

## STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

### 1. DEFINITIONS

In these conditions, unless the context requires otherwise:

“**Buyer**” means Herefordshire and Worcestershire Chamber of Commerce whose registered offices are at Severn House, Prescott Drive, Warndon Business Park, Worcester, WR4 9NE;

“**Client**” means the company, firm, body or person to whom the Order is being delivered to by the Buyer;

“**Goods**” means the subject matter of the contract including ( but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities, etc and whether one or a number of items, whether or not identical or similar (including any such materials, articles or commodities supplied in connection with the Services);

“**Order**” means a purchase order in respect of the Goods and/or Services issued by the Buyer, by an appropriate authoriser only, to the Supplier on the Buyer’s official purchase order form together with all documents referred to in it;

“**Services**” means work and/or services or any of them to be performed by the Supplier for the Buyer pursuant to the Order;

“**Supplier**” means the company, firm, body or person to whom the Order is addressed;

**1.1** unless the context otherwise requires

**1.1.1** words denoting the singular shall include the plural and vice versa and

**1.1.2** the masculine gender shall include the feminine and the neuter genders and vice versa.

### 2. ACCEPTANCE

The Buyer shall not be liable for any Order unless it is issued or confirmed on the Buyer’s official Purchase Order.

### 3. VARIATION

Neither the Buyer nor the Supplier shall be bound by any variation, waiver of or addition to these conditions except if amended on a new official order.

### 4. QUALITY ETC., REMEDIES

**4.1** Subject to these conditions, the Goods and Services to be provided shall:

**4.1.1** conform as to quantity, quality and description with the Order and any specification or standards stated or referred to in the Order;

**4.1.2** be of first-class materials and workmanship throughout and be executed with reasonable care and skill by properly qualified and experienced persons;

**4.1.3** be equal in all respects of any samples, patterns, demonstration or specification provided or given by either party

**4.1.4** be capable of any standard of performance specified in the Order;

**4.1.5** if the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that purpose, and;

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**4.1.6** comply with statutory rule or regulation that may be in force relating to the Goods and/or the Services.

**4.2** The Supplier will keep the Buyer indemnified in respect of all loss, damage, injury, costs and expenses which result, directly, or indirectly, from defective goods, workmanship or design Services supplied or provided by the Supplier or any other defect or fault in the construction of the Goods and the performances of the Services and, in addition, the Supplier will repair, replace or reinstate at the Buyer's option, any defective item or items free of charge.

**4.3** Without prejudice to any right or remedy available to the Buyer under statute or common law, the Supplier will keep the Buyer indemnified in respect of any liability suffered or incurred by the Buyer as a result of the supply or use by the Supplier of defective goods or workmanship in carrying out the Order, or which arise as a result of the performance of the Services or as result of any breach of conditions, warranties, inducements or representations expressed or implied in the contract or any other breach of contract on the part of the Supplier, including but not limited to consequential or indirect loss and loss of profits.

## **5. INSPECTION AND TESTING**

**5.1** The Buyer's inspector or representative and any inspector or representative of the Buyer's customer or the agent of any of them or any government department concerned, may, on the Buyer's authority, inspect or test the Goods or Services at any reasonable time at the Supplier's works or at the works of any permitted subcontractor or assignee. For this purpose, the Supplier will give to the Buyer or any nominee of the Buyer, or otherwise arrange for, reasonable facilities of access to the Suppliers works or any such other works.

**5.2** Such inspection does not relieve the Supplier of any liability nor does it imply acceptance of the Goods or Services.

**5.3** The Buyer reserves the right, at its option, either to reject any Goods or Services in whole or in part (whether or not the same has been delivered to and accepted by the Buyer) or to cancel the Order in any part of the Order to delay the acceptance of the whole or any part of it without any further payment or charge for storage or delay in any of the following circumstances:

**5.3.1** failure by the Supplier to comply strictly with the description, specification and drawings relating to Goods to be supplied or Services to be carried out and/or failure to comply with any British or any other standard specification where applicable; or

**5.3.2** if the Goods or Services are below the specified standard or fail to pass any inspection or test in accordance with these conditions; or

**5.3.3** if the supplier otherwise fails to comply in all respects of any of its obligations under these conditions.

## **6. PERFORMANCE DELAY**

**6.1** Unless otherwise agreed in writing, any time or period given for delivery, despatch, performance or completion shall be of the essence. The Supplier shall immediately notify the Buyer of any anticipated delay in delivery, despatch, completion or performance.

**6.2** The Buyer reserves the right to reject Goods or Services not delivered or performed on time and/or to cancel the whole or any part of the Order of which Goods or Services form part and/or to return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use. Such rights of rejection, cancellation or return shall be available to the Buyer irrespective of the cause of delay without prejudice to the Buyer's right to damages and any other remedies against the Supplier for breach of contract without any liability of whatever nature on the buyer.

**6.3** No concession with respect to delays in delivery, despatch, completion or performance shall be construed as a waiver of any of the Buyer's rights and remedies unless such a waiver is specifically agreed in writing and signed by duly authorised representative of the Buyer.

## **7. EQUALITY OF OPPORTUNITY**

**7.1** The supplier shall not unlawfully discriminate within the meaning and scope of the provisions of any statutory discrimination legislation, including any statutory modification or re-enactment thereof relating to discrimination in employment or the provision of services. The supplier shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the supplier and all sub-contractors employed in the execution of the Contract.

## **8. DELIVERY, PACKAGING ETC.**

**8.1** Deliveries made in advance of the Buyer's requirements may be returned to the Supplier at the Supplier's expense or accepted at the Buyer's option. If the Buyer accepts them, the Buyer shall be entitled to defer payment until the month following the month in which delivery should have taken place.

**8.2** Scheduled Orders only. A Scheduled Order indicates the Buyer's estimated requirements for the Goods or Services described in it. The Buyer will not accept delivery or performance of or be in any way liable to pay for any Goods or Services described in a Scheduled Order unless the Buyer has given the Supplier written release or performance instructions which are directly attributable to that Scheduled Order.

**8.3** No responsibility is accepted for Goods delivered or Services Performed in excess of the Order

**8.4** All Goods must be adequately protected against damage and deterioration and transit and delivered carriage paid in accordance with the Buyer's instructions (if given) and the packages of the Goods must bear the description and the quantity of the contents and the Buyer's Order number.

**8.5** The Buyer will not be responsible for any failure to give notice to carriers of loss, damage, delay, detention, or transit of non-delivery.

## **9. PASSING OF TITLE TO THE GOODS**

**9.1** Title to the Goods shall pass to the Buyer on delivery to the place specified in the Order or as otherwise agreed without prejudice to any right of rejection or other right which may accrue or have accrued to the Buyer under these conditions or otherwise.

**9.2** If the Supplier postpones delivery at the Buyer's request, title to the Goods shall nevertheless pass to the Buyer on the date when, but for such postponement, the Goods would have been delivered.

**9.3** Goods shall be at the risk of the Supplier until actually delivered even when delivery has been delayed or postponed by the Buyer at the Buyer's request.

**9.4** All Goods rejected or returned for any reason shall be at the risk of the Supplier during transit back to the Supplier.

## **10. PRICE AND PAYMENT**

**10.1** Unless the order expressly accepts or stipulates any provision for price variation and the basis for such variation, the price or rate for the Goods and any Services is fixed and not subject to variation unless the Buyer expressly agrees in writing signed by a duly authorised representative of the Buyer.

**10.2** Failure by the Supplier to attend to any of the following details may mean delay in payment (but with no prompt payment discount to be forfeited by the Buyer):

**10.2.1** failure by the Supplier to send, on the day of despatch for each consignment of Goods or on the performance of Services, a separate advice note and invoice for each such delivery or performance; or

**10.2.2** failure by the supplier to mark clearly the Order number on the consignment package, packing notes, invoices, monthly statements and all other correspondence relating to them.

**10.3** Payments will be on the next payment run following 30 days from the date of the invoice. All payments will be made without prejudice to the Buyer's rights should the Goods or any Services prove unsatisfactory or not in accordance with the Order.

**10.4** The Buyer reserves the right to deduct any monies due or becoming due to the supplier any monies due from the Supplier to the Buyer on any account.

## **11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**11.1** Where requested, any material provided by the Client which is designated as confidential shall be kept confidential by the buyer but the foregoing shall not apply to any material which is public knowledge at the time it becomes public knowledge through no fault of the Buyer.

**11.2** Unless otherwise agreed the property and any copyright or other intellectual property in any documents, data, information or other material provided by the Buyer shall belong to the Buyer subject only to the right of the Client to have a free and irrevocable licence to use material relating to the Order providing all sums due to the buyer from the Client have been paid.

## **12. INTELLECTUAL PROPERTY INFRINGEMENT**

The Supplier will keep the Buyer fully indemnified (except in respect of designs provided by the Buyer against all claims whatsoever nature (including those for royalties, damage or other losses)) arising from infringement of patents, registered designs, unregistered designs, design rights, copyrights, trade marks or any other intellectual property rights in relation to the Order and in relation to the use of articles or processes pursuant to the Order.

## **13. INDEMNITY**

The Supplier will keep the Buyer indemnified against any claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of the Buyer or any third party and against any claim in respect of the death of or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise as a result of breach of any statutory or common law duty or any act or omission on the part of the Supplier or any of its employees, subcontractors, assignees or agents or as a result of the performance or non-performance of the Order or otherwise however arising wherever such loss, damage, death or personal injury occurs (including, but not limited to, the Buyer's premises).

## **14. TERMINATION**

If the Supplier, being an individual, becomes bankrupt or insolvent or has a receiving order made against him or compounds with his creditors or, being a company, is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator, the Buyer shall be at liberty (but not bound) at any time after that:

**14.1** to cancel all or any part of the Order immediately by notice and to collect immediately all material, goods, tools or articles of any description sent to the Supplier for any purpose; or

**14.2** to give the Supplier or the receiver, liquidator or other person the option of carrying on with the Order subject to his providing a guarantee up to an amount to be agreed for the due and faithful execution of the Order.

## **15. ASSIGNMENT AND SUBCONTRACTING**

**15.1** The Supplier shall not without the consent in writing of the Buyer assign or transfer the Order or any part of it to any other person.

**15.2** The Supplier shall not without the consent in writing of the Buyer subcontract the Order or any part of it other than for materials, minor details or for any part of the Goods of which the makers are named in the Order or the specification. Any such consent shall not relieve the Supplier of any of its obligations under the contract.

## **16. HEALTH AND SAFETY**

The supplier warrants that the Goods or materials to be supplied in accordance with the Order will be safe and without risk to health when properly used and the Supplier will provide all necessary information in connection with the design, testing and use of them (whether or not such information has been requested by the Buyer).

## **17. LICENCES**

If the performance of the Order requires the Buyer to have any permit or licence from any government or authority at home or overseas, the Order shall be conditional upon such permit or licence being available at the required time.

## **18. INSURANCES**

The supplier will at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities under the Order and in respect of the Goods or Services. The Supplier must provide all facilities, assistance and advice required by the Buyer or the Buyer's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance of the Order.

## **19. NOTICES**

**19.1** Any notice or other document to be served under this agreement must be in writing and may be delivered or sent by prepaid first class letter post, e-mail or facsimile transmission, at the time of transmission. Receipt of notice must be confirmed by the Buyer.

## **20. INVALIDITY**

The invalidity, illegality or enforceability of any provision of these conditions shall not affect the other conditions.

## **21 FORCE MAJURE**

**21.1** Neither party shall be liable for any delay or failure to meet its obligations under this order due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then neither Party may terminate this order by written notice to the other.

## **22 LAW AND APPLICATION**

**22.1** A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**22.2** The order (and any proceedings by which one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the (non-) exclusive jurisdiction of the English courts.

**22.3** These conditions shall have precedence over any conditions appearing on any quotation, acceptance form, delivery form, invoice or other document or letter emanating from the Supplier and such conditions shall have no effect whatsoever except insofar as they are expressly accepted in writing by the Buyer.

**22.4** Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the Buyer is entitled in relation to the Order by virtue of statute of common law. The rights and remedies conferred on the Buyer by these conditions are in addition to and in no way in substitution for any conditions or warranties or other rights or remedies conferred on the Buyer or implied by law.

## **23. ARBITRATION**

If at any time any question, dispute or difference shall arise in respect of this order all parties agree to use their best endeavours to resolve the same by negotiation. Failing which, either party may give the other notice in writing requesting it to be referred to the arbitration of a person to be appointed by the President of the Chartered Institute of Arbitrators. The request shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 and the Arbitrators decision shall be final and binding on the parties hereto.