



## Standard Terms and Conditions for Contracts (October 30, 2019)

### **1 Interpretation**

1.1 In these Standard Terms and Conditions for Contracts:

“Bankruptcy Event” means, with respect to the Customer: (i) any voluntary or involuntary case seeking the liquidation or reorganization of the Customer under Chapter 7 or 11, respectively, of the United States federal bankruptcy code or any similar proceeding under any other similar state law, including any proceeding seeking the appointment of a receiver, liquidator, sequestrator, custodian, trustee or other officer having similar powers to take possession of all or a substantial portion of the Customer’s property or to operate all or a substantial portion of its business; or (ii) any time that Customer becomes insolvent, is unable to pay its debts as they become due or its liabilities exceed its assets.

“Company” means AB Dynamics, Inc., a Delaware corporation;

“Conditions” means these Standard Terms and Conditions for Contracts together with (unless the context otherwise requires) any special terms and conditions agreed in Writing between the Customer and the Company;

“Contract” means the contract for the purchase and sale of the Goods and/or the undertaking of the Work including these Conditions and any applicable Purchase Order or Statement of Work;

“Customer” means the person, firm or company who accepts a quotation from the Company for the sale of the Goods or the performance of the Work or whose order for the Goods or the performance of the Work is accepted by the Company;

“Goods” means the goods (including any instalment of the goods or any parts of them) which the Company is to supply in accordance with these Conditions;

“Purchase Order” means an order of Goods from the Customer that has been accepted in writing by the Company.

“Statement of Work” means a description of services to be performed by the Company at the request of the Customer

that has been accepted in Writing by the Company.

“Writing” includes letter, facsimile transmission, electronic mail message and other means of communication permitted by these Conditions;

“Work” means any work or services to be undertaken or performed by the Company for the Customer pursuant to the Contract.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2 Basis of the Contract**

2.1 The Customer shall buy the Goods and/or request the performance of the Work and the Company shall sell the Goods and/or perform the Work (as the case may be) in accordance with the applicable Purchase Order or Statement of Work, subject in either case to these Conditions, which shall govern the Contract unless they conflict with the terms and conditions contained in any such Purchase Order or Statement of Work in which case the terms and conditions contained in the Purchase Order or Statement of Work will govern the Contract.

2.2 No variation to these Conditions shall be binding unless agreed in Writing by an authorized representative of the Company.

2.3 The Company’s employees or agents are not authorized to make any representations concerning the Goods or the Work unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the

application or use of the Goods or the performance of the Work which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer’s own risk, and accordingly, the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical error, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3 Purchase Orders and Statements of Work**

3.1 No Purchase Order or Statement of Work submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by an authorized representative of the Company.

3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Purchase Order or Statement of Work (including any applicable specifications) submitted by the Customer, and for giving the Company any necessary information, materials or sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods or work shall be those set out in the applicable Purchase Order or Statement of Work.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company or if any Work is to be performed in accordance with a Purchase Order or Statement of Work, the Customer shall indemnify the Company against all loss, damages, cost and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person or entity which results

from the Company's use of the Customer's specifications contained in such Purchase Order or Statement of Work.

3.5 The Company reserves the right to make any changes to a Purchase Order or Statement of Work which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied or the Work undertaken to the Company's specification, which do not materially affect the quality or performance of the Goods or the subject matter of the Work.

3.6 No Purchase Order or Statement of Work which has been accepted by the Company may be cancelled or suspended by the Customer except with the agreement in Writing of the Company. The Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Company as a result of any such cancellation or suspension.

#### **4 Price**

4.1 The price of the Goods or the Work shall be the price contained in the Purchase Order or Statement of Work which reflects the limitations of the Company's liability contained in these Conditions. All prices quoted by the Company are open for acceptance by the Customer within 30 days only, after which time they may be altered by the Company without giving notice to the Customer.

4.2 The Company reserves the right, on giving notice to the Customer at any time before delivery of the Goods or the performance of the Work, to increase the price of the Goods or the Work to reflect any increase in the cost to the Company which is due to any change in delivery dates, quantities or specifications for the Goods or the Work which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions or (where the Contract so provides) materials.

4.3 Except as otherwise stated under the terms of any quotation given by the Company and unless otherwise agreed in Writing between the Customer and the Company, all prices for the Goods are given by the Company on an

ex-works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packing and insurance.

4.4 The price is exclusive of any applicable sales, use or value added tax, customs, import or export duties and any other applicable taxes or duties (whether payable in the United States or elsewhere) which the Customer shall be additionally liable to pay to the Company.

4.5 Except as otherwise agreed in Writing the Customer shall pay the Company's out-of-pocket expenses in performing the Work (including, without limitation, the reasonable travel costs and expenses incurred by the Company's employees or agents while carrying out the Work).

#### **5 Terms of Payment**

5.1 Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods or the Work on or at any time after delivery of the Goods or the performance of the Work, unless the Goods are to be picked-up by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for pick-up or (as the case may be) the Company has tendered delivery of the Goods.

5.2 The Customer shall pay the price for the Goods and/or the Work in United States dollars without deduction set off or withholding whatsoever within 30 days of the date of the Company's invoice notwithstanding that delivery may not have taken place and title to the Goods or the subject matter of the Work has not passed to the Customer. Time shall be of the essence for purposes of payment of the price of Goods and Work under the Contract.

5.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.3.1 cancel the Contract or suspend any further performance of the Work;

5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company or any part of the Work) as the Company may deem appropriate (notwithstanding any purported appropriation by the Customer); and

5.3.3 charge the Customer (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum above the Primer Rate as published in the *Wall Street Journal* from time to time, until payment in full is made (such interest to accrue from day to day and to be compounded and added to principal at such regular intervals as the Company may determine).

#### **6 Delivery and Performance**

6.1 Delivery of the Goods shall be made by the Customer picking-up the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for pick-up or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. Performance of the Work shall be undertaken as stated in the Purchase Order or Statement of Work and if not so stated at such location(s) as the Company may determine in its sole discretion.

6.2 Any dates quoted for delivery of the Goods or the performance of the Work are estimates only and the Company shall not be liable for any delay in delivery of the Goods or completion of performance of the Work. Time shall not be of the essence for purposes of delivery or completion of performance under the Contract. The Goods may be delivered or the Work performed by the Company in advance of the quoted delivery or completion date upon giving reasonable notice to the Customer.

6.3 If the Customer fails to take delivery of the Goods or fails to give the Company adequate instructions by the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:

6.3.1 store the Goods until actual delivery and charge the Customer for reasonable storage costs (including insurance); and

6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **7 Risk and Property**

7.1 Risk of damage to or loss of the Goods or of the subject matter of the Work shall pass to the Customer:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for pick-up; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods; or

7.1.3 in the case of any items created as a result of the performance of the Work, at the time of such creation.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods or of the subject matter of the Work shall not pass to the Customer unless and until the Company has received in cash or immediately available funds payment in full of the price for the Goods or the performance of the Work and all other goods agreed to be sold by the Company to the Customer or work performed by the Company for the Customer for which payment is then due.

7.3 Until such time as title to the Goods or any items created as a result of performance of the Work passes to the Customer, the Company shall be entitled at any time to require the Customer to return the Goods and/or such items to the Company and, if the Customer fails to promptly do so, to enter upon any premises of the Customer or any third party where the Goods or any such items are stored and repossess the same or any part thereof.

7.4 Except as otherwise agreed in Writing, where any Goods are delivered by air or sea transport the responsibility of the Company for the Goods shall

cease immediately upon their placement on board the ship or aircraft.

## **8 Warranties and Liability**

8.1 Subject to the conditions set forth below the Company warrants that:

8.1.1 the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of 12 months from delivery; and

8.1.2 the Work will be performed and completed in accordance with reasonable industry standards.

8.2 The above warranty is given by the Company subject to the following conditions:

8.2.1 the Company shall be under no liability in respect of any defect in the Goods or failure to undertake the Work arising from any drawing, design or specification supplied by the Customer;

8.2.2 the Company shall be under no liability in respect of any defect arising from normal wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods or of the subject matter of the Work without the Company's prior approval in Writing;

8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods or the Work has not been paid by the due date for payment;

8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer.

8.3 Except as expressly provided in these Conditions there are no express or implied warranties of any kind and the Customer acknowledges that any warranties implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Purchase Order

shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.

8.6 Where the Customer requires the Company to carry out Work for the Customer, the Company will make good any defects in such Work attributable to negligent workmanship or to the supply by the Company of defective materials used in connection with such Work which may occur or become apparent within 30 days after completion of the Work provided that:

8.6.1 written notice of such defect is given by the Customer to the Company within 30 days of the defect becoming apparent or completion of the Work (whichever is later);

8.6.2 if the Company so requests, the item or items which are the subject matter of the Work shall be returned by the Customer to the Company in order that such replacement or repairs can be performed; and

8.6.3 any obligations of the Company to repair or replace defects in materials or workmanship remains subject to the conditions set out in Section 8.2 above.

8.7 Except in respect of death or personal injury caused by the Company's gross negligence or willful misconduct, the Company shall not be liable to the Customer by reason of any

representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any special, consequential or punitive loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer or the performance of the Work, except as expressly provided in the Contract.

8.8 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or the Work, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

8.8.1 Acts of God, explosions, floods, storms, fires, tornadoes, hurricanes, lightning strikes, acts of terrorism or accidents;

8.8.2 war, threat of war, sabotage, insurrection, civil disturbance or requisition;

8.8.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any federal, state or local governmental authority;

8.8.4 import or export regulations or embargoes;

8.8.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

8.8.6 difficulties in obtaining raw materials, labor, fuel, parts or machinery;

8.8.7 power failures or breakdowns of machinery.

## **9 Insolvency of Customer**

9.1.1 This Section 9 applies if:

9.1.1 any Bankruptcy Event; or

9.1.2 the Customer ceases, or threatens to cease, to carry on business; or

9.1.3 the Company reasonably believes that a Bankruptcy Event has occurred or is likely to occur and notifies the Customer accordingly.

9.1.4 the Company reasonably believes that the Customer is likely to cease, or threaten to cease, to carry on business and notifies the Customer accordingly.

9.2 If this Section 9 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries or the performance of further Work under the Contract without any liability of the Company to the Customer, and if the Goods have been delivered or Work performed (in whole or in part) but not paid for, all amounts due to the Company from the Customer for any and all work and goods (whether as set forth in a Purchase Order, Statement of Work or otherwise) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary contained in this Contract or otherwise.

## **10 General**

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notice sent by facsimile transmission, electronic mail message or by hand delivery shall be deemed to have arrived upon delivery or receipt of the same; notices sent by first class mail shall be deemed to have arrived three days after being sent.

10.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these Conditions or any other Contract is held by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and any such Contract shall not be affected thereby and shall remain in full force and effect.

10.4 The Contract shall be governed by and construed in accordance with the

laws of State of Delaware without regard to its principles of conflicts of law, and the federal and state courts of Delaware shall have the exclusive jurisdiction to determine any dispute arising in connection with the Contract. The Customer agrees to the jurisdiction of such courts in connection with any such dispute and [waives any right it may have to assert the doctrine of *forum non conveniens*, to assert that it is not subject to the jurisdiction of such courts or to object to venue to the extent any proceeding is brought in accordance with this Section

10.5 No Contract or series of Contracts between the Company and the Customer shall constitute or be deemed to constitute a partnership or joint venture between them.

10.6 The Company shall have a general lien over all goods and property of the Customer whether worked on or not in the possession of the Company in respect of all unpaid debts due from the Customer to the Company.

10.7 Except as otherwise agreed in Writing by the Company, the ownership of all intellectual property rights relating to the Goods and/or the subject matter of the Work shall vest and remain the sole property of the Company. Except as provided in any license specifically granted in Writing to the Customer by the Company, the Customer shall acquire no right to use or otherwise exploit any such intellectual property rights of the Company.