

Terms and Conditions for the purchase of goods and services

1. Definitions

The following words used in these conditions of purchase shall have the meanings set out as follows:

"Change Order" has the meaning given to it in condition 2.2; **"Conditions of Purchase"** means the terms and conditions set out herein;

"Due Date" means the date stated in the Order for delivery of the Goods and/or Services;

"Goods" mean the articles and things, tangible or intangible or any part of them described, listed and/or detailed in the Order, which are supplied to the Purchaser by the Supplier; **"law" or "laws"** means and includes all applicable laws (whether civil, criminal or administrative), common laws or civil codes, legislation, subordinate legislation, treaties, codes of practice, regulations, directives and bye-laws in any jurisdiction, in each case for the time being in force;

"Loss" or "Losses" means all and any direct or indirect losses, costs, expenses, damages, expenditure or other liabilities;

"Order" shall mean the Purchaser's purchase order document and, where used, Specification specifying the Goods and/or Services to be supplied, such Purchase Order being, for the avoidance of doubt, in a form of the Purchaser's choosing, including but not limited to, by way of an e-mail or services of related emails;

"Purchaser" means the ordering entity named or identified in the Order;

"Services" means any services or facilities or any part thereof described, listed and/or detailed in the Order and provided to the Purchaser by the Supplier;

"Specification" means the Purchaser's specification accompanying or (for example where the Order is by way of an e-mail) part of the Order detailing the Goods and/or the Services required; and

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

2. Application of these conditions

- 2.1. These Conditions of Purchase shall apply to the exclusion of all other terms and conditions of the Supplier save for those expressly set out in the Order (if any) or otherwise agreed by the Purchaser in writing which shall take precedence in the event of conflict with these Conditions of Purchase. These Conditions of Purchase are in addition to and without prejudice to the Purchaser's rights at law.
- 2.2. No terms or conditions submitted or referred to by the Supplier when tendering shall form part of these Conditions of Purchase unless agreed in writing by the Purchaser and expressly set out in the Order.
- 2.3. The Purchaser may, from time to time, initiate changes by issuing to the Supplier written notices (each, a "Change Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the terms of this Order. The Supplier will promptly comply with the terms of any Change Order.
- 2.4. No variations to the Order or to these Conditions of Purchase shall be binding on the Purchaser unless confirmed by the Purchaser in writing. For the avoidance of doubt verbal variations of the Order or these Conditions of Purchase shall not be recognised and shall not be contractual.
- 2.5. The Order shall remain valid for a period of 2 weeks unless expressly stated otherwise in the Order, following which it shall expire unless accepted by the Supplier in writing within such time and prior to any notice of cancellation by the Purchaser.
- 2.6. The Supplier shall confirm its acceptance of the Order within 10 days of its date. Acceptance of the Order entails the acceptance by the Supplier of the Order, these Conditions of Purchase and that such are in substitution for the Supplier's conditions of sale (unless expressly stated otherwise in the Order).

3. Labelling and Packaging

- 3.1. The Supplier shall enclose a packing note with the Goods and the Order number shall be endorsed on all packages.
- 3.2. The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any legal or regulatory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order number, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all

documents relating thereto) shall bear prominent and adequate warnings.

- 3.3. The Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all Losses as it may suffer or incur in connection with any breach of this condition by the Supplier.
- 3.4. The Purchaser accepts no liability for packaging materials.

4. Quality

- 4.1. Without limitation to any requirement of law as to, or concerned with, quality or fitness for use or purpose, the Goods shall be of sound materials and workmanship and conform as to quantity, quality and description with the detail stated in the Order and/or Specification. Goods supplied against samples or patterns shall be equal in all respects to the samples or patterns. If a standard of performance is specified, the Goods shall be capable of at least the required standards. Goods shall comply with all relevant statutory industry standards and any rules applicable to the premises where the Goods are to be delivered.
- 4.2. Without limitation to any requirement of law as to, or concerned with, quality or fitness for use or purpose, the Services shall be provided with reasonable care and skill and in accordance with the performance standards or requirements of law and, if any, as specified in the Specification. Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute, or equivalent, is current, all goods and materials used/supplied and all Services shall, unless otherwise agreed in writing in the Order by the Purchaser, be provided in accordance with the appropriate standard. The Supplier shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the Specification.
- 4.3. Without limiting any other provision of these Conditions of Purchase, the Supplier warrants and represents to the Purchaser for a period of twenty four (24) months from the Due Date, that all Goods, Services or Goods furnished in connection with Services will:
 - 4.3.1. be new and free from any defects in workmanship, material and design;
 - 4.3.2. conform to the Specification;
 - 4.3.3. conform to all requirements set out or referred to in law (including that the Goods and/or Services are, and will remain, fit for the purposes for which they are intended);
 - 4.3.4. be free and clear of all liens, security interests or other encumbrances; and
 - 4.3.5. not infringe or misappropriate any third party's intellectual property rights.
- 4.4. The warranties and representations set out in this condition 4:
 - 4.4.1. survive any delivery, inspection, acceptance or payment; and
 - 4.4.2. are cumulative and in addition to any other warranty provided by law or equity.

5. Inspection

- 5.1. The Purchaser reserves the right at any reasonable time to inspect the Goods, whether complete or in manufacture, whether on or after the Due Date, but such inspection shall not relieve the Supplier of any obligations under the Order.
- 5.2. The Purchaser, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or non-conforming to, amongst other things, the Specification or the Order, the requirements of Condition 4 or any other requirement of law. If the Purchaser requires any remedial action including, without limitation, replacement of the Goods, the Supplier shall promptly take such remedial action in respect of the non-conforming Goods. If the Supplier fails to, as the case may be, timely undertake such remedial actions and/or to deliver replacement Goods and/or to undertake such remedial actions to the satisfaction of the Purchaser, the Purchaser may replace them with goods from a third party and charge the Supplier the cost thereof and terminate the Order for cause without any liability to the Supplier.
- 5.3. Any inspection or other action by the Purchaser under condition 5.2 shall not affect the Supplier's obligations under the Order, and the Purchaser shall have the right to further inspection after the Supplier takes remedial action.

6. Delivery

- 6.1. Any Goods and/or Services shall be supplied by the Supplier on or before the Due Date to the place or places specified in the Order or as subsequently specified in writing by the Purchaser.
- 6.2. If no Due Date is specified in the Order, the Supplier shall deliver in full within a reasonable time of receipt of the Order. Timely delivery is of the essence. If the Supplier fails to deliver the Goods or Services in full, on the Due Date, the Purchaser may terminate the Order immediately and the Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all Losses incurred or suffered by it in connection with the Supplier's failure to deliver.
- 6.3. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all Losses that are suffered or incurred by it in connection with any damage or injury (whether fatal or otherwise) in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of its sub-contractors or agents or any other person or party for whom it is or may be vicariously liable.
- 6.4. Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with all reasonable requirements of the Purchaser.

7. Passing of property

Subject to the provision of this condition 7, the property in the Goods and/or Services shall pass to the Purchaser on delivery per condition 6 or payment of the invoice; whichever is the earlier. Such passing of property shall not prejudice the Purchaser's rights of rejection under these Conditions of Purchase (including conditions 7 and 10) or any other rights or remedies the Purchaser may have under these Conditions of Purchase or otherwise. The Goods and/or Services shall remain at the Suppliers risk until acceptance has taken place.

8. Price and Payment

- 8.1. The price for the Goods and/or Services shall be as set out in the Order and is agreed to be a firm and fixed price unless expressly stated otherwise in the Order. No claims for extras or price variations shall apply to the Order unless expressly agreed to in writing by the Purchaser.
- 8.2. Invoices shall be submitted by the Supplier in writing on or after the supply of the Goods and/or Services. All invoices must correctly name the Purchaser, the Goods and/or Services and provide the Supplier's VAT number in order to be a valid invoice for the purposes of these Conditions of Purchase.
- 8.3. Unless otherwise stated in the Order, the Purchaser shall pay all validly invoiced amounts due to the Supplier within thirty (30) days after the end of the month in which it receives the valid invoice, except for any amounts disputed by the Purchaser.
- 8.4. The parties shall seek to resolve all such disputes expeditiously and in good faith. The Supplier shall continue performing its obligations under the Order notwithstanding any such dispute.
- 8.5. Without prejudice to any other right or remedy, the Purchaser reserves the right to set off any amount owing to it by the Supplier against any amount payable by the Purchaser to the Supplier.
- 8.6. Payment of an invoice is not evidence or admission that the Goods and/or Services meet the requirements of the Order.

9. Damage in transit

- 9.1. On despatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume.
- 9.2. The Purchaser shall notify the Supplier within 10 days of any apparent damage to Goods whilst in transit.

- 10. Rejection**
- 10.1. By notice in writing to the Supplier the Purchaser may reject any or all of the Goods if:
- 10.1.1. the Goods have been damaged in transit; or
- 10.1.2. the Goods fail to comply with these Conditions of Purchase (including condition 4), and the Supplier shall, at its cost, collect the rejected Goods within ten (10) days from the date of notice.
- 10.2. All monies to be refunded to the Purchaser on rejection shall be paid by the supplier to the Purchaser's nominated bank account within 10 days from the date of the notice referred to in condition 10.1.
- 10.3. If the Supplier fails to collect the Goods, the Purchaser may dispose of them (and retain all proceeds without needing to account for such to the Supplier) or return them at the Supplier's expense, and shall be entitled to recover any and all such Losses from the Supplier as a debt.
- 11. Guarantee**
- Unless otherwise stated on this Order, the Goods shall be guaranteed to the standard set out in condition 4 for not less than 24 months from the delivery of the Goods.
- 12. Indemnity and Insurance**
- 12.1. The Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all Losses resulting from or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which, in either case, may result directly or indirectly from any defect in the Goods or the negligent or wrongful acts of the Supplier.
- 12.2. The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities/undertakings to pay under these Conditions of Purchase and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of the latest premium due thereunder.
- 12.3. Nothing in these Conditions of Purchase shall exclude or restrict either party's liability for fraud or for death or personal injury caused by that party's negligence.
- 13. Cancellation**
- 13.1. The Purchaser may terminate this Order, in whole or in part, for any reason upon thirty (30) days' prior written notice to the Supplier.
- 13.2. Without prejudice to its rights under condition 13.1 or otherwise in these Conditions of Purchase, the Purchaser may cancel the Order in whole or in part by written notice, which shall be effective immediately:
- 13.2.1. when Goods or Services conforming to the requirements of these Conditions of Purchase (including condition 4) have not been delivered by the Due Date; and/or
- 13.2.2. if the Supplier becomes bankrupt or insolvent or makes an arrangement of composition with its creditors or has a winding up petition made against it, or has a liquidator or receiver appointed or enters into liquidation (whether voluntary or compulsory) other than for the purpose of amalgamation or reconstruction.
- 13.3. The Supplier shall refund (without any set-off, withholding or counterclaim) to the Purchaser any advance payment for Goods the subject of 13.1.1 above.
- 13.4. The Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all additional costs and/or Losses, which have been incurred or suffered by the Purchaser in obtaining the Goods and/or the Services not supplied by virtue of the cancellation.
- 13.5. If the Supplier defaults on the obligations in condition 13.3 above the Purchaser may deduct such sums from any monies due to the Supplier from the Purchaser.
- 14. Materials provided by the Purchaser**
- The Supplier shall be fully responsible for any loss or damage to any free issue materials or to any Purchaser's materials or other property whilst in the Supplier's possession for any purpose connected with the Order. Any wastage due to poor workmanship shall be replaced or credited at the Purchaser's discretion.
- 15. Special Tools, Jigs or Fixtures**
- Any tools, jigs or fixtures that are required for the execution of and made especially for the Order shall become the property of the Purchaser on completion of the Order, unless specifically agreed otherwise by the Purchaser in writing.
- 16. Intellectual Property**
- 16.1. It shall be a condition of the Order that, except to the extent that the Goods are made up strictly in accordance with designs furnished by the Purchaser, none of the Goods or Services will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial or intellectual property ("IPR") of any third party and the Supplier shall, immediately on any demand by the Purchaser, pay to the Purchaser an amount equal to any and all Losses resulting from or in connection with any such infringement or alleged infringement.
- 16.2. All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser in connection with the Order ("**Materials**") shall remain vested solely with the Purchaser (except the right to use such Materials solely to the extent necessary for the implementation of the Order). The Supplier shall not, without prior written consent of the Purchaser, use or disclose any such Materials or rights therein and in particular the Supplier shall not refer to the Purchaser or the Order in any advertisement without the Purchaser's prior written agreement.
- 16.3. Any IPR arising out of or in relation to the Supplier's performance of its obligations in respect of any Order (including any IPR in relation to any Goods and Services) shall, upon its creation, vest in the Purchaser and the Supplier shall do all such further acts and execute all such documents as may from time to time be necessary to give full effect to this condition.
- 16.4. The Supplier shall not use, copy or disclose any Confidential Information for any purpose other than to the extent required to perform its obligations hereunder and shall use its best endeavours to prevent any such activity which is not in accordance with this condition. This condition does not apply to information which is or becomes publicly known other than by a breach of these Conditions of Purchase; can be shown to the Purchaser's satisfaction to have been known by the Supplier before disclosure by the Purchaser to the Supplier; is or becomes available to the Supplier otherwise than from the Purchase and free from any restrictions as to its use or disclosure; and/or is required to be disclosed by law providing the Supplier gives prior notice to the Purchaser (save where it is prohibited by law from doing so).
- 17. Confidentiality**
- The specifications, patterns, drawings, samples and information issued by the Purchaser in connection with the Order are confidential and their use must be confined to the Supplier, his subcontractors or employees solely for the execution of the Order.
- 18. Assigning or sub-letting**
- The Supplier shall not assign, sub-let or sub-contract any part of the Order unless written consent has been provided in advance by the Purchaser. No sub-letting or sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Order.
- 19. Notices**
- Any notice given under or pursuant to the Order may be sent by post or by registered post or by the recorded delivery service or transmitted by facsimile or any other means of telecommunication resulting in the written communication in permanent form and so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means or transmission it would first be received by the addressee in normal business hours.
- 20. General**
- 20.1. The headings to conditions shall not affect their interpretation.
- 20.2. The rights and remedies of the Purchaser provided in these Conditions of Purchase are cumulative and are not exclusive of any rights or remedies provided at law or in equity and may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Purchaser shall not constitute a waiver of that or any other right or remedy.
- 20.3. Nothing in these Conditions of Purchase is intended to create a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other.
- 20.4. If any of these Conditions of Purchase is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification and/or deletion as may be necessary to make it valid and enforceable. No such invalidity or unenforceability shall not affect the other conditions which shall remain in full force and effect.
- 20.5. The Supplier shall ensure that it and its sub-contractors comply at all times with the Data Protection Act 1998. The Supplier acknowledges that if it or its sub-contractors 'process' any 'personal data' (as defined in such Act) pursuant to an Order, they shall do so only on the instructions of the Purchaser and that they shall maintain in place all appropriate measure, procedures and policies to protect the security and integrity of any such personal data.
- 20.6. These Conditions of Purchase shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the jurisdiction to the English courts save in relation to enforcement where jurisdiction shall be non-exclusive.