

Commercial In Confidence

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**LIME**

# Purchase Order

**TERMS AND CONDITIONS**

Value Every Moment



## GENERAL TERMS AND CONDITIONS OF PURCHASE

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### 1. DEFINITIONS

In these conditions:-

"Conditions" mean the standard terms and conditions of purchase set out in this document and include any special terms and conditions agreed in writing between C&W and the Supplier.

"Contract" means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services formed by the Supplier's acceptance of the Order which, however made or communicated, shall be deemed made subject to these Conditions.

"Delivery Address" means the address for delivery stated on the Order.

"Goods" means all those goods and materials described in the Order.

"C&W" means the Cable & Wireless Communications plc Group registered company in the Caribbean noted on the Order.

"Order" means C&W's purchase order for the supply of the Goods and/or supply of Services.

"Price" means the total price of the Goods and/or Services.

"Services" means the services (if any) described in the Order.

"Specification" means the plans, drawings, data and other technical information relating to the Goods and/or Services.

"Standards" means the safety and technical standards of the Goods and/or Services referred to in the Specification.

"Supplementary Contract" means a written agreement between C&W and the Supplier used to replace the standard terms and conditions of purchase set out in this document and/or enhance the specification of the Goods and/or Services.

"Letter of Intent" means a written agreement between C&W and the Supplier used to replace the standard terms and conditions of purchase set out in this document to authorise certain work to be carried out or monies to be committed prior to final agreement and signature of a formal Supplementary Contract.

"Supplier" means the person, firm or company to whom the Order is addressed.

"writing" includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

"Commercial Invoice" means formal document used to transfer title of Goods and/or Services from Supplier to Buyer

"Delivery Note" means a document accompanying the delivery of goods or services that defines the Order the delivery is made against, lists the description, and quantity of the



goods or services delivered, and to whom. A copy of the delivery note, signed by the buyer or consignee, is returned to the seller or consignor as a proof of delivery.

“Working Day” means any day other than Saturday, Sunday, or a gazetted or statutory holiday in the jurisdiction of incorporation of C&W or of the Supplier.

## 2. BASIS OF PURCHASE

(a) The Order constitutes an offer by C&W to purchase the Goods and/or acquire the Services subject to these Conditions. The Order shall constitute the only authorised form of offer on the part of C&W and, unless otherwise stated herein, any written or verbal communication by other means from C&W shall not constitute any form of offer or commitment on the part of C&W. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to C&W or subject to which the Order is accepted or purported to be accepted by the Supplier.

(b) The Order will be considered accepted when such acceptance is received in writing from the Supplier or after five (5) working days following the date of issue to the Supplier.

(c) Notwithstanding the foregoing, the Order may substitute for these Conditions one or more Supplementary Contracts explicitly referred to in the Order document.

## 3. INSPECTION AND TESTING OF GOODS PRIOR TO DELIVERY

(a) C&W shall be entitled to:-

(i) inspect and test the Goods during their manufacture, processing or storage at any reasonable time at the Supplier's works or at the premises of subcontractors and the Supplier shall afford to C&W all such facilities as may be reasonably required by C&W; and

(ii) require one or more samples to be submitted for inspection and testing prior to dispatch of the Goods.

(b) Such inspection and testing shall not constitute acceptance by C&W and does not relieve the Supplier or any subcontractor of any responsibility under the Order, whether implied or expressed.

(c) In the event that any of the Goods fail inspection and/or testing, C&W reserves the right to charge the Supplier any costs incurred by C&W for subsequent re-inspection and/or testing including, without limitation, in respect of travel and accommodation.

## 4. DELIVERY

(a) The Supplier shall deliver the Goods to and the Services shall be performed at the Delivery Address during normal working hours unless specified otherwise in the Order. In the event that the Supplier delivers the Goods to the wrong address or performs the Service at the wrong address, C&W reserves the right to refuse to accept delivery at that address and/or to charge the Supplier for the costs of subsequent transfer. C&W shall not be liable for the safe custody or safe return of Goods delivered after the agreed delivery date or to any location other than that specified on the Order.



(b) The Supplier shall deliver during the delivery period or on the delivery date stated on the Order. Time stipulated for delivery of the Goods or performance of the Services shall be of the essence.

(c) In the event of delivery being delayed by any cause beyond the reasonable control of the Supplier, provided that the Supplier shall give C&W notice in writing immediately of such delay, C&W shall grant the Supplier such extension of time as may be reasonable.

(d) The Supplier shall properly pack and secure the Goods, and all dispatches must bear the C&W order number and any other information explicitly requested by C&W. The Supplier shall be liable for any damage incurred due to poor or insufficient packaging. C&W shall not be obliged to accept delivery in installments.

(e) If for any reason C&W is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery in accordance with sub-clause (b) above the Supplier shall store the Goods, insure and safeguard them and take all steps to prevent their deterioration until their actual delivery and C&W shall be liable to the Supplier for the reasonable costs (including insurance) of so doing.

(f) C&W shall be entitled to reject any of the Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until C&W has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. In the event of over-supply of Goods, the Supplier shall entirely at his expense arrange with C&W the appropriate return or disposal of the Goods.

(g) Delivery of the Goods or performance of the Services shall be made or completed no later than the delivery date stated on the Order and the Supplier shall be liable to C&W for any loss or damage, whether direct, indirect or consequential, if it is delayed or prevented, in whole or in part, from delivering the Goods or performing the Services or otherwise performing its obligations under the Contract for any reason whatsoever except where the Supplier can demonstrate that it is so delayed or prevented by reasons outside its control. C&W reserves the right to impose a fee of up to 0.2% of the value of the Order per day to a maximum of 10% of the Value of the Order, or partially or completely reject the order if the specified delivery date (including any extension of time under 4(c)) is not complied with.

(h) Unless otherwise agreed with C&W, all Goods obtained from outside of the Caribbean shall use C&W's nominated freight forwarding company. C&W shall be liable for the payment of all freight and associated charges. Shipping terms will comply with the definitions of Incoterms 2010.

(i) The Supplier shall provide all relevant documentation at the moment of delivery, including as a minimum a Commercial Invoice in 2 copies detailing exactly what was delivered and to where. Where the Commercial Invoice is a summary of the title being transferred, then a detailed Delivery Note must supplement the Commercial Invoice. In addition the Supplier must provide any other documentation explicitly requested by C&W or required to ensure efficient transportation/exportation of Goods. Where services are delivered and invoiced on a periodic basis, a Delivery Note must be sent when each invoice is submitted.



## 5. TITLE AND RISK

(a) Subject to Clause 5(c) below, title and risk of damage to or loss of the Goods shall pass to C&W only upon actual delivery of the Goods to the Delivery Address or such other address as C&W shall have specified in writing without prejudice to any right of rejection which may accrue to C&W under these Conditions. Any loss or damage to the Goods prior to that time shall be borne by the Supplier.

(b) If the Supplier postpones delivery at the request of C&W pursuant to Clause 4 (e) above, title in the Goods shall pass to C&W seven days (7) after the date of receipt of notification from the Supplier that the Goods are due and ready for delivery or on such other date as may be agreed in writing between the parties but the Goods shall remain at the Supplier's risk until delivery.

(c) Where C&W pays for all or part of the Goods prior to delivery, title in those Goods paid for (but not risk) shall pass to C&W on the date of payment.

(d) Where Services are provided, all work done thereon shall vest in C&W at delivery, unless otherwise specifically stated on the Order.

(e) Where the provision of Goods and/or Services involves the generation of Intellectual Property, the rights to this shall pass to C&W with the title, unless otherwise specifically stated on the Order.

## 6. PRICE AND PAYMENT

(a) Subject to the sub-clauses below, C&W shall pay the Supplier the Price in accordance with the payment terms set out in the Order.

(b) The Price shall be inclusive of any applicable Tax both those indicated by territorial Laws and regulations or by any jurisdiction applicable to subject transaction and of all charges for packaging, packing, shipping, carriage, insurance, delivery of the Goods to the Delivery Address (all of which shall be identified separately in any documentation).

(c) Notwithstanding anything else herein contained, the Supplier agrees that it shall be responsible for payment of all taxes properly payable by it, including but not limited to withholding taxes, and the Supplier further acknowledges that C&W may, if statutorily obligated, remit payment of such taxes directly to the applicable taxing authority from the payment due to the Supplier. C&W shall if so required provide to the Supplier receipts of such payments in the name of the Supplier within such period as may be reasonable in the circumstances, of such payments being made to the applicable taxing authority.

(d) C&W reserves the right to set off against the Price any sums owed by the Supplier to C&W under the Contract or otherwise.

(e) In the event that no payment terms are stated, C&W shall pay for the Goods and/or Services sixty (60) days following the receipt and acceptance of the Goods and/or Services, or receipt of a valid invoice for the Goods and/or Services, whichever is the later.

(f) Any payment or spend commitment not supported by an Order will not be paid by C&W.



- (g) Invoices must be issued in the currency stated on the Order. Any deviation will make the invoice invalid and return to the Supplier for re-submission.
- (h) All invoices shall be presented within 6 months of acceptance of final delivery, after such time C&W reserve the right to refuse payment of some or all of the Order.
- (i) The Supplier must provide all information requested from time to time by C&W on all invoices, including specifically the Order reference, send them to the address indicated on the Order, and reflect the correct C&W billing entity as stated on the Order. C&W will return invoices which have no Order reference. Incorrectly addressed invoices may be subject to delay in payment.
- (j) Any agency fees due to local agents must be paid in advance of Goods being dispatched. The Supplier shall be liable for any demurrage caused by the Supplier's local agents delaying clearance of Goods.
- (k) On request, the Supplier shall provide periodic statements of invoices and payments to C&W to support reconciliation. The periodicity shall be defined at the time of request.

## 7. WARRANTY AND GUARANTEE

- (a) The Supplier warrants that the Goods:-
  - (i) will be of good and merchantable quality and fit for the purpose which they are designed to fulfill and for any purpose made known expressly or impliedly by C&W to the Supplier and will conform in all respects with the terms of the Order;
  - (ii) will be free from defects in design, materials and workmanship;
  - (iii) will conform to the Standards and the Specification; and
  - (iv) will comply with all statutory requirements and regulations relating to the sale of the Goods.
- (b) The Supplier also warrants that all reasonable care and skill has been used in manufacturing the Goods or providing the Service, as the case may be, and that it shall perform its Services in a timely manner.
- (c) The Supplier warrants that the sale or use of the Goods does not infringe any patent, design right, copyright, trademark, trade name or other intellectual property right.
- (d) Notwithstanding that C&W has inspected and accepted the Goods, the Supplier shall guarantee the Goods for a period of twelve (12) months or the period defined in the Manufacturer's guarantee, whichever is longer, from the date of delivery to C&W and shall investigate the cause of faults and promptly repair to C&W's satisfaction or replace without charge to C&W all or any part of the Goods found to be faulty by reason of defective material, design or workmanship within the guarantee period. If within the guarantee period the Goods are found to be faulty after their partial or complete installation, the Supplier shall be liable for any costs incurred to de-install the faulty Goods and reinstall the replacement Goods. C&W shall arrange dispatch of the Goods to the Supplier in the manner agreed with the Supplier, at the Supplier's risk and expense,



and the Supplier shall deliver the repaired Goods or replacements free of costs to the destination specified by C&W.

(e) All Goods shall have the Manufacturer's relevant guarantee which shall be registered in the name of C&W regardless whether bought directly from the manufacturer or through a distributor. The relevant documentation shall be provided with the Goods on delivery.

(f) Notwithstanding that C&W has inspected and accepted the work applying to the Service, the Supplier shall guarantee the work applying to the Service for a period of twelve (12) months from the date of delivery to C&W and shall investigate the cause of faults and promptly repair to C&W's satisfaction all or any part of the work applying to the Service found to be faulty by reason of workmanship or any defective material provided by the Supplier within the guarantee period.

#### 8. LIABILITY AND INDEMNITY

(a) In addition to and without prejudice to the generality of these Conditions, the Supplier undertakes to keep C&W fully indemnified against all liability, loss, damage, costs and expenses (including legal expenses) awarded against or incurred or paid by C&W resulting directly or indirectly at any time from:-

(i) any damage to C&W's property and any claims for loss or injury to any third party or the property of any third party by reason of the Supplier's negligence or any act or omission on the part of employees, subcontractors or agents of the Supplier arising out of the execution of the Order and to adequately insure against this liability; and

(ii) any defect or fault discovered in the Goods including, without limitation, defects in design, materials and workmanship; and

(iii) failure of the Goods to conform to the Standards and the Specification; and

(iv) failure of the Goods to comply with all statutory requirements and regulations relating to the sale of the Goods; and

(v) any claim for infringement of any patent, design right, copyright, trademark, trade name or other intellectual property rights which arises as a result of the sale or use of the Goods, except to the extent that the claim arises from compliance with that part of the Specification supplied by C&W; and

(vi) delivery of the Goods after the delivery period or delivery date stated on the Order.

(b) C&W shall not be liable to the Supplier in an action based on breach of contract or tort (or otherwise) for any loss of revenue, business, contracts, or profits: or any indirect or consequential loss, howsoever arising. C&W's aggregate liability arising out of or in connection with any Contract shall be limited to the Price under that Contract.

(c) Nothing in these Conditions shall limit the liability of either party for death or personal injury resulting from negligence or for fraud.

#### 9. REGULATIONS AND LABELLING

The Supplier shall be responsible for compliance with all relevant laws and regulations, including those of any country where the Goods are to be delivered or, to the knowledge



of the Supplier, ultimately resold or used, and the Supplier shall ensure that the Goods when delivered to C&W are labeled in such a way as to ensure the safety which a person is entitled to expect from the Goods.

#### 10. CONFIDENTIALITY

- (a) The parties shall treat the Order as confidential and, in particular, the Supplier shall not make use of the name C&W or the name of C&W's customers for any advertisement, announcement or publicity without the prior written consent of C&W.
- (b) The Specification and all information supplied therewith, both of which contain copyright material, shall remain the property of C&W and are confidential. The Supplier shall not without the prior written consent of C&W use the Specification except for the purpose of the Order and shall not communicate such information to third parties except insofar as may be necessary for the purpose of the Order. The Supplier will ensure that third parties who are given confidential information keep that information confidential.
- (c) On completion of the Order or the termination of the same, at the request of C&W, the Supplier must return to C&W the Specification and any other documentation supplied.

#### 11. TERMINATION

- (a) Without prejudice to any claim or right it might otherwise make or exercise C&W shall have the right forthwith to terminate the Order by summary notice if the Supplier commits any breach or non-observance of any of the Conditions, including a failure to deliver during the delivery period or by the due date, whereupon C&W shall be entitled:
  - (i) to return to the Supplier at the Supplier's risk and expense any of the Goods and/or Services already delivered and to recover from the Supplier any monies paid by C&W in respect of such Goods and/or Services; and
  - (ii) to recover from the Supplier any additional expenditure incurred by C&W in obtaining other Goods and/or Services in replacement of the Goods and/or Services.
- (b) C&W shall be entitled to terminate the Contract without liability to the Supplier by giving summary notice to the Supplier if:-
  - (i) the Supplier makes any voluntary arrangement with its or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
  - (ii) an encumbrancer takes possession, or a receiver is appointed of any of the property of the Supplier; or
  - (iii) the Supplier ceases, or threatens to cease, to carry on business; or
  - (iv) C&W reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.
- (c) C&W shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time in which event C&W's sole liability shall be to pay to the Supplier the Price for the Goods and/or Services in respect of which C&W has exercised its right of cancellation, less the Supplier's net saving of cost





arising from cancellation. C&W shall have no further liability to the Supplier as a result of any such cancellation.

(d) C&W and the Supplier may mutually agree to terminate the Order by giving thirty (30) days' notice in writing to the other party. In the event that any Goods and/or Services specifically defined in the Order have already been delivered, then C&W and the Supplier shall agree the treatment of these Goods and/or Services and the balance of the Order shall be considered terminated.

## 12. NOTICES

All notices, demands, or other communications under this Agreement shall be given or made in writing and shall be delivered personally or sent by certified or registered mail (airmail, if appropriate) or sent by international overnight courier, with return receipt requested, addressed to the other party at the address set out in the Contract or at such other address as may be designated by notice from such other party. Any notice, demand or other communication given or made by mail in the manner prescribed in this paragraph shall be deemed to have been received five (5) working days after the date of mailing. Any notice, demand or other communication given or made by international overnight courier shall be deemed to have been received seventy-two (72) hours after deposit with such international courier.

## 13 SPARES SUPPORT

The Supplier shall keep spare parts for the Goods for a period of ten (10) years from the date of the Order and where the Goods or spare parts thereof are to be made obsolete, the Supplier will give C&W at least twelve (12) months' notice in writing. This should be complied with unless otherwise detailed on the Order.

## 14. FREE ISSUE MATERIALS

(a) When materials or items are issued on a free issue basis the Supplier undertakes to replace at its own expense any such materials or items scrapped in excess of any scrap allowance given. All free issue materials or items shall remain C&W's property and all work done thereon shall immediately vest in C&W.

(b) All scrap arising from free issue materials or items shall be disposed of in accordance with C&W's instructions and the proceeds of sale of any such scrap shall be credited to C&W.

## 15. ASSIGNMENT/SUB-CONTRACTING

(a) The Supplier shall not assign or sub-contract the Order, the Contract or any part of it without the prior written consent of C&W.

(b) In any case where the Contract is assigned or sub-contracted in accordance with Clause 15(a) above, the Supplier will ensure that the assignee or sub-contractor, as the case may be, agrees to be bound by the Contract and these Conditions, and such assignment or sub-contract shall in no way limit or affect the obligations or liability of the Supplier hereunder.

## 16. AMENDMENTS



No amendment, interpretation or waiver of any of the provisions of the Order, the Contract or these Conditions shall be effective unless made in writing and signed by the authorized representatives of C&W and the Supplier.

#### 17. ENFORCEMENT

The failure to enforce or to require the performance at any time or times of any of the provisions of the Contract or these Conditions shall not be construed to be a waiver of such provision, and shall not affect either the validity of the Contract or these Conditions or any part thereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of the Contract and these Conditions.

#### 18. GOVERNING LAW

The Contract and the relationships of the parties in connection with the subject matter of the Contract will be governed by and determined in accordance with the laws of the jurisdiction of origin of the Order and the parties hereby submit to the non-exclusive jurisdiction of the courts of country of origin of the Order in relation to any legal action or proceedings arising out of or in connection with the Contract.

#### 19. NO AGENCY

None of the parties to the Contract are the agent or representative of any other party to the Contract. C&W reserves the right to temporarily or permanently cease commercial relations with any supplier in breach of this requirement.

#### 20. REPRESENTATIONS AND WARRANTIES

Each party to the Contract represents and warrants that it has the full legal right, power and authority to perform its obligations under the Contract and these Conditions and that the person executing the Contract has been duly authorised to sign the Contract on behalf of such party.

#### 21. SEVERABILITY

In the event any one or more of the provisions contained in the Contract or these Conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract or these Conditions, but the Contract or these Conditions shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Contract and these Conditions shall be carried out as nearly as possible according to their original terms and intent.

#### 22. SPECIAL CONDITIONS

Where special conditions are stated on the face of the Order, such special conditions shall apply equally with these Conditions, except that where there is any inconsistency between the two, the special conditions stated on the face of the Order shall apply.

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