

# CONDITIONS OF PURCHASE

## 1 Interpretation

In these Conditions: “**Buyer**” means the company ordering the Goods and/or the Services as set out in the Order; “**Conditions**” means the terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller and any quality assurance and other conditions and/or manuals notified in writing to the Seller by the Buyer from time to time; “**Contract**” means the contract for the purchase of the Goods and/or the provision of the Services; “**Goods**” means the goods (including any instalment of the goods or any part of them) described in the Order; “**Order**” means the Buyer’s purchase order; “**Seller**” means the person so described in the Order; “**Services**” means the services (if any) described in the Order; “**Specification**” includes any plans, drawings, data or other information relating to the Goods or Services. “**Mandatory Policies**” means the Buyer’s business policies and codes listed in the schedule as amended by notification to the seller from time to time.

## 2 Basis of purchase

The Order constitutes an offer by the Buyer to purchase the Goods and/or the Services subject to these Conditions. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions. No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller. The execution of this Order shall be sufficient to infer acceptance of these Conditions. Only Orders placed on the Buyer’s official Order Forms will be binding.

## 3 Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all applicable laws concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services and shall comply with any quality assurance requirements notified by the Buyer to the Seller in writing from time to time.
- 3.4 The Goods shall be marked in accordance with the Buyer’s instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

## 4 Price of the goods and services

- 4.1 The price of the Goods and the Services shall be as stated in the Order and if not so stated, shall be no greater than the price of similar goods or services which could be purchased by the Buyer. The price shall be exclusive of any applicable value added tax (which shall be clearly shown as a separate item on a VAT invoice) and, unless otherwise agreed in writing, inclusive of all charges for packaging, packing, shipping, carriage, royalties, insurance, delivery and unloading of the Goods at the delivery address and any duties or levies other than value added tax.
- 4.2 No increase in the price may be made without the written consent of the Buyer.

## 5 Terms of payment

- 5.1 Unless otherwise agreed in writing, invoices shall be rendered following the delivery of the Goods or performance of the Services. The Buyer’s Order number must be shown clearly on all invoices, together with the name of the contract for which the Goods have been supplied. Only one invoice shall be submitted in respect of each Order. Invoices must also contain: details of the Goods delivered; the delivery note number; details of any discount applicable; and the seller’s VAT registration number.
- 5.2 Unless otherwise agreed in writing, the Buyer shall not be required to pay the price of the Goods and/or the Services until [the end of the month following the month] of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer and until the Seller has produced any appropriate Inland Revenue registration card or certificate.
- 5.3 The Buyer may set off against the price any sums owed to the Buyer by the Seller and may deduct from the price any sums required to be deducted by law.

## 6 Delivery

- 6.1 The Seller shall follow the Buyer’s time frame for the delivery of the Goods and for commencement and completion of the Services. If the Seller is unable to do so, it must notify the Buyer immediately, although notification shall not prejudice the Buyer’s rights and remedies in respect of such inability. Unless agreed otherwise in writing, goods may not be delivered in instalments.
- 6.2 The Goods shall be delivered to, and the Services shall be performed at the address and on the date or within the period stated in the Order. A detailed delivery note must accompany all Goods and the outer containing this delivery note must be marked accordingly.
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4 The Buyer may reject any Goods delivered or Services supplied, which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect them following delivery or completion or, if later, within a reasonable time after any latent defect in the Goods or Services has become apparent.
- 6.5 If any delivery of the Goods and/or supply of the Services is not made by the delivery date specified by the Buyer, then, without prejudice to its other rights and remedies, the Buyer may:
  - 6.5.1 cancel the Order wholly or in part and return to the Seller, at the Seller’s risk and expense, any Goods already delivered to the Buyer but which cannot be effectively and commercially used by the Buyer by reason of the failure of the Seller to deliver the complete Order by the agreed date, and to recover from the Seller any monies already paid by the Buyer to the Seller in respect of such Goods and/or Services; and/or
  - recover from the Seller any additional expenditure reasonably incurred by the Buyer in obtaining other Goods to replace those in respect of which the Order has been cancelled.

## 7 Risk and Property

- 7.1 Subject to condition 8.3, risk of damage to or loss of the Goods shall not pass to the Buyer until delivery to the Buyer in accordance with the Contract.
- 7.2 Subject to condition 8.3, the property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made.
- 7.3 Where the Order relates to the carriage of goods, the Seller and/or its nominated carrier shall be responsible for the proper and safe loading of the goods and their delivery in an undamaged state to the delivery address.

## 8 Warranties and liability

- 8.1 Without prejudice to any conditions implied by law, the Seller warrants to the Buyer that the Goods: will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller at the time the Order is placed; will be free from defects in design, material and workmanship at the time of delivery and, unless otherwise agreed in writing, for a period of thirty (30) months (or such other longer period as is normally offered by the seller) from use of the Goods by the Buyer or any third party; will correspond with any relevant Specification or sample; and will comply with all statutory requirements and regulations relating to the sale of the Goods together with any quality assurance requirements notified by the Buyer to the seller in writing from time to time.
- 8.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer may:
  - 8.3.1 notify the Seller within 90 days of the date of delivery (or, if later, within 30 days of the date of discovery of any damage or defect not apparent on a reasonable inspection) and require the Seller to repair the Goods or to supply replacement Goods or reperform the Services in accordance with the Contract within [7] days (or such other timescale as the Buyer may notify to the Seller); or
  - 8.3.2 at the Buyer’s sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods and/or reperform the Services, to treat the Contract as discharged by the Seller’s breach and require the repayment of any part of the price which has been paid.
- 8.4 The Seller shall indemnify the Buyer in full against all liability, loss (including loss of profit), damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
  - 8.4.1 breach of any term of the Contract or any warranty given by the Seller in relation to the Goods or the Services;
  - 8.4.2 any claims, demands, proceedings or actions that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 8.4.3 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods or carrying out the Services, including death and injury to person and damage to property caused directly or indirectly by negligence or breach of statutory duty of the Seller or subcontractor; and
  - 8.4.4 any act or omission of any of the Seller’s personnel in connection with the performance of the Services.

- 8.5 The Seller shall effect and maintain the following insurances: [a general third party insurance policy with a combined bodily injury and property damage limit of not less than £10 million per occurrence or series of occurrences arising from the one event;] an employer's liability insurance policy with a limit of not less than £10 million per occurrence or series of occurrences; and a products liability insurance policy with a limit of not less than £10 million per occurrence or series of occurrences.
- 8.6 The policies shall be endorsed to indemnify the Buyer as principal, and the Seller shall forward the policies for these insurances for examination to the Buyer within one week of the Buyer's request.
- 8.7 The Buyer reserves the right and the seller grants to the Buyer the right of access to the Sellers' premises to inspect and test materials and/or Goods and/or the Seller's premises prior to the delivery of any Goods and/or Services.
- 8.8 If following normal BS6001 inspections additional testing or sorting are deemed necessary by the Buyer or Seller, this will be wholly at the expense of the Seller.
- 8.9 The Buyer's Safety Rules and Conditions for Contractors and, in particular, the provisions as to the indemnity by Contractors shall, where the Buyer so specifies, be incorporated in these Conditions, and the Seller shall, on his request, be provided with a copy thereof.
- 8.10 The restrictions on liability in this clause 8.10 apply to every liability of the Buyer arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.10.1 Nothing in in the Contract limits any liability of the Buyer which cannot legally be limited, including liability for:
- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (iv) defective products under the Consumer Protection Act 1987.
- 8.10.2 Subject to clause 8.10.1, the Buyer's total liability to the Seller shall not exceed the price of the Goods and Services calculated in accordance with paragraph 4.1 above.
- 8.10.3 Subject to clause 8.10.1, the following types of loss are wholly excluded:
- (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.

## 9 Termination

- 9.1 The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the price for the Goods or Services (to the extent performed) in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.
- 9.2 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if: the Seller breaches any material term of this Contract; the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or the Seller ceases, or threatens to cease, to carry on business; or any similar or analogous event occurs in any jurisdiction; or the Buyer reasonably apprehends that any of the foregoing events is about to occur in relation to the Seller and notifies the Seller accordingly.

## 10 Force Majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

## 11 Confidentiality

- 11.1 The Seller shall keep strictly confidential all information concerning the business and affairs of the Buyer obtained from the other either pursuant to the Contract or prior to and in contemplation of it, shall use the same exclusively for the purposes of the Contract, and shall disclose the same only to those of its directors and employees to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Contract.
- 11.2 The obligations of clause 11.1 above shall survive the expiry or termination of the Contract but shall not apply to any information which: the Seller can demonstrate was already in its possession and at its free disposal prior to receipt under the circumstances mentioned at clause 11.1 above; is subsequently disclosed to the Seller without any obligation of confidence by a third party who has not derived it directly or indirectly from the Buyer; enters the public domain through no act or default of the Seller, its agents or employees; or is required by law to be disclosed.
- 11.3 The Seller shall not, without the prior written consent of the Buyer, use the Order and/or the Buyer's name in any way for the purpose of advertisements or publicity.

## 12 General

- 12.1 The Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.
- 12.2 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without the written consent of the Buyer.
- 12.3 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. If such written notice is given by facsimile transmission, a copy of that notice must be sent as soon by post as is reasonably possible after such transmission.
- 12.4 All tools, materials and documents supplied by the Buyer or prepared or obtained by the Seller for and at the sole cost of the Buyer shall be and remain the property of the Buyer (the "Buyer's Property"). The Buyer's Property shall, while in the Seller's possession or control, be at the Seller's risk and shall be maintained by the Seller in good order and condition and insured against all risks. On completion of the Order, or otherwise as directed by the Buyer, the Buyer's Property shall be returned to the Buyer in good order and condition at the Seller's risk and expense and, if it does not do so, the Buyer shall be entitled to enter upon the Seller's premises to take possession of the Buyer's property. If it is not so returned, the Buyer may, as an alternative to entering upon the Seller's premises to take possession of the same, withhold or require reimbursement of such part of the payment as is necessary to replace or repair the Buyer's Property.
- 12.5 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.7 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.8 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.

## Schedule

The Mandatory Policies described by:

- Code of Conduct for Suppliers and Third-Party Intermediaries (Document ref PUR011)