

General Conditions of Purchase

Definitions

1. "Contract" means the contract between the Buyer and the Seller consisting of the Order including these Conditions of Purchase and any other terms specified by the Purchaser in the Purchase Order. Should there be any inconsistency between the documents comprising the contract then unless expressly overruled by any provision specified in the Purchase Order those Conditions of Purchase shall prevail.

"Purchaser" means Tolent Construction Limited.

"Vendor" means the person, firm or company to whom the order is addressed,

"Goods" means goods or services of whatsoever nature described in the order.

"Order" means the Purchaser's order to which these Conditions of Purchase apply.

Variations

2. Neither the Purchaser nor the Vendor shall be bound by any variation, waiver of, or addition to these conditions except as agreed by both parties in writing and signed on their behalf. No conditions submitted or referred to by the Vendor when tendering shall form part of the contract unless agreed in writing by the Purchaser. Verbal variations of the contract or specifications therein will not be recognised.

Formation of contract

3. (i) This order constitutes an offer on the part of the Purchaser which must be accepted in writing by the Vendor or by the actual execution of the order.

(ii) (a) Acceptance of an order will be deemed to bind the Vendor to the following terms and conditions and no Goods shall be supplied by the Vendor, their employees, agents or representatives, except in accordance therewith. In the case of any conflict between these conditions and those of the Vendor, these conditions will prevail.

(b) Every Vendor shall where relevant be bound by the General Conditions, specifications and drawings applicable to the Purchaser's main contract with their clients (if any) which, insofar as these are relevant may be inspected on request. In the event of any inconsistency between any such documents comprising the main contract and these Conditions of Purchase then, unless expressly over-ruled by any provisions specified in the Purchase Order, these Conditions of Purchase shall prevail.

Property and risk in goods

4. The property and risk in the goods shall pass to the Purchaser on actual delivery to the delivery point specified in the Order and shall remain with the Vendor until such time.

Quality

5. Without prejudice to any other terms of this Contract including terms implied by statute or by Common Law:
 - (i) The Goods shall conform in all respects with any drawings specifications descriptions or other stated requirements of the Purchaser and all Goods shall be of sound materials workmanship and design and shall correspond with any relevant samples or patterns provided by or accepted by the Purchaser.
 - (ii) The Vendor warrants and it is a condition of the Contract that the Goods shall comply in all respects with these Conditions of Purchase and all relevant requirements of any statute statutory instrument rule or order or other instrument having the force of law which shall be in force when the Goods are delivered.
 - (iii) All Goods will be of satisfactory quality, fit for the purpose intended and otherwise in accordance with the implied conditions of Sections 13, 14 and 15 of the Sale of Goods Act 1979 as amended.

Acceptance/rejection/cancellation

6. (i) The Purchaser shall have the right to inspect and test the Goods prior to delivery at a mutually agreed time and location. No inspection or testing by the Purchaser shall imply any acceptance of the Goods, or in any way relieve the Supplier of its obligations and duties under the Contract or otherwise.
- (ii) The Purchaser reserves the right to reject the Goods or any of them for non-compliance with the requirements of Clause 5. In the event of rejection, the Purchaser may return the rejected Goods at the Vendor's risk and expense and may also at such risk and expense return any Goods in excess of the quantity ordered.
- (iii) In the event of the rejection of Goods or any of them pursuant to Sub-Clause (ii) the Vendor shall, at the Purchaser's option either:
- (a) forthwith at the Vendor's expense supply the Purchaser with replacement Goods which comply with the requirements of Clause 5 on a delivery date satisfactory to the Purchaser; or
- (b) promptly refund to the Purchaser the purchase price together with any losses and expenses reasonably incurred by the Purchaser as a result of the failure of the Goods or any of them to comply with the requirements of Clause 5.
- (iv) Without prejudice to Sub-Clause (iii), if within 12 months after delivery the Purchaser shall give notice to the Vendor of any defect in the Goods which arises under proper use from faulty design materials or workmanship, then the Vendor shall with all possible speed and at its expense replace or repair the Goods or, at the Purchaser's option, refund all monies paid under the Contract provided that failure to give such notice shall not operate as a waiver of the Purchaser's rights under this Clause.
- (v) Subject to Clause 11 hereof and without prejudice to the Purchaser's rights under Sub-Clauses (ii) and (iii) above, the Purchaser reserves the right to cancel the whole or any part of the Order if the same is not completed in all respects in accordance with the instructions and specifications stated and with these Conditions of Purchase. In the event of the Purchaser cancelling the Order as to all or any of the Goods the Purchaser shall be entitled to purchase from a third party a like quantity of Goods of a similar description and quality or a reasonable alternative thereto or to contract with a third party to supply Goods of a similar description and quality and in such event the Vendor shall be liable to reimburse the Purchaser in connection with such cancellation including any increase in the sums which the Purchaser has to pay over and above the price stated in the Order.
- (vi) The provisions of the Clause 6 shall in each case be without prejudice to the Purchaser's rights under any condition, warranty or other term implied herein by statute or by Common Law or under any term of the Contract.

Indemnity

7. Insofar as is not prohibited by the Unfair Contract Terms Act 1977 or any statute amending or replacing it the Vendor will indemnify the Purchaser against any liability claim cost proceeding loss or damage:
- (i) caused by any defect in any Goods supplied or by their not complying with Clause 5.
- (ii) arising as a result of the death or injury, howsoever caused, to any of the employees, or those of the agent or sub-contractors of the Vendor, while in or about the Purchaser's sites or works or other places of business.
- (iii) arising directly or indirectly out of any breach by the Vendor of the Contract.

Delivery

8. (i) The Goods, properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of the transport, shall be delivered carriage paid by the Vendor at, or despatched for delivery to, the place or places and in the manner specified in the order or as subsequently agreed, Deliveries are made at the Vendor's own risk.
- (ii) Consignments by road shall be unloaded in such quantities and at such place or points on the site or the works as may be required by the Purchaser or its representatives.
- (iii) When special unloading facilities are required, the Vendor must give adequate notice of intention to deliver to delivery site/address.

(iv) Delivery shall be effected within the time specified in the Order and time shall be of the essence. The Vendor shall forthwith notify the Purchaser if any delay is anticipated in delivery of the Goods and shall specify the reasons for such delay. Subject to Clause 11 and without prejudice to any other rights under these Conditions of Purchase the Purchaser shall be at liberty either to extend the delivery date or to cancel the order and to obtain supplies elsewhere and the Vendor shall be responsible for any extra costs incurred by the Purchaser in so doing.

(v) Without prejudice to the Purchaser's rights to reject the Goods, any goods delivered in a damaged condition shall (at the Purchaser's request) be replaced immediately without extra charge with Goods complying with the Order, until which time the Goods shall not be deemed to have been delivered.

(vi) A delivery note shall be furnished to the Purchaser with all Goods supplied to them and a legible signature of acceptance obtained from a responsible person in the employ of the Purchaser but such signature shall neither constitute acceptance of the Goods by the Purchaser nor shall it in any way prejudice any rights of the Buyer under these Conditions of Purchase.

(vii) Weigh tickets (the cost of obtaining which shall be borne by the Vendor) shall be supplied with all deliveries, for which the charge is calculated by reference to weight.

Storage

9. If for any reason other than the Vendor's breach of Contract the Purchaser is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Vendor shall, if its storage facilities permit, store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery, and the Purchaser shall be liable to the Vendor for the reasonable cost (including insurance) of its so doing.

Price

10. (i) The Price for the Goods shall not exceed that specified in the Order. No claims for extras or price variations shall be entertained unless the Purchaser agrees in writing.
- (ii) The Purchaser reserves the right to deduct from any monies due or becoming due to the Vendor, any monies due from the Vendor to the Purchaser and/or any company connected with the Purchaser. In this Sub-Clause, a "connected" company shall be defined by reference to sections 839 and 840 of the Income and Corporation Taxes Act 1988.
- (iii) Unless previously agreed in writing between the Vendor and the Purchaser all prices quoted are deemed to include carriage.
- (iv) A separate invoice must be rendered in duplicate in respect of each delivery and shall state upon each the Purchaser's order number. Value Added Tax, where applicable, shall be shown as a separate item on all invoices as a strictly net extra charge.
- (v) The payment is 60 days from the end of the month from the date of the invoice.
- (vi) The Purchaser shall not be bound by any assignment by the Vendor in favour of any third party of any monies or other interest due by the Purchaser to the Vendor at any time and shall be entitled to refuse to accept any intimation of any such assignment.

Force majeure

11. If either the Vendor or the Purchaser is delayed or prevented from performing its obligations under the Contract by circumstances beyond its reasonable control including without prejudice to the generality of the foregoing any form of government intervention strikes and lockouts relevant to the Order, breakdown of plant, delays by Sub-Contractors the Contract may be cancelled by either party by written notice. The Purchaser will pay to the Vendor such sum as may be fair and reasonable in all the circumstances in respect of work performed by the Vendor pursuant to the Order prior to cancellation.

Patents trademarks and similar rights

12. (i) The Vendor warrants that neither the sale nor the use of the Goods will infringe any British or foreign patent trade mark registered design copyright or other industrial or intellectual property rights whether similar to the foregoing or not and the Vendor indemnifies the Purchaser from and against all actions losses costs claims demands liabilities and expenses whatsoever resulting from any actual or alleged infringement as aforesaid.

(ii) Any and all patents registered designs copyright or other industrial or intellectual property whether similar to the foregoing or not in any part of the world resulting from any work carried out by the Vendor in execution of the Order shall belong to and vest exclusively in the Purchaser.

Assignments

13. (i) The Vendor shall not without written consent of the Purchaser assign, transfer or sub-let the contract or any part thereof other than for minor details or for any part of the Goods of which the makers or suppliers are named in the order.

(ii) The Vendor shall treat the Order and all designs drawings specifications and information supplied therewith as confidential and shall not disclose the same to any third party without the Purchaser's written consent or infringe any copyright patent trade mark trade name or registered design vested in the Purchaser or use the same for purposes other than carrying out the Order.

Insolvency

14. If the Vendor becomes insolvent or makes an arrangement with its creditors or (being a company) has a Receiver, Manager, Administrative Receiver or Administrator appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) the Purchaser may without prejudice to any other rights under these conditions of contract terminate the Contract forthwith by notice to the Vendor or any person in whom the Contract may have become vested.

Notices

15. Any notice to be given by the Vendor or the Purchaser shall be sufficiently given if sent by recorded delivery first class post telex or facsimile transmission addressed to the place of business of the relevant party shown on the face hereof and shall be deemed to have been received.

(i) in the case of postage two days after it was posted and

(ii) in the case of telex or facsimile transmission on the date of despatch so long as the same is a business day.

Non waiver

16. No failure by the Purchaser to enforce any provision or provisions hereof shall in any way be construed as being a waiver by the Purchaser of such provisions or provisions or of any of the Purchaser's rights thereunder.

Law of contract

17. These Conditions of Purchase and any order or contract placed under them shall be construed and performed in accordance with English Law and the parties agree to submit to the jurisdiction of the English courts.

Scope of order

18. The scope of your supply is as defined over.

Verification of status

19. We reserve the right of entry to verify status of material/assemblies at source.