

**INDEX ASA**  
**PURCHASE TERMS AND CONDITIONS**

**INDEX ASA**, a company duly organized and existing under the laws of the country of Norway, and maintaining its principal place of business at Martin Linges vei 25, No-1364 Fornebu, Norway ("INDEX")

**THESE PURCHASE TERMS AND CONDITIONS** (the "Terms") apply to all purchase of goods and/or the provision of services ("Goods") and form the contract between you as the seller of Goods (the "Seller") and the INDEX Group Company referred to on the Order (as defined below) accompanying these Terms, unless authorized representatives of both INDEX and Seller have executed and delivered to each other a separate written agreement governing the sale of Goods by Seller to INDEX.

**1. DEFINITIONS**

1.1 "**INDEX**" and or "**INDEX Group Company**" means any of INDEX ASA or its Affiliates.

1.2 "**Affiliates**" means any legal entity that, directly or indirectly, owns and/or controls, is owned and/or controlled by, or is under common ownership and/or control of a party. In the case of legal entities having stocks and/or shares, ownership or control shall exist through the direct or indirect ownership and/or control of more than fifty percent of the voting shares. In the case of any other legal entity, ownership and/or control shall exist through the ability to directly or indirectly control the management and/or business of the legal entity.

1.3 The "**Order**" means the order placed by INDEX for the supply of Goods and accepted by the Seller.

1.4 "**Goods**" is defined above.

1.5 "**Seller**" is defined above.

1.6 "**Terms**" is defined above.

1.7 "**Tools**" means jigs, tools, test rigs, masks, photomasters, drawing masters and other masters including tapes, discs and any other data storage items and software specific to the Order.

1.8 "**Software**" means the data pertaining to the Order which is contained in documents, tapes, discs, memories and or other data storage medium.

1.9 "**Delivery**" means CIP (carriage and insurance paid) to and unloading at the address specified on the Order.

1.10 "**Required Standard**" is defined in section 6 below.

**2. APPLICABILITY**

2.1 The Terms shall apply to the Order to the exclusion of any other terms and conditions put forward by the Seller. If the Order is not accepted by the Seller within fourteen days after the date of the Order, it shall be deemed to have lapsed. Any variation to the Order or these Terms shall be deemed null and void unless it is made in writing and signed by an authorised officer of both parties.

2.2 INDEX shall not be bound by any Orders or amendments thereto other than those issued or confirmed on INDEX's official printed Order or amendment forms, and either duly signed or sent via e-mail to Supplier by an authorised officer of INDEX.

**3. PRICES**

3.1 The price for Goods shall be as stated in the Order and shall include packing, carriage, insurance, delivery to the stated delivery address and all other charges or expenses of any nature except for value added tax which shall be payable subject to receipt of a VAT invoice. No increase in price may be made.

3.2 The price for services must be consistent with the last agreed estimate. Any variation must be agreed with INDEX prior to the service being provided. INDEX may refuse to pay any charges not specifically agreed in advance.

**4. TERMINATION**

INDEX reserves the right to terminate the Order or the unfulfilled part thereof and require repayment of any money paid and/or to reject the Goods:

- (a) if the Goods or Software are/is not delivered or work to be done is not carried out by the date or dates specified on the Order or the date or dates first notified in response to the Order by the Seller and accepted by INDEX, time being of the essence,  
or
- (b) If the Goods or Software or work to be done do not strictly comply with the quality, quantity, description and specification of the Goods or Software and any drawings relating thereto specified in the Order, and with the degree of skill and care that is required by current, good and sound professional procedures and practices or if none, as implied by law,  
or
- (c) If the material(s) or workmanship in relation to the Goods is/are not sound in every respect and equal to relevant samples provided or given by one party or the other.

**5. FORCE MAJEURE**

Should INDEX's business be stopped, interrupted or restricted by riot, lock-out, strike, fire, explosion or any other exceptional cause or any cause beyond its control, INDEX is at liberty to terminate the Order or the unfulfilled part thereof or defer the date or dates of delivery until the causes of stoppages, interruptions or restrictions have ceased.

**6. REQUIRED STANDARD**

6.1 The Goods shall conform to specification or sample as the case may be and shall conform in all other respects with the number and description specified by the Order. The Goods shall be of such quality of design and/or material and/or workmanship as will meet INDEX's reasonable satisfaction. The Goods shall be suitable for their purpose which the Seller is deemed to know. All the above said requirements are collectively known as the "**Required Standard**".

6.2 In the event that INDEX purchases certain Goods from the Seller on a regular basis, and Seller intends to change the form, fit or function of such Goods, the Seller shall give INDEX prior written notice of such intended changes, and INDEX shall have the right to cancel the Order by providing a written cancellation notice to the Seller.

**7. DEFECTS**

7.1 In the event that a substantial proportion of the Goods are not of the Required Standard INDEX may at its option either carry out additional inspection to enable immediate acceptance of the Goods which are non-defective, in which case the Seller shall pay the cost of this extra work and INDEX shall pay only for accepted Goods, or return the entire batch without any payment obligations to the Seller and at the Seller's cost and expense.

7.2 The Seller shall within 7 days of INDEX's request for repair, or if INDEX shall so request, replace the Goods free of charge:

- (a) If the Goods are damaged or lost in transit and INDEX shall have given to the Seller notification of such damage within a reasonable time after use by INDEX or, in the case of loss, after the agreed delivery date.  
or
- (b) If within 12 months after use by INDEX of the Goods, INDEX notifies the Seller of any defects in the Goods or the Goods are not of the Required Standard which shall arise under proper use or of any other non-conformity with these Terms or the Order.

## **8. TITLE; DELIVERY**

8.1 The title and risk in Goods shall pass to IDEX on Delivery.

8.2 Goods must not without IDEX's written consent be delivered earlier than 1 week before the Delivery date. IDEX may in case of such early Delivery at its option refuse or accept Delivery but withhold initiation of payment action until the due date.

8.3 Goods which are not received on or before the Delivery date shall IDEX be delivered in an expedited manner as specified by IDEX, entirely at the cost of the Seller (including without limitation the cost of any premium air freight).

## **9. INVOCIES; PAYMENT**

Invoices must bear IDEX's order number and must be sent the same day as the Goods are dispatched or later. In the event of the Goods being delivered in the calendar month following the date of invoice(s), such invoice(s) will be treated as received in the calendar month of Delivery. Payment shall be made within 60 days of the end of the month in which the invoice is received or treated as received. IDEX may set off any claims it has against the Seller when making payment.

## **10. EMPTY CONTAINERS**

IDEX may at its option return empty containers using all reasonable care and may debit any charges relating thereto.

## **11. CONFIDENTIALITY**

The Order and the subject matter thereof shall be treated as confidential between IDEX and the Seller and shall not be disclosed by the Seller or any sub-contractor of the Seller to any other party or used by the Seller or any subcontractor for advertisement, display, publication or exhibition without IDEX's prior consent in writing.

## **12. TOOLS**

12.1 Tools wholly paid for by IDEX shall be IDEX's property. Tools partially paid for by IDEX shall be used solely for the purposes of IDEX's Orders, unless otherwise agreed in writing by IDEX. If there is a need to repair, replace or renew any of the Tools (whether due to the Seller's negligence or otherwise), the Seller shall notify IDEX immediately so that IDEX may ensure its future supplies.

12.2 Whether the loss or damage is caused by the Seller's negligence or otherwise (except for fair wear and tear caused by normal use) the Seller shall at its own expense promptly and satisfactorily repair or replace all Tools lost or damaged. Without prejudice to the foregoing the Seller will, unless it informs IDEX forthwith in writing to the contrary, at its own expense insure in the joint names of itself and IDEX the Tools against loss and damage.

12.3 The Seller shall at its expense send any Tools wholly paid for to IDEX forthwith upon request by IDEX at any time.

## **13. WARRANTIES; INDEMNITIES**

13.1 The Seller represents and warrants that (i) it has the authority to enter into this Agreement; (ii) the Goods and the Software will be delivered free and clear of all liens, claims, and encumbrances; and (iii) that the Goods and the Software do not, and will not, infringe on any third party intellectual property rights.

13.2 The Seller hereby indemnifies and agrees to keep IDEX (including its assignees, employees, and customers) indemnified from and against any actions, claims, losses, liabilities, proceedings, damages, costs and expenses (including reasonable legal costs and expenses) suffered or incurred by IDEX arising out of any breach by the Seller of any of the undertakings, obligations, representations and warranties contained herein. Any forbearance shown by or any delay by IDEX in enforcing any of its rights shall not be a waiver of any such rights.

## **14. INTELLECTUAL PROPERTY**

All copyright and other intellectual property rights of any nature anywhere in the world arising out of any work done by the Seller in connection with these Term and the Order shall belong to IDEX

absolutely, and the Seller hereby assigns any and all such intellectual property rights to IDEX. The Seller hereby agrees that it shall execute any documents IDEX may require to vest title in such rights in IDEX and hereby irrevocably appoints IDEX as its attorney to do so.

## **15. INJUNCTIVE RELIEF**

Any rights conferred upon IDEX by the Terms shall be in addition and without prejudice to all other rights and remedies available to it at law or in equity. IDEX's remedies for any breach of these Terms and/or the Order by the Seller will include damages, injunctive relief, specific performance, and restitution. The Seller acknowledges that breaches of these Terms and/or the Order by the Seller could cause irreparable injury to IDEX for which monetary damages would not be an adequate remedy and, therefore, IDEX is entitled to seek injunctive relief (including specific performance).

## **16. CHOICE OF LAW; VENUE**

These Terms will be governed by in the case of:

16.1 IDEX Group Companies incorporated in Europe (other than England, Scotland and Wales) by Norwegian law and subject to the jurisdiction of the Norwegian courts.

16.2 IDEX Group Companies incorporated in England, Scotland and Wales by English law and subject to the jurisdiction of the English courts.

16.3 IDEX Group Companies incorporated in any states or countries in North or South America by Delaware (US) law and subject to the jurisdiction of Delaware (US) courts.

16.4 IDEX Group Companies incorporated in any states or countries in the Asia-Pacific region by Singapore law and subject to arbitration in Singapore before the Singapore International Arbitration Centre ("SIAC").

## **17. MISCELLANEOUS**

17.1 Goods must be supplied by the Seller suitably packed and with relevant data to enable their safe transport, handling, use, storage and disposal as required by current legislation and such goods and packing shall meet all current statutory requirements.

17.2 If the Goods are to be delivered by installments the Order shall be treated as a single contract and not as separate contracts unless IDEX has requested delivery by installments.

17.3 The Seller shall not without the consent of IDEX in writing assign or transfer or sub-contract these Term and/or the Order or any parts thereof.

17.4 If any provision in whole or part of these Terms shall be found by any court or competent authority to be void or unenforceable, the enforceability of the remainder of these Terms (and the remainder of the provision concerned) shall not be affected.

17.5 All waivers must be in writing and signed by the party to be charged. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.