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### Conditions of Purchase

These Conditions are an integral part of the Purchase Order and shall apply except to the extent that they may be inconsistent with any Special Conditions appearing on the face of or otherwise incorporated in the Purchase order and which shall have precedence over these Conditions. Such Special Conditions (if any) and these Conditions shall constitute the entire agreement.

These Conditions may only be varied with the written agreement of the Purchaser.

The Supplier accepts the Purchase Order by acknowledging receipt or commencing performance. Purchase Orders will not be accepted against any other terms.

#### **1. DEFINITIONS**

- 1.1 The term "Purchaser" shall mean J.R. Clark (Coventry) Ltd.
- 1.2 The term "Supplier" shall mean the Organisation, Company or Person to whom the Purchase Order is issued.
- 1.3 The word "Goods" shall mean any such goods or service to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contracts) pursuant to or in connection with this Purchase Order.
- 1.4 The word "Service" shall include all service work specified in this Purchase Order.
- 1.5 "The Contract" shall mean the contract between Purchaser and Supplier consisting of the Purchase Order (the "Order") and any other document specified in the Order.
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#### **2. CONFORMITY QUALITY AND FITNESS FOR PURPOSE**

- 2.1 All Goods supplied must be new and of satisfactory quality and free from defects in material or workmanship and shall conform to the quantity, quality and specification stated in the Order and any variations thereto and/or any drawing or sample submitted.
- 2.2 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Order.
- 2.3 No Goods shall be supplied with asbestos content.
- 2.4 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations, standards or bye-laws from time to time in force.

#### **3. RIGHTS OF THIRD PARTIES**

- 3.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

#### **4. DELIVERY**

- 4.1 Time of delivery shall be of the essence and failure to deliver on dates agreed gives Purchaser right to cancel all or part of the order without prejudice to Purchaser's other rights, but in Force Majeure situations Purchaser will attempt to give reasonable extensions to delivery timing on prompt notification of situation by Supplier. Any extra costs resulting must be paid by Supplier.
- 4.2 Supplier shall use reasonable endeavours to meet Purchaser's request to change delivery timings at no extra cost to Purchaser and will inform Purchaser at once of any difficulty. Purchaser may refuse early delivery.
- 4.3 A delivery or advice note must accompany every delivery, detailing the Order number, quantities and description of the Goods included in the consignment.
- 4.4 All Goods must be delivered at the delivery point specified in the Purchase Order, between 0830 and 1630 hours Monday to Friday, unless otherwise agreed by the Purchaser in writing.
- 4.5 Supplier must obtain a legible authorised signature on a separate copy of the Delivery Note, as proof of delivery.

#### **5. INSPECTION REJECTION AND GUARANTEE**

- 5.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.
- 5.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein or which are defective in any way. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:
  - 5.2.1 to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or
  - 5.2.2 to obtain a refund from the Supplier in respect of the Goods or Service concerned.
- 5.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.
- 5.4 Any Goods rejected or returned by the Purchaser as described in paragraphs
- 5.2 or 5.3 shall be returned to the Supplier at the Supplier's risk and expense.

## **6. CARRIAGE AND PACKING**

- 6.1 Carriage to be paid by Supplier to Purchaser's delivery address, unless otherwise agreed and stated on the Order.
- 6.2 The Goods shall be securely packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements.
- 6.3 All packaging shall be considered as non-returnable and the cost as having been included in Supplier's price, unless otherwise agreed and stated on the Order.

## **7. PROPERTY AND RISK**

- 7.1 Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser pass to the Purchaser at the time of delivery.

## **8. INTELLECTUAL PROPERTY**

- 8.1 The Supplier shall indemnify the Purchaser from and against all costs, claims, proceedings or demands in respect of any infringement of letters patent, registered design, trade mark or copyright arising out of the sale or use of any Goods supplied under this Order, provided always that the Supplier shall not be required to indemnify the Purchaser against such infringements where the Goods are supplied to the particular design or specification of the Purchaser.
- 8.2 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 pursuant to this Order shall remain vested solely in the Purchaser and the Supplier shall not (except to the extent necessary for the implementation of this Order) without prior written consent of the Purchaser use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Order) and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Order in any advertisement without the Purchaser's prior written agreement.
- 8.3 All new intellectual property rights arising from the supply of Goods or Services under this Order shall be vested in and become the property of the Purchaser. Save that nothing in this clause 8.3 shall be construed as affecting the ownership of intellectual property rights in the Goods or Service in existence prior to the performance of this Order.

## **9. WARRANTY**

- 9.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.
- 9.2 Unless the Goods are supplied to the design or specification of the Purchaser, the Supplier accepts design responsibility and warrants the Goods to be free from defect.

- 9.3 The Supplier warrants that all necessary permits or licences required for the supply of the Goods have been obtained.

## **10. INDEMNITY**

- 10.1 Without prejudice to any rights or remedies of the Purchaser, the Supplier shall at all times hold harmless and keep indemnified the Purchaser, its employees and agents from and against any and all claims, proceedings, judgements, costs (including legal fees) and losses wherever made, or incurred in respect of damage to property and/or injury, or death of persons arising directly or indirectly out of any actual or alleged defect in design, materials and/or workmanship, or the failure to provide adequate, complete and proper warnings and instructions in respect of the Goods, or resulting from any acts or omissions of the Supplier.
- 10.2 The undertaking shall apply whether the claim proceeding or judgement is grounded on breach of warranty, negligence or strict liability.
- 10.3 Supplier agrees upon request by the Purchaser to take over for the Supplier's own account the defence of any such claim or proceeding.
- 10.4 Supplier providing Service on Purchaser's premises shall accept full responsibility for all damage to persons or property caused by its errors, actions, and inactions (including those of its employees, agents, servants and sub-contractors) and must have the benefit of adequate insurance therefore and provide evidence thereof to the Purchaser on request.

## **11. PRICE**

- 11.1 The price specified on the Order shall remain fixed and no increase will be accepted by the Purchaser unless otherwise agreed in writing before the execution of the Order. All indirect charges such as but not limited to packaging, freight, insurance, import duties, foreign taxes and other like charges shall be included in the price.
- 11.2 Notwithstanding the above, the Purchaser shall pay to the Supplier in addition to the agreed price a sum equal to the Value Added Tax chargeable on the value of the Goods.
- 11.3 Invoices must quote the Order number, and be sent to the "Invoice" address shown. Failure to quote the Order number may result in delayed payment.
- 11.4 Purchaser's payment terms are 30 days from receipt of invoice or satisfactory completion of deliveries or services, whichever is the later date.

## **12. CONFIDENTIALITY**

- 12.1 The Supplier shall keep confidential and not disclose and shall procure that his employees keep confidential and do not disclose any information of a confidential nature obtained by him by reason of this Order except information which is in the public domain otherwise than by reason of a breach of this provision.
- 12.2 The provisions of paragraph 12.1 shall apply during the continuance of this Order and after its termination howsoever arising.

## **13. TRANSFER AND SUB-CONTRACTING**

- 13.1 The Supplier shall not assign, transfer, sub-contract (except as is customary in the trade), or otherwise dispose of the Order or any part thereof or any interest, rights, obligations or any benefit or advantage of the Order or any part thereof without the previous consent in writing of the Purchaser.

- 13.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under this Order.
- 13.3 Any such purported transfer or assignment shall be null and void.

#### **14. TERMINATION**

- 14.1 For default In the event of a breach of any of the terms and conditions of this Order the Purchaser may give the Supplier notice of such breach. If such breach is capable of remedy the Supplier shall rectify the breach within fourteen days. If the breach has not been rectified within fourteen days or if the breach is not capable of remedy then the Purchaser may give notice terminating the Order without incurring liability. The Supplier shall indemnify the Purchaser from and against any cost resulting from the termination of the Order.
- 14.2 For insolvency If the Supplier becomes insolvent or has a receiver or administrator appointed over all or a substantial part of its undertakings or assets or is compulsorily or voluntarily wound up or enters into any liquidation (or being an individual be declared bankrupt) or if the Purchaser bona fide believes that any of such events may occur then the Purchaser shall have the right without prejudice to any other remedy to suspend the performance of or terminate the Order without incurring liability except in respect of Goods already delivered.
- 14.3 For convenience The Order may be terminated by the Purchaser at any time in whole or in part by notice to the Supplier. In the event of such notice the Supplier shall cease work. The Purchaser will pay a fair and reasonable price for justified work or Goods completed at the time of termination. Payment of such price shall be in full and final settlement of any claims arising out of such termination. Such payments made taken together with any sums paid or due or becoming due to the Supplier under the Order shall not exceed the total price of the Goods under the Order.
- 14.4 Any termination of the Order shall not prejudice any rights or remedies which may have accrued to either party under this Order at the date of termination and both parties shall use reasonable endeavours to mitigate their losses on such termination.

#### **15. FORCE MAJEURE**

- 15.1 Except for payment of money due, neither party shall be liable for failure to perform its obligations under this Contract, nor give rise to any claim for compensation or damage, nor be deemed in breach of this Contract, if and to the extent that such failure arises from an occurrence or circumstances reasonably beyond that party's control (Force Majeure).
- 15.2 If either party is affected by Force Majeure that party shall give written notice without delay to the other party of the nature and extent of the circumstances and the date and anticipated duration of the suspension.
- 15.3 If such Force Majeure causes a delay of sixty (60) days or more and such delay may reasonably be anticipated to continue, then either party may terminate this Contract forthwith.
- 15.4 The party serving notice pursuant to Clause 15.1 shall notify the other in writing as soon as the performance of its obligations is no longer affected by Force Majeure and the parties shall resume the performance of their respective obligations each to the other with effect from the date so notified.

## **16. NON-WAIVER**

- Failure or relaxation on the part of the Purchaser at any time to enforce any Order Condition shall not be construed as a waiver by the Purchaser of such Order Condition.

## **17. GENERAL CONDITIONS**

- 17.1 Supplier's acknowledgement referring to Purchaser's Order or commencement of work shall be deemed acceptance of the terms of the Order.
- 17.2 Subject to any amendment in accordance with sub-clause 17.6, these Conditions shall be the entire understanding of the parties and no representation whatsoever whether oral or written shall have any binding effect.
- 17.3 The headings to Conditions shall not affect their interpretation. If any part of any Conditions shall be held to be unenforceable to any extent the remainder of the Order shall nevertheless remain in full force and effect.
- 17.4 Where the Supplier provides a Service on the Purchaser's premises the Service shall be performed in accordance with the Purchaser's site rules and regulations which shall be agreed prior to commencement of work.
- 17.5 Any notice given pursuant to the Order must be in writing and may be sent by hand, or by post or transmitted by telex or facsimile transmission to the address shown on the Order and shall be deemed to have been served on the day when it would be received by the addressee in normal business hours.
- 17.6 No variation or modification expressed to be an amendment to this Contract shall have any effect unless made in writing and signed by a duly authorised representative of the Purchaser and the Supplier.

## **18. LAW**

- 18.1 These conditions shall be governed by and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England.
- 18.2 Purchaser and Supplier retain all statutory rights not inconsistent herewith.