

## Standard Terms and Conditions for Purchase of Goods

### AJS Contracts Ltd Standard Terms & Conditions for Purchase of Goods

#### 1. Interpretation

1.1 In these Conditions the following words shall have the following meanings:

"Buyer" means **AJS Contracts Ltd** registered and incorporated in England and Wales with registered number 03523630 and having its registered office at West Terrace, Esh Winning, Durham, DH7 9PT.

"Conditions" means these Standard Terms and Conditions for Purchase of Goods together with any special terms agreed in writing by the Supplier and the Buyer.

"Confidential Information" means any and all information provided by either party under the Contract that is either (i) marked as being confidential (or in the case of verbal discussions is later confirmed in writing to be confidential) or (ii) information (however communicated) that is of a type that the other party could reasonably have been expected to know that the information was confidential.

"Contract" means any contract between the Buyer and the Supplier for the purchase of Goods including the Order and incorporating these Conditions.

"Goods" means any goods which the Buyer is to purchase from the Supplier (including any of them or any part of them).

"Intellectual Property Rights" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or in the future arising.

"Loss" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made.

"Order" means any order made by the Buyer for Goods from the Supplier.

"Quotation" the price offered by the Supplier to the Buyer for the supply of Goods.

"Supplier" the person(s), firm or company who supplies Goods to the Buyer known as ..... and having its registered office/usual place of business at.....

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

#### 2. Formation and Incorporation

2.1 These terms and conditions are the only conditions upon which the Buyer is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions subject to any variation under Condition 2.7. No terms and/or conditions endorsed upon, delivered with or contained in the Supplier's quotation acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and/or conditions. Any reference below or overleaf to such documents will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such documents will have effect to the exclusion or amendment of the terms of the Contract.

2.2 The Buyer will contact the Supplier (either verbally or in writing) to request a Quotation for the purchase of Goods and the Supplier will supply the Buyer with a Quotation.

2.3 Each Quotation provided by the Supplier shall be deemed to be an offer by the Supplier to the Buyer for the provision of Goods on these Conditions.

2.4 No Quotation provided by the Supplier shall be deemed to be accepted by the Buyer until the Buyer places an Order.

2.5 When the Buyer places an Order by fax, email or post the placing of the Order by the Buyer shall be deemed to be acceptance by the Buyer for the provision of Goods by the Supplier on these Conditions.

2.6 Where the Buyer places an Order by telephone, the Buyer will send a copy of the Order to the Supplier by fax, email or post within [five (5)] Working Days of placing the Order. The Contract shall be deemed to be made on the Seller's receipt of the written Order from the Buyer.

2.7 Any variation to the Order or these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Buyer.

#### 3. Specification and the Right of Rejection

3.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Supplier (the "Specification").

3.2 The Supplier acknowledges that precise conformity of the Goods (or any part thereof) with the Specification is of the essence of the Contract and the Buyer shall be entitled to reject the Goods if they are not in conformance with the Specification, however slight the breach may be.

3.3 The Supplier shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.4 The Goods shall be of the best available design and of the best material and workmanship and be without fault and shall conform as to the quality quantity and description with the particulars and/or specifications in the Contract and shall be new and unused unless otherwise specified.

3.5 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Buyer and the Buyer relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Order.

3.6 The Buyer shall have the right to inspect and test the Goods at all times and the Supplier shall not unreasonably refuse any request by the Buyer to inspect and test the goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and the Supplier shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.7 If as the result of such inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Specification and the Buyer so informs the Supplier within 30 days of inspection or testing, the Supplier shall take all steps necessary to ensure compliance.

3.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

3.9 Following delivery in accordance with Condition 4, the Buyer shall be entitled to reject any Goods (or part thereof) which do not comply in full with the Specification.

3.10 The Buyer may return any rejected Goods at the Supplier's risk and expense. The right to reject shall extend to the whole or any part of a consignment of Goods. Rejected Goods shall not be replaced unless the Buyer so requires in writing.

3.11 In the event that the Buyer exercises its right of rejection under this clause, the Supplier agrees to indemnify, keep indemnified and hold harmless the Buyer in full against any and all Loss which the Buyer may incur due to the exercise by the Buyer of its right of rejection of the Goods and/or any additional expenditure reasonably incurred by the Buyer in obtaining other goods to replace the rejected Goods.

3.12 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course.

3.13 The Buyer may at any time make changes in writing relating to the Contract including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increasing cost of, or time required for, the performance of the Contract an equitable adjustment shall be made to the price, delivery schedule or both. Any claim or adjustment by the Supplier must be approved by the Buyer in writing before the Supplier proceeds with such changes.

3.14 In the event that the parties are unable to agree upon any such claim or adjustment, the parties shall agree on the appointment of an independent expert and the expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.

3.15 If the parties are unable to agree on an expert within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request that the President of the Law Society appoints an expert with appropriate experience.

3.16 Each party shall bear its own costs in relation to the reference to the expert and the expert's fees and any costs properly incurred by him in arriving at his decision shall be borne by the parties equally.

#### 4. Delivery

4.1 The Goods shall be delivered carriage paid, unless otherwise agreed by the parties in writing, to the Buyer's place of business as named on the Order, or if some other place of delivery is agreed by the Buyer in writing by delivery of the Goods to that place during the Buyer's normal office hours. The Supplier shall off-load the Goods of its own risk as directed by the Buyer.

4.2 The Goods shall be delivered on the date or within the period specified in the Order, or if no such period is specified within 28 days of the Order.

4.3 Where access to the Buyer's premises is necessary in connection with delivery or installation of the Goods, the Supplier and its sub-contractors shall be granted a bare licence to access the Buyer's premises on the terms of these Conditions. In exercising that right of access, the Supplier and its sub-contractors shall at all times comply with the reasonable requirements of the Buyer's Administrative Officer and the right shall be granted only to the extent necessary to enable the Supplier to perform its obligations under the Contract. The Supplier also agrees to comply and to procure that its personnel and sub-contractors comply at all times whilst on the Buyer's premises with the Buyer's health and safety policies then in force.

4.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.5 Time for delivery shall be of the essence of the Contract.

4.6 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

4.6.1 cancel the Contract in whole or in part;

4.6.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

4.6.3 recover from the Supplier any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier; and

4.6.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

4.7 The Buyer shall not be deemed to have accepted the Goods until the Buyer has had twenty one days to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

4.8 No Goods supplied under the Contract earlier than the date for delivery set out in these Conditions, or in any delivery schedule, will be accepted or paid for unless the Buyer notifies the Supplier in writing of its intention to accept the same.

4.9 The Supplier shall supply the Buyer on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair and for the Buyer to accept delivery of Goods.

4.10 Unless the Buyer expressly agrees otherwise in writing, containers and packing must be supplied at no cost to the Buyer but will be returned to the Supplier, if required, at the Supplier's risk and expense.

4.11 Where more than one Good is involved in the Order and the Buyer agrees to accept delivery by instalments, the Contract shall be construed as a separate contract in respect of each instalment. Nevertheless, failure to deliver any instalment shall entitle the Buyer at its option to treat the Contract as repudiated.

4.12 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to accept or pay for the excess (and shall be entitled to reject it) and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

4.13 The Goods shall be properly packed, clearly labelled and adequately protected against damage and deterioration in transit.

4.14 The Supplier will repair or replace Goods damaged or lost in transit or during off-loading or stacking free of charge provided the Buyer gives written notice to the Supplier of the damage or loss within a reasonable time after receipt of a despatch note.

4.15 Goods which are repaired or replaced shall be subject to these Conditions in the same manner as those originally delivered under the Contract.

#### 5. Risk/Ownership

5.1 Risk in the Goods shall pass to the Buyer once the Goods have been delivered, unpacked, checked and accepted by the Buyer.

5.2 Ownership (with full title guarantee) of the Goods shall pass to the Buyer upon delivery.

#### **6. Price**

6.1 Unless otherwise agreed by the Buyer in writing:

6.1.1 the price and any additional expenses for the Goods shall be as specified in the Order; and

6.1.2 once an Order has been made by the Buyer the price for the Goods shall be fixed.

6.2 The price stated in the Order shall be inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts, levies or taxes other than value added tax.

6.3 No variation in the price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer.

#### **7. Payment**

7.1 The Supplier shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and each invoice shall quote the number of the Order. The Supplier shall render a separate invoice in respect of each consignment of Goods delivered under the Order.

7.2 Unless otherwise stated in the Order the Buyer shall pay the price of the Goods within sixty (60) days of receiving the Goods or the last day of the month following the month of receipt by the Buyer of a validly constituted invoice whichever is the later, unless the parties agree otherwise in writing.

7.3 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any charges or other monies properly owing at any time from the Supplier (or any member of the Supplier's group of companies) to the Buyer (or any member of the Buyer's group of companies) under the Contract or any other contract against any sums payable by the Buyer to the Supplier (or a member of the Supplier's group of companies) under the Contract.

7.4 If there is any invoice which is in dispute (whether in whole or part), the Buyer shall be entitled to withhold payment of the relevant invoice in full. The parties shall enter into good faith discussions to resolve such dispute.

#### **8. The Buyer's Property**

8.1 All Intellectual Property Rights in or relating to the Goods produced from or arising as a result of the performance of the Contract, so far as not already vested, are hereby assigned by the Supplier to the Buyer and shall become the absolute property of the Buyer. The Supplier shall do all that is reasonably necessary to ensure that such rights vest in the Buyer by the execution of appropriate instruments or the making of agreements with third parties.

8.2 The Buyer shall retain ownership of any Intellectual Property Rights in any additional specification for Goods which the Supplier is supplying in accordance with the Specification.

8.3 All property of the Buyer shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

8.4 The Supplier warrants that the Goods will not in any way infringe or violate any Intellectual Property Rights or Confidential Information, or any contractual, employment or property rights or other rights of any third parties.

8.5 Should the Buyer receive notice of any claim that the Goods infringe any Intellectual Property Right or any other right of any third party, the Buyer shall have the right to terminate the Contract forthwith but such termination shall be without prejudice to any other right of action the Buyer may have.

#### **9. Warranties and Indemnity**

9.1 The Supplier warrants to the Buyer that the Goods:

9.1.1 will 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 in writing at the time the Order is placed;

9.1.2 will be free from defects in design, material and workmanship as well as supplied and (where applicable) installed in accordance with the Supply of Goods and Services Act 1982;

9.1.3 will correspond in every respect with any specifications (including the Specification), drawings, samples or descriptions provided by the Buyer or the Supplier; and

9.1.4 will comply with all statutory requirements and regulations and voluntary codes of conduct relating to the Goods and their sale and supply.

9.2 The Supplier shall indemnify, keep indemnified and hold harmless the Buyer in full from and against all Loss incurred by the Buyer as a result of or in connection with:

9.2.1 breach of any warranty given by the Supplier in relation to the Goods;

9.2.2 any claim that the Goods infringe, or their use, resale or importation infringes any Intellectual Property Right of any other third party except to the extent that the claim arises from any specifications, drawings, samples or descriptions provided by the Buyer;

9.2.3 any defect in packaging or containers of the Goods or any misleading or inaccurate information or data supplied at any time by the Supplier, its servants or agents; and

9.2.4 any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

9.3. The Supplier shall effect with a reputable insurance company a policy or policies covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Buyer produce the relevant policy or policies together with receipts or other evidence of payment of the latest premiums thereunder. At the Buyer's request, the Supplier agrees to assign the benefit of such insurance to the Buyer.

#### **10. Termination**

10.1 The Buyer shall be entitled to cancel any Order in whole or in part by giving notice to the Supplier at any time prior to delivery of the Goods in which event the Buyer's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation shall not include loss of anticipated profits or any consequential loss.

10.2 The Buyer shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:

10.2.1 the Supplier commits a material breach of any of the terms and conditions of the Contract;

10.2.2 any distress, execution or other legal process is levied upon any of the assets of the Supplier;

10.2.3 the Supplier enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purpose of solvent amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the Supplier's undertaking or assets;

10.2.4 the Supplier ceases or threatens to cease to carry on its business;

10.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Buyer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy;

10.2.6 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier; or

10.2.7 the Supplier does not pay any money due from it to the Buyer.

10.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The provisions of these Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

10.4 No concession or delay on the part of the Buyer shall be construed as a waiver of any rights and remedies.

10.5 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving to the Supplier notice in writing whereupon all work on the Contract shall be discontinued. The Supplier shall pay fair and reasonable compensation for the work in progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss whatsoever.

#### **[11. Remedies**

11.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with or the Supplier fails to comply with any of the terms of this Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods has been accepted by the Buyer:

11.1.2 to rescind the Order;

11.1.3 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

11.1.4 at the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

11.1.5 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;

11.1.6 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and

11.1.7 to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract. *[A decision should be made as to whether or not this needs to be included.]*

#### **12. Health and Safety**

12.1 Any Goods supplied or installed under the Contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and all Goods will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed.

12.2 The Supplier agrees before delivery to furnish the Buyer in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Buyer will rely on the supply of such information from the Supplier in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation.

12.3 In respect of all goods supplied the Supplier will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Buyer, its customs, relevant British Standards, statutory and regulatory bodies.

12.4 It is the responsibility of the Supplier to acquaint itself with the purposes for which the Goods supplied are to be used.

12.5 The Supplier shall indemnify, keep indemnified and hold harmless the Buyer against all Loss which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition 12.

#### **13. Assignment**

13.1 This Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or subcontract any of its obligations under the Contract.

13.2 The Buyer may assign the Contract or any part thereof to any person, firm or company.

#### **14. Force Majeure**

14.1 The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control.

14.2 Without prejudice to the generality of condition 14.1 the following shall be included as causes beyond the Buyer's reasonable control:

14.2.1 governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

14.2.2 Act of God, fire, explosion, flood, epidemic or accident;

14.2.3 import or export regulations or embargoes;

14.2.4 labour disputes not including the work-force of the Supplier;

14.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or

14.2.6 a power failure or breakdown of machinery.

#### **15. Notices**

Any notice given under or pursuant to the Order may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunications resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

#### **16. Confidentiality**

16.1 Both parties will and shall procure that their personnel and sub-contractors will, keep confidential all Confidential Information that it may acquire and will not use the Confidential Information for any purpose other than to complete its obligations under the Contract.

16.2 The obligations of this Clause will not apply to information which:

16.2.1 is publicly available or becomes publicly available through no act or omission of either of the parties; or

16.2.2 either party is required to disclose by order of a court or regulatory body of competent jurisdiction.

16.3 This Clause 16 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

**17. General**

17.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

17.2 The Supplier hereby undertakes that it will not under any circumstances impose or seek to impose a lien (whether general or specific), charge or other encumbrance in respect of the Buyer's property (including, where title has passed, the Goods), whether in respect of any claims for outstanding sums under the Contract or otherwise.

17.3 Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by its negligence of any liability for fraud or fraudulent misrepresentation or any other liability that cannot be restricted by law.

17.4 Any provision of the Contract which is held by a competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

17.5 Failure of the Buyer to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.6 The parties to a Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

17.7 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

August 2011