

**CONDITIONS OF CONTRACT
FOR SALE AND SUPPLY OF GOODS**

1. Definitions

In these conditions:

- "Buyer" means ISLE OF WIGHT COUNCIL of County Hall, High Street, Newport, Isle of Wight PO30 1UD
- "Contractor" means the person, firm or company to whom the Order is addressed
- "Equality Legislation" includes, but not limited to, the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Acts 1976 and 2000, the Disability Discrimination Acts 1995 and 2005 and the Equality Act 2006, all secondary legislation to those Acts and all further legislation pertinent thereto whether in force at the date of these conditions or which come into force during the supply of the Goods
- "Goods" mean the goods or materials described in the Order
- "Order" means any order placed by the Buyer for the purchase and supply of Goods
- "the parties" means the Buyer and the Contractor

Words which use the male derivatives such as "his or him" also refer to and it is agreed that they have prescribed to them the female derivatives such as "her or hers"

2. Conditions of Purchase

- (i) These conditions shall apply to all contracts for the purchase of Goods by the Buyer from the Contractor to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any sales offer or similar document or in correspondence. These conditions constitute the entire understanding between the Buyer and the Contractor with respect to the subject matter covered by the Order and supersede all previous agreements and understandings between the parties
- (ii) Dispatch or delivery of the Goods by the Contractor to the Buyer shall be deemed conclusive evidence of the Contractor's acceptance of these conditions
- (iii) Any variation of these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the parties

3. The Goods

The Contractor warrants that the Goods shall:

- (i) correspond with any description specified in the Order
- (ii) be capable of any standard or performance specified in the Order or any literature supplied by the Contractor to the Buyer prior to the placing of the Order
- (iii) correspond with any sample provided or given by either party
- (iv) be reasonably fit for the purpose specified in the Order (if any) or for such other purpose such goods are ordinarily used

4. Delivery

- (i) The Goods, properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport, shall be

delivered by the Contractor at, or despatched for delivery to, the place or places and in the manner specified in the Order

- (ii) Arrangements for payment and return of returnable wooden packing cases skids, drums and other re-usable articles used for packaging the Goods will be as specified in the Order

5. Payment

Payment of the price specified in the Order shall be made by the Buyer to the Contractor within 30 days of receipt of the appropriate VAT invoice, such invoice to be received no earlier than the date for delivery of the Goods or in the event that the Buyer exercises the right to delay under condition 6 not prior to the date of the Buyer's notice of postponement of delivery

6. Storage

If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Contractor shall, if his storage facilities permit, store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery, and the Buyer shall be liable to the Contractor for the reasonable costs (including insurance) of so doing

7. Rejection

- (i) The Buyer may by notice in writing to the Contractor given within 28 days or such other period as may be agreed after delivery, reject any Goods which are found not to be in accordance with the Order
- (ii) The Buyer shall when giving notice of rejection specify the reasons therefor and shall thereafter return the rejected Goods to the Contractor at the Contractor's risk and expense. In such case, the Contractor shall within a

reasonable time replace such rejected Goods with Goods which are in all respects in accordance with the Order

- (iii) Any money paid by the Buyer to the Contractor in respect of any rejected Goods not replaced by the Contractor within a reasonable time, together with any additional expenditure over and above the price specified in the Order reasonably incurred by the Buyer in obtaining other goods in replacement, shall be paid by the Contractor to the Buyer

8. Title

Title in the Goods shall pass to the Buyer on delivery without prejudice to any right of rejection which may accrue to the Buyer under these conditions

9. Risk and Insurance

- (i) All and any Goods shall be at the risk of the Contractor until such time as delivery has been completed and title has passed to the Buyer
- (ii) The Contractor shall indemnify the Buyer in respect of any damage to the Buyer's property or premises and physical or other personal injury to the Buyer's employees or to members of the public or other persons occasioned during delivery of the Goods and for these purposes the Contractor shall maintain a public liability insurance policy with a minimum amount of third party insurance of ten million pounds (£10,000,000) for any one accident/number of accidents unlimited
- (iii) The contents of this condition are expressly stated to be entirely without prejudice to any rights that might subsist between the Buyer, the Contractor and third parties at common law or otherwise

10. Time

- (i) The Contractor shall deliver the Goods to the Buyer at the time(s) specified in the Order or as agreed by the parties and in this event time shall be considered to be of the essence. If no time is specified for delivery and completion of the Goods then the Contractor shall deliver the Goods within a reasonable time of the receipt by the Contractor of the Order
- (ii) If, owing to industrial disputes or other cause outside the Contractor's control, the Contractor is unable to deliver the Goods within the time specified then provided that the Contractor shall have given the Buyer notice in writing without delay of his intention to claim an extension of time the Buyer shall grant the Contractor such extension of time as may be reasonable
- (iii) If the Goods or any portion thereof are not delivered within the time or times specified or any extension of such time or times and/or if the service or any portion thereof is not completed within the time or times specified or any extension of such time or times to the complete satisfaction of the Buyer, the Buyer shall be entitled to either:
 - (a) determine the Order in respect of the Goods undelivered and of any other Goods already delivered under the Order which cannot be effectively and commercially used by reason of the non-delivery of the Goods undelivered as aforesaid. On such determination the Buyer shall be entitled:
 - (1) to return to the Contractor at the Contractor's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used as aforesaid and to recover from the Contractor any monies paid by the Buyer in respect of such Goods, and
 - (2) to recover from the Contractor any additional expenditure reasonably incurred by the Buyer in obtaining other goods to

replace those in respect of which the Order has been determined

11. Damage or Loss in Transit

The Contractor will replace or (at the Buyer's request) repair, free of charge, any Goods that have been damaged or lost in transit and/or the Buyer shall give to the Contractor written notification of any such damage or loss if it comes to his attention within such time as will enable the Contractor to comply with the carrier's conditions of carriage, as affecting loss or damage in transit, or when delivery is made by the Contractor's own transport, within a reasonable time, the interpretation of what amounts to being a reasonable time herein being at the Buyer's discretion

12. Guarantee

- (i) If within a period of 12 months following delivery of the Goods ("the Guarantee Period") the Buyer gives notice in writing to the Contractor of any defect in the Goods which shall arise under proper use from faulty design (other than a design made, furnished or specified by the Buyer for which the Contractor has in writing disclaimed responsibility), materials or workmanship, then the Contractor shall with all possible speed replace or repair the Goods so as to remedy the defects without cost to the Buyer
- (ii) The Buyer shall, as soon as practicable after discovering any such defect or failure, return the defective Goods or parts thereof to the Contractor at the Contractor's risk and expense unless it has been agreed between the parties that the necessary replacement or repair shall be carried out by the Contractor on the Buyer's premises

13. Assignment or Sub-Contracting

- (i) The Contractor shall not without the consent in writing of the Buyer assign or transfer the Order or any part thereof to any other person except as part of a company amalgamation or reconstruction
- (ii) The Contractor shall not without the consent in writing of the Buyer sub-let the Order or any part thereof but this shall not prevent the Contractor sub-letting part of the Order to any company which is a member of the group to which the Contractor belongs or a company with whom the Contractor is associated (provided that the Contractor shall provide such evidence of proof as required by the Buyer). Any such consent shall not relieve the Contractor of any of his obligations under the Order

14. Bankruptcy/Liquidation etc.

In the event of the Contractor becoming bankrupt or making a composition or arrangement with its creditors or having a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, or having an application made under the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof in respect of its company to the Court for the appointment of an administrator, or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act, 1986 or any statutory re-enactment or amendment thereof, appointed or having possession taken by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in or subject to the floating charge then in any and all of such eventualities the Buyer shall be at liberty:

- (a) to cancel the Order summarily by notice in writing without compensation to the Contractor, or
- (b) to give any receiver, liquidator, trustee or insolvency practitioner the option of carrying out the Order

PROVIDED THAT the exercise of the right under this condition shall be at the sole discretion of the Buyer and shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer

15. Force Majeure

The Contractor or its designated representatives shall not be liable to the Buyer for any delay or failure by the Contractor to perform its obligations under the Order and/or these conditions if such delay or failure arises from any cause or causes beyond the reasonable control of the Contractor, including, but not limited to, labour disputes, lightning, shortages of materials, rationing, utility or commitments failures, earthquakes, blockages, actions, restrictions, regulations or orders of any Government, agency or subdivision thereof

16. Infringement of Patents

- (i) Where applicable the Contractor shall fully indemnify the Buyer against any action, claim, demand costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, trademark, or trade name protected in the United Kingdom by the use or sale of the Goods and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. PROVIDED ALWAYS that this indemnity shall not apply to any infringement which is due to the Contractor having followed a design or instruction furnished by the Buyer or to the use of the Goods in a manner or for a purpose not reasonably to be

inferred by the Contractor or disclosed to the Contractor prior to the making of the Contract

- (ii) In the event of any claim being made or action brought against the Buyer arising out of the matters referred to in this condition the Contractor shall be promptly notified thereof and at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Buyer shall not, unless and until the Contractor shall have failed to take over the conduct of negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having first given to the Buyer such reasonable security as shall from time to time be required by the Buyer to cover the amount ascertained or agreed estimated, as the case may be, of any compensation, damages, expenses and costs for which the Buyer may become liable. The Buyer shall, at the request of the Contractor, afford all available assistance for any such purpose and shall be repaid any expenses incurred in doing so
- (iii) The Buyer on his part warrants that any design or instructions furnished or given by him shall not be such or cause the Contractor to infringe any letters patent, registered designs, trademarks or trade name in the performance of the Contract

17. Value Added Tax (VAT)

- (i) All sums payable pursuant to the Order, unless otherwise stated, are exclusive of VAT and other duties or taxes
- (ii) Any VAT or other duties payable in respect of such sums shall be payable in addition to such sums

18. Corruption

The Buyer shall be entitled to cancel the Order and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person a gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to any action in relation to the obtaining or execution of the Order or for showing or forbearing to show favour or disfavour to any person in relation to the Order or any other contract with the Buyer or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to the Order, the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 and 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act, 1972

19. Equality

- (i) The Council as a public body in carrying out its functions must:
- have due regard to the need to eliminate unlawful race, disability and sex discrimination; and
 - promote equality of opportunity and good relations between persons of different racial groups, persons with disabilities and between men and women,
- in accordance with appropriate Equality Legislation
- (ii) The Contractor confirms that it will perform its obligations pursuant to the Order in all respects in conformance with the Equality Legislation where appropriate
- (iii) The Contractor shall indemnify the Council in respect of all costs claims and demands arising from a third party claim resulting from the Contractor's obligations under this condition

20. Human Rights Act

- (i) The Buyer as a public authority has a positive obligation to ensure compliance with the Human Rights Act 1998 and as a contractor working for and on behalf of the Buyer the Contractor has a similar duty under the said Act
- (ii) The Contractor confirms that it will perform its obligations pursuant to the Order in all respects in conformance with the said Act
- (iii) The Contractor shall indemnify the Buyer in respect of all costs claims and demands arising from a third party claim resulting from a breach of the Contractor's obligations under this condition

21. Data Protection Act

The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (or subsequent legislation) and will indemnify the Buyer against all actions costs expenses claims proceedings and demands which may be made or brought against the Buyer for breach of statutory duty under the said Act which arises from the use disclosure or transfer of personal data by the Buyer and his servants and agents

22. Freedom of Information

The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and The Environmental Information Regulations 2004 and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with its obligations as to the disclosure of information.

23. Confidentiality

The Contractor shall not at any time during or after the term of the Order divulge or allow to be divulged to any person any information, confidential or otherwise, relating to the business or affairs of the Buyer unless expressly agreed to by the Buyer

24. Indemnity

- (i) The Contractor shall, subject to paragraphs ii and iii of this condition indemnify the Buyer in respect of all damage or injury occurring to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses (including legal fees and costs incurred) arising in connection therewith to the extent that the same shall have been occasioned by the negligence of the Contractor, his servants or agents during such time as he or they were on, entering onto or departing from the Buyer's premises for any purpose connected with the Contractor.
- (ii) The Contractor shall not be liable to the Buyer for:
 - (a) any loss of profit or of contracts, and
 - (b) any damage or injuryto the extent that the same is caused by or arises out of the act or omissions of the Buyer or of others (not being the Contractor's servants or agents)
- (iii) In the event of any claim being made against the Buyer by the reason of any matter referred to and in respect of which the Contractor is liable under this condition, the Contractor shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Buyer shall not unless and until the Contractor shall have failed to take over the conduct of negotiations or litigation make any admission which may be prejudiced thereto. The conduct by the Buyer of such negotiations or litigation shall be conditional upon the Contractor having first given to the Buyer such reasonable security as shall

from time to time be required by the Buyer to cover the amount ascertained or agreed or estimated as the case may be of any compensation, damages, expenses and costs for which the Buyer may become liable. The Buyer shall at the request of the Contractor afford all available assistance for any such purpose and shall be repaid any out of pocket expenses incurred in doing so

25. Termination for Breach

The following obligations are conditions of the Order and any breach of them shall be deemed a fundamental breach which shall determine the Order immediately and the rights and liabilities of the party not at fault shall then be determined

- (i) Failure on the part of the Contractor to observe any obligation(s) under the Order or these conditions
- (ii) The levying of any distress or execution against the Contractor or the making by him of any composition or arrangement with creditors or being a company in bankruptcy/liquidation in accordance with the terms of condition

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26. Severance

If any provision of these conditions is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Buyer it may be severed from the Order or these conditions as the case may be and the remaining provisions of the Order or these conditions shall remain in full force and effect unless the Buyer in the Buyer's discretion decides that the effect of such a

declaration is to defeat the original intention of the parties in which event the Buyer shall be entitled to terminate the Order by 14 days' written notice to the Contractor

27. Change of Address

Each of the parties shall give notice to the other of the change of address at the earliest opportunity but in any event within 48 hours of such change.

28. Notice

Any Notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or first class post to the address of the relevant party as detailed in the Order or, in the event of the change of address to that address

29. Third Parties

The parties hereby declare that no term of the Order is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Right of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

30. Law and Jurisdiction

The Order and these conditions shall be construed and be subject to English Law and jurisdiction of the English Courts