party will have any liability other than pursuant to the express terms of the Agreement.

19.9 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.