

## TERMS AND CONDITIONS OF PURCHASE ORDER

1. Unless the context otherwise requires or these Terms & Conditions otherwise provide, the following words and phrases shall have the meanings given below:
- |                           |                                                                                                                                                             |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Customer                  | The person(s), firm, or company engaging the Supplier under the Supply Contract and named in the Purchase Order.                                            |
| Delivery Date             | Has the meaning ascribed to it in clause 10(a).                                                                                                             |
| Delivery Location         | Has the meaning ascribed to it in clause 10(b).                                                                                                             |
| HGCRA                     | The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.               |
| Insolvent                 | Insolvent within the meaning of section 113 of HGCRA.                                                                                                       |
| Main Contract             | The contract terms and conditions and such other documents incorporated therein, forming the contract between the Employer and the Customer.                |
| Main Contract Works       | The design, supply, execution and completion of the work described in the Main Contract.                                                                    |
| Goods                     | The goods (or any part of them) set out in the Purchase Order.                                                                                              |
| Parties                   | The Customer and the Supplier together.                                                                                                                     |
| Purchase Order            | The Customer's order for the supply of Goods, as set out in the Customer's purchase order form.                                                             |
| Supply Contract           | Has the meaning ascribed to it in clause 3.                                                                                                                 |
| Supply Contract Documents | The documents (if any) listed as such in the Purchase Order.                                                                                                |
| Specification             | Any specification for the Goods (including, without limitation, any related plans and drawings) that is agreed in writing by the Customer and the Supplier. |
| Supplier                  | The person(s), firm, or company engaged by the Customer under the Supply Contract.                                                                          |
| Variation                 | Has the meaning ascribed to it in clause 22.                                                                                                                |
2. The Purchase Order constitutes an offer by the Customer to purchase Goods from the Supplier in accordance with these Terms & Conditions. The Purchase Order shall be deemed to be accepted on the earlier of:
- the Supplier issuing a written acceptance of the Purchase Order; and
  - the Supplier doing any act consistent with fulfilling the Purchase Order,
- at which point the Supply Contract shall come into existence.
3. The Supply Contract consists of the Purchase Order, the Supply Contract Documents and these Terms & Conditions which together constitute the entire agreement between the Parties. These Terms & Conditions (as supplemented and amended by the Purchase Order and the Supply Contract Documents) apply to the Supply Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Supplier acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Customer which is not set out in the Supply Contract.
4. Unless otherwise stated in the Supply Contract, the price is a VAT-inclusive lump sum deemed to have been calculated on a fully fixed price basis which includes the costs of packaging, insurance and carriage of the Goods together with everything necessary for the supply of the Goods in accordance with, without limitation, the Supply Contract, the Main Contract and all statutory and Local Authority Regulations, British Standards and Codes of Practice.
5. The Supply Contract is to be read as a whole save that:
- if there is any inconsistency between the terms of the Supply Contract and those of the Main Contract, the terms of the Supply Contract shall prevail; and
  - if there is any conflict between the Supply Contract Documents and the Terms & Conditions, the latter shall prevail.
6. The Supplier shall ensure that the Goods shall:
- correspond with their description and any applicable Specification;
  - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- be free from defects in design, material and workmanship and remain so until the expiry of the rectification/defects liability period of the Main Contract Works under the Main Contract; and
  - comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
  - be supplied with relevant and current CE certification and declaration of performance (where applicable)
7. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under and in accordance with the Supply Contract.
8. The Customer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 6, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Supply Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
9. The Supplier shall ensure that:
- the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable)); special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
10. The Supplier shall deliver the Goods:
- on the date specified in the Purchase Order or, if no such date is specified, then on such other date as the Customer shall require (the "**Delivery Date**");
  - to such location as is set out in the Purchase Order or as instructed by the Customer before delivery (the "**Delivery Location**");
  - during the Customer's normal hours of business or as instructed by the Customer.
11. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Risk in the Goods shall pass to the Customer on completion of delivery.
12. The Supplier shall constantly use its best endeavours to prevent or minimise any delay in the supply of Goods. Immediately upon it becoming apparent that progress is being, or is likely to be, delayed the Supplier shall, as a condition precedent to any right or entitlement, give written notice to the Customer stating the cause or causes of the delay and the Supplier's best estimate of delay attributable to each cause.
13. If the Supplier delivers:
- less than the pre-ordered or pre-agreed quantity, the Customer may reject the delivery; or
  - more than the pre-ordered or pre-agreed quantity and the quantity exceeds the quantity stipulated in the order, the Supplier is liable for the excess. The Customer may pay the excess but the Supplier must inform the Customer of any additional quantities prior to delivery
- and any rejected Goods shall be returnable at the Supplier's risk and expense.
14. The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 15.
15. If the Goods are not delivered by the Delivery Date, or do not comply with the undertakings set out in clause 6 then, without limiting any of its other rights or remedies, the Customer may, whether or not it has accepted the Goods:
- terminate the Supply Contract;
  - reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
  - require the Supplier to repair or replace the rejected Goods (and these Terms & Conditions shall apply to any such repaired or replacement Goods), or to provide a full refund of the price of the rejected Goods;



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- (b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (c) recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party;
- (d) where the Customer has paid in advance for Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Supply Contract.
16. The price of the Goods shall be the price set out in the Purchase Order or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Supply Contract came into existence.
17. Notwithstanding any other term of the Supply Contract, no extra charges shall be effective unless agreed in writing and signed by the Customer.
18. The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
19. The Customer shall pay correctly rendered invoices on the final working day of the month following the month in which the invoice was received by the Customer. Payment shall be made to the bank account nominated in writing by the Supplier.
20. In the event of a party failing to pay any sum due to the other under the Supply Contract by the due date for payment, the defaulting party shall pay interest on such overdue sum at the rate of 5% per annum above the base rate from time to time of the Bank of England. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
21. The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Supply Contract.
22. The Supplier shall carry out any variation to the supply of Goods that the Customer may direct in writing (each a "Variation"). Variations shall be valued by the Customer on a fair and reasonable basis with reference, where available and relevant, to rates and prices in the Supply Contract Documents. The Supplier shall not be entitled to any addition to be made to the price where and to the extent that any circumstance arises by reason of any error, omission, negligence, default or breach of contract on the part of the Supplier, its servants or agents, or any party involved in the supply chain to the Supplier or their respective servants or agents. The Supplier shall not make any alteration to the Goods other than pursuant to this clause 22.
23. If the Supplier is delayed in supplying the Goods by the Delivery Date by the ordering of any Variation or for other reasons beyond the control of the Supplier, the Supplier shall notify the Customer in writing and the Customer shall make such extension of time (if any) as is reasonable. The Supplier shall not be entitled to any extension of time where and to the extent that any circumstance arises by reason of any error, omission, negligence, default or breach of contract on the part of the Supplier, its servants or agents, or any party involved in the supply chain to the Supplier or their respective servants or agents.
24. The Supplier shall be deemed to have full knowledge of the Main Contract (including, without limitation, the rate of liquidated damages under the Main Contract) and to contemplate that any breach of the Supply Contract is likely to give rise to losses arising from delays to the Main Contract Works. The Supplier shall perform and assume, as part of its obligations under the Supply Contract, the Customer's obligations, liabilities and risks contained within the Main Contract to the extent that they relate to the supply of the Goods as if they were expressly referred to in the Supply Contract as obligations, liabilities and risks of the Supplier.
25. The Supplier shall carry out and complete the supply of the Goods so that no act, default or omission on its part or on the part of any of its subcontractors, servants, agents or suppliers shall cause, contribute or otherwise give rise to any breach by the Customer of any of the Customer's obligations under the Main Contract.
26. The Supplier shall supply the Goods in such order and at such times and in such manner as the Customer shall reasonably direct and/or require, and comply with any other or revised programme issued by the Customer as and when directed. The Customer reserves the right to phase or amend the timing of the supply of Goods to suit the Main Contract programme and the price shall include for any costs arising therefrom.
27. The Supplier shall comply forthwith with any directions the Customer may issue from time to time. Except as provided in clause 22, the Supplier shall not be entitled to any additional payment in respect of the Customer's directions. If within 5 days after receipt of a written notice from the Customer requiring compliance with a direction, the Supplier does not comply, then the Customer may employ and pay other persons to supply the Goods and all associated costs incurred shall be due to the Customer and may be deducted from any monies otherwise due to the Supplier or recovered as a debt.
28. The Supplier shall keep the site clean and tidy. Where the removal of waste, arisings or the like from the site is not defined in the Supply Contract, the Supplier shall clear from the site any rubbish arising from the Supplier's supply of the Goods at no cost to the Customer. Where in the opinion of the Customer, the Supplier fails to keep the site clean and tidy, the Customer shall issue a written notice detailing the required remedial actions. If within 24 hours of such notice the Supplier has failed to undertake the required actions the Customer may employ others to do so and all associated costs shall be due to the Customer and may be deducted from any monies otherwise due to the Supplier or recovered as a debt.
29. The Supplier must advise the Customer in good time of all deliveries to site and the details thereof as the Customer may require. In the event that the Supplier fails to so advise, the Supplier shall bear all associated Supplier and Customer costs arising from such default.
30. The Supplier shall provide all necessary labour, plant, tools, attendance, transport, sufficient supervision, temporary works, personal protective equipment and any other resources that are necessary to carry out and complete the supply of the Goods and the price shall be deemed to include for all such items. Without any guarantee as to availability, where personal protective equipment is provided by the Customer due to the Supplier's default in the provision thereof, the associated cost shall be due to the Customer and may be deducted from any monies otherwise due to the Supplier or recovered as a debt.
31. During the term of the Supply Contract and for a period of 12 years thereafter, the Supplier shall maintain with reputable insurers and on customary and usual terms prevailing for the time being in the insurance market professional indemnity insurance (if applicable), product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Supply Contract (or at such higher level and on such terms as the Main Contract may otherwise provide). Within 5 days of the Customer's request, the Supplier shall provide written evidence in such form as the Customer may require that the insurances required under the Supply Contract are in force and that premiums are paid.
32. The Supplier shall within 14 days of the Customer's written request execute and deliver to the Customer such warranties, indemnities and/or guarantees in such forms as the Purchase Order shall stipulate.
33. Notwithstanding any other term of the Supply Contract, if the Supplier shall at any time be in breach of its obligations to provide any warranty, indemnity and/or guarantee, the Customer shall not be liable to make any further payment to the Supplier until such document or documents have been provided and such obligations have been satisfied.
34. The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Supply Contract without the Customer's prior written consent.
35. The Supplier shall be responsible for, and shall indemnify and keep indemnified the Customer from and against, any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Supplier in performing its obligations under the Supply Contract.
36. The Customer shall be entitled by written notice to the Supplier to terminate the Supply Contract forthwith in whole or in part at any time before delivery, whereupon the Supplier shall discontinue all work on the Supply Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential/indirect loss.
37. The Customer shall be entitled by written notice to the Supplier to terminate the Supply Contract forthwith if the Supplier at any time is Insolvent or is in breach of its obligations under the Supply Contract which the Supplier fails to rectify within 5 days of a written warning from the Customer specifying the breach and requiring that it be remedied within that period.
38. If the Customer's employment under the Main Contract is terminated, the Supplier's employment under the Supply Contract shall thereupon terminate and the Customer shall immediately notify the Supplier. If the Customer's employment under the Main Contract is terminated for any reason other than in consequence of any error, omission, negligence, default or breach of contract on the part of the Supplier, its servants or agents, or any party involved in the supply chain to the Supplier or their respective servants or agents, the Supplier shall be entitled to be paid the value of the Goods delivered and the reasonable cost of removal from the site, less sums already paid. The Supplier shall not be entitled to loss of profit or any other consequential/indirect loss.
39. If any court or competent authority finds that any provision (or part of any provision) of the Supply Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Supply Contract shall not be affected.
40. If any invalid, unenforceable or illegal provision of the Supply Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
41. Where under these Terms & Conditions an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday, that day shall be excluded.
42. A waiver of any right or remedy under the Supply Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Supply Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the future exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
43. A person who is not a party to the Supply Contract shall not have any rights under or in connection with it.
44. A notice or other document may be served by any effective means and shall be treated as effectively served if it is addressed, pre-paid and delivered by post:

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- (a) to the addressee's last known principal residence or if (s)he is or has been carrying on a trade, profession or business, his/her last known principal business address; or
- (b) where the addressee is a body corporate, to the body's registered or principal office.
45. The Supply Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
46. The Supplier warrants and undertakes to the Client that:
- (a) It has not and shall not engage in any extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, and/or any similar activity including, without limitation, any activity, practice and/or conduct which would constitute an offence under Sections 1, 2 and/or 6 of the Bribery Act 2010 (\*Corrupt Activity\*) in relation to the Goods; and
- (b) It has not and shall not engage in any activity, practice and/or conduct which could place the Customer in breach of Section 7(1) of the Bribery Act 2010; and
- (c) It has and will maintain in place adequate procedures designed to prevent any employee, agent, subsidiary and/or third party (who performs services for and on behalf of the Supplier) from undertaking any conduct that would give rise to an offence under Section 7 of the Bribery Act 2010 in relation to the Goods or their supply to the Customer
- (d) It has not and shall not solicit or engage with or take steps to solicit or engage with any person associated with the Client to facilitate, in connection with this Order, the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence under Section 45 and/or 46 of the Criminal Finances Act 2017; and
- (e) It has and will maintain such prevention procedures as it is reasonable in all the circumstances to expect the Supplier to have in place to prevent any breach of clause 46 (d)
47. Without prejudice to the obligations set out in clause 46, the Supplier will take all appropriate steps to satisfy itself, acting reasonably, that any third party from whom it procures services or supplies has not and shall not engage in Corrupt Activity and for which purpose, the Supplier shall obtain an undertaking similar to that in clause 46.
48. To the extent that compliance with this Order involves the Supplier processing personal data (such terms having the meanings given in the relevant Data Protection Legislation) the Supplier shall comply with the relevant Data Protection Legislation in relation to that personal data.
49. In performing its obligations under the Supply Contract, the Supplier shall
- (a) Comply with all applicable laws, statutes, regulations in force from time to time including but not limited to the Modern Slavery Act 2015; and
- (b) Take reasonable steps to ensure that there is no modern slavery or human trafficking in the Suppliers or subcontractors supply chains or in any part of their business

Dated 4<sup>th</sup> February 2020