

---

Purchase Order Conditions

(Supply only)

---

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the words or expressions that begin with capital letters shall have the precise meanings as set out below:

1.1.1 **'Conditions'** means these terms and conditions;

1.1.2 **'Delivery Address'** means the address for the delivery of the Products as identified in the Purchase Order or any other location specified by the Purchaser;

1.1.3 **'Delivery Dates'** means the date(s) for the delivery of the Products as specified by the Purchaser;

1.1.4 **'Insolvent'** means in relation to the Supplier if:

- (a) a petition is presented, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise, composition or scheme of arrangement with its creditors or any class of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or
- (c) any step (whether in or out of court) is taken, an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it (being a company); or
- (d) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed, an administrative receiver; or
- (e) a receiver (including an administrative receiver) appointed over the whole or any part of its property, assets or undertaking; or
- (f) being an individual, it is the subject of a bankruptcy petition or order or enters into an individual voluntary arrangement, a deed of arrangement or any compromise, composition or scheme of arrangement with its creditors ; or

- (g) any distress, execution, sequestration or other such process is levied or applied for in respect of the whole or any part of its property, assets or undertakings; or
    - (h) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (g) above;
  - 1.1.5 **'Framework Agreement'** means the framework agreement entered into by the Supplier and Land Warfare Centre on behalf of the Secretary of State for Defence (with reference number RM 6157) which is dated 26 Oct 21;
  - 1.1.6 **'Material Breach'** means any breach of the Purchase Contract by the Supplier where the Purchaser has served notice on the Supplier that it has seven (7) days in which to rectify the breach and the Supplier fails to do so;
  - 1.1.7 **'Performance'** means the manufacture, ordering of goods and materials and delivery to and unloading at the Delivery Address;
  - 1.1.8 **'Price'** means all sums payable to the Supplier for Performance and the Products as stated in the Purchase Order;
  - 1.1.9 **'Products'** means all goods, materials and products to be supplied and delivered pursuant to the Purchase Contract whether as expressly described in the Purchase Contract or to be inferred therefrom;
  - 1.1.10 **'Purchase Contract'** means the contract between the Purchaser and the Supplier comprising these Conditions and the Purchase Contract Documents relating to the Products and Performance;
  - 1.1.11 **'Purchase Contract Documents'** means the Purchase Order and any other documents relating to the Products which are listed the Purchase Order;
  - 1.1.12 **'Purchase Order'** means the order from the Purchaser to the Supplier issued pursuant to the Framework Agreement relating to the Performance and the Products;
  - 1.1.13 **'Purchaser'** means the Purchaser named in the Purchase Order;
  - 1.1.14 **'Statutory Requirements'** means any and all law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
  - 1.1.15 **'Supplier'** means the legal entity with whom the Purchaser enters into the Purchase Contract and to whom the Purchase Order is addressed;
  - 1.1.16 **'Variation'** means addition, omission or other alteration (including but not limited to the products or quantity) to the Products; and
  - 1.1.17 **'Working Day'** means any day other than a weekend or public holiday.
- 1.2 In these Conditions, unless the context otherwise requires:
- 1.2.1 words in the singular shall include the plural and in the plural shall include the singular;
  - 1.2.2 clause headings are inserted for convenience only and shall not affect the construction of these Conditions;

- 1.2.3 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time or it is in force as at the date of the Purchase Contract;
- 1.2.4 a reference to a 'person' includes any individual, firm, partnership, company and any other legal entity;
- 1.2.5 a reference to a party or the parties is a reference to a party or the parties to the Purchase Contract and references to a party shall include its successors in title and permitted assigns;
- 1.2.6 a reference to writing or written includes email, but not fax;
- 1.2.7 any words following the terms including, include, includes, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect.

## **2. BASIS OF THE PURCHASE CONTRACT**

- 2.1 The Purchase Order placed by the Purchaser and any quotation received by the Purchaser from the Supplier in respect of the Products is deemed to have been made subject to the Conditions and the Framework Agreement and the Supplier agrees to supply the Products in accordance with the Conditions and the Framework Agreement. Any terms and conditions of the Supplier are superseded and do not form part of or apply to the Purchase Contract even if included as part of the Purchase Contract Documents.
- 2.2 The terms and conditions of the Purchase Contract may only be amended or varied as specifically set out in the Purchase Order.
- 2.3 Notwithstanding the date the Purchaser and the Supplier enter into the Purchase Contract, any goods supplied or work performed by or on behalf of the Supplier prior to the date of the Purchase Contract in anticipation of the Purchaser entering into the Purchase Contract with the Supplier shall be subject to the terms of the Purchase Contract.

## **3. GENERAL OBLIGATIONS AND WARRANTIES**

- 3.1 The Supplier warrants to the Purchaser that the Products:
  - 3.1.1 will be of sound and satisfactory quality and fit for all purposes for which the Products are commonly supplied and/or for any special purposes which are notified to the Supplier;
  - 3.1.2 will correspond with any relevant specification or sample provided to the Supplier or where no specification or sample has been provided, will meet all of the Purchaser's performance criteria which are notified to the Supplier;
  - 3.1.3 will be free from defects in design, material and workmanship;
  - 3.1.4 will comply with all and will not contravene any Statutory Requirements relating to the manufacture and sale of materials and goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard and Codes of Practice or equivalent specification unless otherwise agreed);
- 3.2 The Supplier shall ensure that copies of any test certificates or product guarantees or warranties referred to in the Purchase Contract Documents, certificates of analysis, inspection or origin and information relating to the components, parts or raw materials used in the manufacturing of the Products as may be required by the Purchaser or by law are provided to the Purchaser upon delivery of the Products.

- 3.3 The Supplier shall ensure that all product information relating to the Products provided by the Supplier and all product information provided to the Supplier by its suppliers and sub-contractors complies with the Code for Construction Product Information issued by the Construction Products Association.
- 3.4 The Supplier shall ensure that the Products will be safe and delivered in a safe manner and be accompanied by comprehensive instructions as to the use, handling, maintenance, storage, safety and erection, assembly and/or installation of the Products including all information required for the Purchaser to comply with the Control of Substances Hazardous to Health Regulations 2002 as amended by the Control of Substances Hazardous to Health (Amendment) Regulations 2004.

#### **4. PRICES AND PAYMENT**

- 4.1 In consideration of the satisfactory supply and delivery of the Products, the Purchaser shall pay to the Supplier the Price in accordance with and subject to these Conditions. Subject to payments in respect of Variations pursuant to clause 5, the Price shall be as stated in the Purchase Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a VAT invoice); and
  - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and unloading of the Products to the Delivery Address and any duties, tariffs, imposts or levies other than VAT.
- 4.2 Unless otherwise stated in the Purchase Contract Documents the Supplier may submit an invoice to the Purchaser after delivery of the Products.
- 4.3 The Supplier shall provide a separate invoice for each individual delivery setting out:
- 4.3.1 the Purchase Contract number;
  - 4.3.2 a breakdown of the amount invoiced clearly showing the amounts charged for Products supplied; and
  - 4.3.3 Value Added Tax shown separately.
- 4.4 The Supplier shall provide with the invoice a copy of the advice note signed by an authorised signatory of the Purchaser upon delivery in accordance with clause 9.
- 4.5 The Purchaser shall be entitled to deduct from the Price:
- 4.5.1 the unit price for any of the Products which as may be defective and rejected by the Purchaser; and
  - 4.5.2 any amount which is disputed by the Purchaser, pending resolution of such dispute.
- 4.6 The final date for payment of each invoice shall be 30 days after receipt by the Purchaser.
- 4.7 If the Purchaser fails to pay a sum due to the Supplier by the final date for payment, simple interest shall be added to the unpaid sum from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of three per cent (3%) above the Bank of England Base Rate.
- 4.8 The Supplier must facilitate payment by the Purchaser of the Price under the Purchase Contract under any method agreed with the Purchaser in the Particulars. The Supplier must facilitate a change of payment method during the term of the Purchase Contract. The Supplier shall not charge the Purchaser any fees for the use of any payment method or for a change of payment method during the term of the Purchase Contract.

## **5. CHANGES/VARIATIONS**

- 5.1 The Purchaser may request Variations by way of an instruction in writing. Variations shall be valued in accordance with the rates and prices in the Purchase Contract Documents or (if no applicable rates and prices exist) such prices as are agreed or as shall be fair and reasonable in the circumstances.

## **6. ASSIGNMENT/SUB-CONTRACTING**

- 6.1 The Supplier must not sub-let all or any part of the Purchase Contract or assign or charge all or any part of the Purchase Contract or any rights or benefits under it without the Purchaser's prior written consent (such consent not to be unreasonably withheld or delayed).
- 6.2 The Purchaser may assign the benefit of or any rights under the Purchase Contract or novate the Purchase Contract to any department, office or agency of the Crown [Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Purchaser.

## **7. INSPECTION AND TESTING**

- 7.1 The Purchaser and its representatives shall, subject to giving the Supplier reasonable notice, be granted access to any premises (including those of the Supplier's suppliers) and be allowed to inspect and test the Products at any time prior to acceptance of delivery.
- 7.2 Neither inspection, testing nor acceptance of any of the Products nor any waiver of any rights in respect thereof by the Purchaser nor its representative shall release the Supplier in any respect from any of its obligations under the Purchase Contract or otherwise including without limitation its responsibility for any defects subsequently found in materials and/or workmanship.
- 7.3 Where following testing or inspection any Products appear to be defective or otherwise not in accordance with the Purchase Contract the Purchaser shall have the right to reject such Products.

## **8. MAKING GOOD DEFECTS AND RIGHT OF REJECTION**

- 8.1 If the Purchaser or its representatives reasonably considers any of the Products to be defective in quality of material, workmanship or design and/or to be not in accordance with the Purchase Contract, the Purchaser shall have the option to reject any such Products and require the Supplier at no cost to the Purchaser to replace any such Products in their entirety or to make good such defects by repair or replacement.
- 8.2 The Purchaser's rights under this clause 8 shall apply at any time prior to acceptance of delivery of the Products by the Purchaser in accordance with clause 9 and also following such acceptance in the event of it becoming apparent to the Purchaser that any of the Products are defective or not otherwise in accordance with the Purchase Contract.
- 8.3 Where the Purchaser rejects any Products it shall so notify the Supplier in writing and upon issuing such notification, property and risk in any such rejected Products shall revert to the Supplier. The Purchaser shall be entitled to a refund of the Price relating to such rejected Products if the Purchaser has paid for such Products. If such Products have already been delivered, the Supplier shall make arrangements with the Purchaser for the collection of such Products.
- 8.4 The Purchaser's rights and remedies under these Conditions are in addition to the rights and remedies available to the Purchaser in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample incorporated into the Purchase Contract.

## **9. DELIVERY AND UNLOADING**

- 9.1 The Products shall be delivered to the Delivery Address by the Delivery Date in accordance with these Conditions. The Supplier shall report any delay or anticipated delay to delivery as soon as reasonably practicable and shall keep the Purchaser informed with dates of anticipated actual delivery.
- 9.2 Where the Delivery Date of the Products is to be specified after entering into the Purchase Contract, the Purchaser shall give the Supplier reasonable notice of the specified date.
- 9.3 The Supplier shall be responsible for unloading at the Delivery Address unless otherwise stated in the Purchase Contract Documents.
- 9.4 The Products upon delivery shall be accompanied by an advice note showing the Purchase Contract number, date of delivery, the quantity and full description of the goods delivered. The Supplier shall upon delivery obtain the signature of an authorised signatory of the Purchaser on a duplicate copy of the advice note. The signature of the advice note by the authorised signatory of the Purchaser shall not be construed as confirmation by the Purchaser that the Products delivered are of the correct quality, quantity, specification, materials, design and/or workmanship or are in accordance with the Purchase Contract.

## **10. PACKING AND MARKING**

- 10.1 Any packaging shall be the property of the Supplier, and the Supplier shall be responsible for recycling all packaging materials where possible, or otherwise disposing of in accordance with current legislation.

## **11. SUSPENSION AND TERMINATION**

- 11.1 The Purchaser may instruct the Supplier to suspend Performance at any time and for any reason on reasonable notice. Where Performance has been suspended pursuant to this clause the Purchaser may at any time require the Supplier in writing to resume Performance of its obligations under the Purchase Contract in whole or in part and set reasonable new Delivery Dates for delivery of the Products and the Supplier shall as soon as reasonably practicable so resume Performance. Save where such suspension is due to a breach or default by the Supplier, it shall be a Variation.
- 11.2 The Purchaser may terminate the Supplier's engagement under the Purchase Contract for convenience at any time by giving to the Supplier not less than seven (7) days' prior written notice. On expiry of such notice period, the Supplier's engagement under the Purchase Contract will terminate automatically.
- 11.3 In the event of termination pursuant to clause 11.2 the Purchaser shall pay for all Products delivered to Delivery Address up to the date of termination and the reasonable costs of materials, goods and manufacture incurred by the Supplier prior to the notice of termination in relation to Products not yet delivered.
- 11.4 Without prejudice to the Purchaser's rights under clause 11.2, in the event of Material Breach by the Supplier or if the Supplier is Insolvent, the Purchaser may give written notice to the Supplier to terminate the Supplier's engagement under the Purchase Contract and such termination shall take effect from the date of receipt by the Supplier of such notice.
- 11.5 The Purchaser shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with such termination under clause 11.4 and the Purchaser shall not be obliged to make any further payment to the Supplier once the Purchaser has given notice of termination under clause 11.4 until the Supplier has received delivery of equivalent or replacement products to the Product from an alternative supplier or decided that it does not intend to order equivalent products from an alternative supplier. The Purchaser may deduct from any payment to the Supplier which is outstanding and/or to recover from the Supplier all additional costs and expenses which the Purchaser suffers or incurs in ordering and receiving delivery of

equivalent or replacement products and any losses and/or damage arising from the termination.

- 11.6 Termination of the Supplier's engagement under the Purchase Contract shall not affect the accrued rights and remedies available to either party as at the date of such termination.

## **12. TITLE AND RISK**

- 12.1 Title and ownership in the Products shall pass from the Supplier to the Purchaser on the earlier of:
- 12.2 12.1.1 payment by the Purchaser for the Products; and
- 12.3 12.1.2 delivery of the relevant goods forming the whole or part of the Products.
- 12.4 The risk in the Products shall remain with the Supplier until completion of delivery and unloading.
- 12.5 If payment is made for any Products before delivery such Products shall be:
- 12.5.1 clearly marked by the Supplier as the Purchaser's property and shall be stored separately from the Supplier's property; and
- 12.5.2 insured in joint names with the Purchaser for their full replacement cost with a reputable insurer carrying on business in the United Kingdom.

## **13. INSURANCES**

- 13.1 The Supplier shall maintain insurance cover as referred to in this clause 13 and shall provide to the Purchaser if required documentary evidence that such insurance is in place.
- 13.2 The Supplier shall have in force policies of insurance showing adequate cover with such insurers as the Purchaser may approve including:
- 13.2.1 insurance of the Products for their full replacement cost, such insurance to be maintained up until the point at which the Products have been delivered and unloaded at the Delivery Address;
- 13.2.2 public liability insurance with a minimum cover of ten million pounds (£10,000,000) for each and every claim; and
- 13.2.3 product liability insurance with a minimum cover of ten million pounds (£10,000,000) for each and every claim such insurance to be maintained for the period until six (6) years after the date on which the Products have been delivered and unloaded at the Delivery Address; and
- 13.2.4 if the Supplier is responsible for design, professional indemnity insurance with a minimum cover of one million pounds (£1,000,000) each and every claim such insurance to be maintained for the period until six (6) years after the date on which the Products have been delivered and unloaded at the Delivery Address.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 The intellectual property rights in all designs, drawings, specifications, software, electronic data, photographs, plans, surveys and reports prepared by or on behalf of the Supplier in relation to the Purchase Contract, if any, ("**Documents**") remain the property of the Supplier and the Supplier grants to the Purchaser an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the use of the Products. Such licence entitles the Employer to grant sub-licences to third parties in the same terms as this licence

provided always that the Supplier shall not be liable to any licensee for any use of the Documents or the intellectual property rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the Supplier.

## **15. CONFIDENTIALITY**

- 15.1 Each party shall keep confidential any information which relates to the business, affairs, developments, trade secrets, know-how and personnel of the other party and any other information clearly designated as being confidential and not disclose the other party's confidential information to any other person without prior written consent, unless disclosure is a requirement of law, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or such information was already in the public domain at the time of disclosure otherwise than by a breach of the Purchase Contract.
- 15.2 Nothing in the Purchase Contract shall prevent the Purchaser from disclosing the Supplier's confidential information to any Crown body or any other Contracting Bodies as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000.

## **16. BRIBERY ACT**

- 16.1 The Supplier shall, and shall ensure that any associated person or other person performing services in connection with the Purchase Contract shall, comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act 2010.

## **17. MODERN SLAVERY ACT**

- 17.1 In performing its obligations under the Purchase Contract, the Supplier shall comply and shall ensure that each of its employees, suppliers, sub-contractors, servants and agents shall comply with the Modern Slavery Act 2015.

## **18. EQUALITY ACTS**

- 18.1 The Supplier shall perform its obligations under the Purchase Contract in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise).

## **19. DATA PROTECTION**

- 19.1 The parties shall comply with all applicable law about the processing of personal data and privacy including without limitation the Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

## **20. SEVERANCE**

- 20.1 If any term or condition of the Purchase Contract is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Purchase Contract and the validity and enforceability of the remainder of the Purchase Contract shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Purchase Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

## **21. NOTICES**

- 21.1 Any notice to be given under or in connection with the Purchase Contract shall be sent to the relevant party's contact details as referred to in the Purchase Contract Documents or such other contact details as may be notified in writing by either party from time to time. Subject to clause 21.2, a notice is deemed to be received:



21.1.1 if delivered personally, on delivery, provided delivery is between 9.00am and 5.00pm on a Working Day (otherwise, delivery will occur at 9.00am on the next Working Day); and

21.1.2 if sent by Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery, at the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm); and

21.1.3 if sent by email, at 9.00am on the first Working Day after sending.

## **22. WAIVER**

22.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Any agreement by the Purchaser or the Supplier to waive any obligation or liability of the Supplier will only be effective if in writing.

22.2 Except as expressly set out in clause 22.1, no waiver, forbearance, release, inspection, approval, comment, review or consent or omission to inspect, approve, comment, review or consent by The Purchaser or its employees, servants, suppliers or agents shall in any way derogate, limit or reduce the Supplier's duties and obligations in connection with the Purchase Contract.

## **23. LIMITATION PERIOD**

23.1 Notwithstanding the manner in which the Purchase Contract has been entered into, the statutory contractual limitation period in respect of the Supplier's obligations and liabilities under the Purchase Contract shall extend to the expiration of six (6) years after the date of delivery of all Products to the Purchaser under the Purchase Contract.

## **1. DISPUTE RESOLUTION**

1.1 If any dispute arises out of or in connection with the Purchase Contract it may be referred by either party to its nominated senior representatives who will attempt to resolve it.

1.2 Either of the parties may elect (but will not be obliged) to refer a dispute which arises out of or in connection with the Purchase Contract to mediation.

## **24. GOVERNING LAW AND JURISDICTION**

24.1 The Purchase Contract shall unless otherwise stated in the Purchase Order be governed and construed in accordance with the law of England and Wales, Scotland or Northern Ireland determined by reference to the location of the head office of the Purchaser and the courts of the applicable country shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from it.