

# **ROTHAMSTED RESEARCH**

## **GENERAL CONDITIONS OF CONTRACT**

### **1 Definitions**

- 1.1** The term "Buyer" shall be those described in the purchase agreement.
- 1.2** The term "Seller" shall mean the person, firm or company to whom the Purchase Order is issued.
- 1.3** The word "Goods" includes all goods covered by a Purchase Order.
- 1.4** The term "Purchase Order" shall mean Buyer's Purchase Order issued under the terms of the Purchase Agreement.
- 1.5** The word "Packages" includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 1.6** "The Contract" shall mean the contract between the Buyer and Seller consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.

### **2 Quality and fitness purposes**

The Goods shall be of satisfactory quality and free from defects in material or workmanship. If the purpose for which the Goods are required is made known to the Seller expressly or by implication the Goods shall be fit for that purpose. The Goods shall conform with specifications, drawings descriptions and samples contained or referred to in the Contract.

In the absence of a specification or sample, all goods supplied shall be within the normal limits of industrial quality.

### **3 Delivery date**

The date of delivery of the Goods shall be that specified in a Purchase Order unless agreed otherwise between Buyer and Seller. Time shall be of the essence. Seller shall furnish such programmes of manufacture and delivery as Buyer may reasonably require and Seller shall give notice to Buyer as soon as practicable if such programmes are likely to be delayed. Buyer has the right to instruct Seller to take such action as is required to bring the Contract to completion or to reject the Goods for late delivery.

### **4 Incorrect delivery**

All Goods must be delivered at the delivery point specified in the Purchase Order. If Goods are incorrectly delivered, Seller will be held responsible for any additional expense incurred in delivering them to their correct destination.

### **5 Passing of property and risk to Buyer**

The property and risk in the Goods shall remain in Seller until they are delivered at the point specified in the Purchase Order.

### **6 Terms of payment**

The Purchase Order shall specify the time when invoices shall become due, and the manner in which invoices shall be submitted. Unless otherwise stated in the Purchase Order, payment will be made within 28 days of receipt of a properly prepared invoice.

Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly nett extra charge.

### **7 Loss or damage in transit**

- 7.1** Without prejudice to the rights of the Buyer under Clause 19 Buyer shall advise Seller and the Carrier (if any) in writing, otherwise than by a qualified signature on any Delivery Note, of any loss or damage within the following time limits:

a) Partial loss, damage, defects or non-delivery of any separate part of a consignment shall be advised within seven days of date of delivery of the consignment or part consignment.

b) Non-delivery of whole consignment shall be advised within 21 days of notice of despatch.

**7.2** Seller shall make good free of charge to Buyer any loss of or damage to or defect in the Goods where notice is given by Buyer in compliance with this condition provided that Buyer shall not in any event claim damage in respect of loss of profits.

## **8 Acceptance**

In the case of Goods delivered by Seller not conforming with the Contract whether by reason of being of quality or in a quantity measurement not stipulated or being unfit for the purpose for which they are required where such purpose has been made known in writing to Seller, Buyer shall have the right to reject such Goods within a reasonable time of their delivery and to purchase elsewhere as near as practicable to the same Contract specifications and conditions as circumstances shall permit but without prejudice to any other right which Buyer might have against Seller. The making of payment shall not prejudice Buyer's right of rejection. Before exercising the said right to purchase elsewhere Buyer shall give Seller reasonable opportunity to replace rejected Goods with Goods which conform to the Contract.

## **9 Variations**

Seller shall not alter any of the Goods, except as directed in writing by Buyer; but Buyer shall have the right, from time to time during the execution of the Contract, by notice in writing to direct Seller to add to or to omit, or otherwise vary, the Goods, and Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract.

Where Seller receives any such direction from Buyer which would occasion an amendment to the Contract price Seller shall, with all possible speed, advise Buyer in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in Seller's tender. The Buyer shall confirm in writing all agreed amendments to Contract price.

If, in the opinion of Seller, any such direction is likely to prevent Seller from fulfilling any of his obligations under the Contract he shall so notify Buyer and Buyer shall decide with all possible speed whether or not the same shall be carried out and shall confirm his instructions in writing and modify the said obligations to such an extent as may be justified. Until Buyer so confirms his instructions they shall be deemed not to have been given.

## **10 Patent rights**

**10.1** Seller will indemnify Buyer against any claim or infringement of patent, design right, registered design, trade mark or copyright by the use or sale of any article or material supplied by Seller to Buyer and against all costs and damages (including legal fees) which Buyer may incur in any action for such infringement or for which Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to Seller having followed any instruction furnished or given by Buyer or to the use of such article or material in a manner or for a purpose not specified by or disclosed to Seller, or to any infringement which is due to the use of such article or material not supplied by Seller. Provided also that this indemnity is conditional on Buyer giving to Seller the earliest possible notice in writing of any claim being made or action threatened or brought against Buyer.

**10.2** All intellectual property rights in works, goods or materials produced for Buyer by Seller or specifically commissioned by seller from Buyer shall vest in Buyer and Seller undertakes to execute all documents required to ensure such ownership.

## **11 Force majeure**

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances which could not have been contemplated and which are beyond the party's reasonable control. Failure of sub-contractors and strikes are not force majeure.

## **12 Assignment and sub-letting**

The Contract shall not be assigned by Seller nor sub-let as a whole. Seller shall not sub-let any part of the work without Buyer's written consent, but the restriction contained in this clause shall not apply to sub-contracts for materials, for minor details, or for any part of which the makers are named in the Contract. Seller shall be responsible for all work done and goods supplied by all sub-contractors.

### **13 Copies of sub-orders**

When Buyer has consented to the placing of sub-contracts copies of each sub-order shall be sent by Seller to Buyer immediately it is issued.

### **14 Progress and inspection**

Buyer's representatives shall have the right to progress and inspect all Goods at Seller's works and the works of sub-contractors at all reasonable times and to reject goods that do not comply with the terms of the Contract even for slight defects. Seller's sub-contracts shall include this provision. Any inspection, checking, approval or acceptance given on behalf of Buyer shall not relieve Seller or his sub-contractors from any obligation under the Contract.

### **15 Buyer's rights in specifications, plans, process information etc**

Any specifications, plans, drawings, process information, patterns or designs supplied by Buyer to Seller in connection with the Contract shall remain the property of Buyer, and any information derived therefrom or otherwise communicated to Seller in connection with the Contract shall be kept secret and shall not, without the consent in writing of Buyer, be published or disclosed to any third party, or made use of by Seller except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Buyer must be returned to Buyer on fulfilment of the Contract.

### **16 Free-issue materials**

Where Buyer for the purposes of the Contract issues materials "free of charge" to Seller such materials shall be and remain the property of Buyer. Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall be made good at Seller's expense. Without prejudice to any other of the rights of the Buyer, Seller shall deliver up such materials whether further processed or not to the Buyer on demand.

### **17 Hazardous goods**

**17.1** Hazardous Goods must be marked by Seller with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. Seller shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of hazardous Goods.

**17.2** All information held by, or reasonably available to, Seller regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to Buyer.

### **18 Packages**

**18.1** Where Buyer has an option to return Packages and does so, Buyer will return such Packages empty in good order and condition (consigned "carriage paid" unless otherwise agreed) to Seller's supplying works or depot indicated by Seller, and will advise Seller the date of despatch.

Packages returned promptly in the manner aforesaid shall be subject to an allowance at Seller's standard rate operating at the time of delivery to Buyer.

**18.2** Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle.

**18.3** Where goods are delivered by tank wagons these will be emptied and returned without delay.

### **19 Warranty**

Seller shall soon as reasonably practicable repair or replace all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, Seller's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties, expressed or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. Seller shall further be liable in damages (if any) in respect of each Purchase Order up to the limit of the price of the Goods covered by that Purchase Order.

## **20 Insolvency and bankruptcy**

If Seller becomes insolvent or bankrupt or (being a Company) makes an arrangement with its creditors or has and administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), Buyer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to Seller or any person in whom the Contract may have become vested and shall be entitled to the return of any monies paid in advance.

## **21 General conditions in the tender**

No conditions submitted or referred to by Seller when tendering shall form part of the Contract unless otherwise agreed to in writing by Buyer.

## **22 Applicable Law**

This Contract shall be subject to English Law and the jurisdiction of the English High Court.

## **23 Notices**

Any notice to be sent under this Agreement should be sent to the addresses given on page one and served personally or by pre-paid registered or recorded delivery letter or fax confirmed by first class post. Letters shall be deemed served 48 hours after posting and faxes on despatch.

## **24 Waiver**

No delay or omission by Buyer in exercising any of its rights or remedies under this Agreement or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

## **25 Headings**

The headings in this Agreement are for ease of reference only and shall not affect the construction thereof.

## **26 Severance**

In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Agreement so far as possible.