

University Of Sheffield – Terms & Condition Of Contract

1. Definitions

1.1 The term "Buyer" shall mean the University of Sheffield.

1.2 The term "Seller" shall mean the person, firm or company to whom the Purchase Order is issued.

1.3 The word "Goods" means the articles or items or any part of them described in the order and where appropriate such packaging as may be necessary for the immediate containment of handling the goods.

1.4 The word "Packages" includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.

1.5 The term "Purchase Order" shall mean Buyer's Purchase Order which specifies that these conditions apply to it.

1.6 The "Contract" shall mean the contract between Buyer and Seller consisting of the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the contract, they shall have precedence in the order herein listed.

2. Quality

2.1 The Goods shall conform as to quantity, quality, description and price with the particulars stated in the Buyer's order. They shall be of sound materials and workmanship. If samples or patterns are provided, the Goods shall be equal in all respects to the samples or patterns. If a standard of performance is specified the Goods shall be capable of meeting the required performance.

2.2 The Seller shall cause all Goods supplied by him to the Buyer to be suitable and sufficiently marked, endorsed and labelled with information and advice necessary to instruct and warn such persons into whose hands the Goods shall come about hazards to health and/or safety reasonably as arising from the despatching, receiving, handling, using or possessing the Goods and also about the necessary precautions to be taken in respect thereof provided however that if it shall not be reasonably practicable to mark, endorse or label the goods accordingly, the Seller shall fully instruct and advise such persons by an accompanying notice at the time of despatch.

2.3 Be new (unless otherwise specified in the Contract) and be of sound materials and skilled and careful workmanship

3. Delivery Date

The Seller shall supply and deliver the Goods at his own risk free of charge for carriage or demurrage unless otherwise agreed. The Goods shall be delivered by the Seller at the place or places and in the manner specified in the Buyer's Purchase Order or as subsequently specified. A detailed Delivery Note quoting the Buyer's official Purchase Order Number must accompany the Goods themselves. Delivery may be effected only between the hours of 09.00 to 16.30 Monday to Friday. Deliveries outside these times will only be accepted with prior agreement. Time is deemed to be of the essence and delivery must be effected within the time stated in the order, failing which the Buyer reserves the right to purchase the Goods stated in the said Order elsewhere and to charge the Seller with any loss incurred. The Buyer asserts the right to arrange, in writing, with the Seller for a deferred delivery of the goods.

4. Incorrect Delivery

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

5. Passing of Property and Risk to Buyer

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

6. Terms of Payment

The basis of price for this order is inclusive of all materials, labour, transport, administration and

carriage costs, tools and appliances and other things necessary for the completion of the Contract. Prices shall remain fixed for the duration of the Contract, except where otherwise agreed in writing between the Buyer and the Seller. Invoices shall be sent within 15 days of completion of works/order to the Buyer at the address given on the Purchase Order, and must specify the Order Number and Contract Reference (if applicable). Unless otherwise stated payment will be made within 30 days of receipt and agreement of a valid invoice.

7. Loss or Damage in Transit

7.1 The Seller shall repair to the satisfaction of the Buyer or replace free of charge Goods damaged in transit and in the event of such damage, delivery shall not be deemed to have taken place until repaired or replacement Goods have been delivered.

7.2 The Seller shall replace Goods lost in transit provided always that, if the Seller has given the Buyer at the address for delivery of the Goods notice of the date of despatch and has with the notice required the Buyer to give him notice of non-delivery within a stated period and the Buyer has failed to do so, the Goods shall notwithstanding their non-receipt within that period be deemed to have been delivered at the expiry of that period. In such last mentioned event the Seller shall pursue for the benefit of the Buyer such rights (if any) as the Seller may have against the Carrier.

7.3 The Seller shall ensure that the Goods are packed in such a manner so as to prevent any loss or damage to the Goods whilst in transit and by any appropriate method of handling.

7.4 Where the Buyer has specified to the Seller specific types or methods of packaging these must be strictly adhered to unless written concession has been granted.

8. Acceptance

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

9. Variations

There shall be no variations to the Goods, works/services to be supplied, their specifications, price agreed, terms and conditions or any other aspects of the Contract except by way of a written variation order duly authorised by the Buyer.

10. Patent Rights

Seller will indemnify Buyer against any claim or infringement of Letters Patent, Registered Design, Trade Mark or Copyright by the use or sale of any article or material supplied by Seller to Buyer and against all costs and damages which Buyer may incur in any action for such infringement or for which Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to Seller having followed any instruction furnished or given by Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified or disclosed to Seller, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by Seller. Provided also that this indemnity is conditional on Buyer giving to Seller the earliest possible notice in writing of any claim being made or action

threatened or brought against Buyer and on Buyer permitting seller at Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. Buyer on his part warrants that any instruction furnished or given by him shall not be such as will cause Seller to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of the Purchase Order.

11. Force Majeure

Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure (any event or occurrence which is outside the control of the party concerned end which is not attributable to any act or failure to take preventative action, but shall not include any industrial action), where there is no practicable means available to the party concerned to avoid such failure or delay. If either party becomes aware of any circumstances of Force Majeure, they shall promptly give written notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue. In the event of delay caused by circumstances of Force Majeure continuing for a period in excess of 5 working days, the Purchaser shall have the right to terminate the Contract on giving notice to the Supplier.

12. Assignment and sub-letting

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

13. Copies of sub-orders

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

14. Progress and Inspection

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

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

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

16. Free-issue materials

Where Buyer for the purpose of the Contract issues materials "free of charge" to seller such materials shall be and remain the property of Buyer, Seller shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Buyer's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall

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be made good at Seller's expense. Without prejudice to any other of the rights of the Buyer, Seller shall deliver such materials whether further processed or not to the Buyer on demand.

17. Hazardous Goods

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

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

18. Packages

18.1 Where Buyer has an option to return Packages and does so, Buyer will return such Packages empty in good order and condition (consigned "carriage paid" unless otherwise agreed) to Seller's supplying works or depot indicated by Seller, and will advise Seller the date of despatch. Packages returned promptly in the manner aforesaid shall be subject to an allowance at Seller's standard rate operating at the time of delivery to Buyer.

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

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

19. Warranty

Seller shall as soon as reasonably practicable repair all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, Seller's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties, expressed or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after the repair or replacement. Seller shall further be liable to damages (if any) in respect of each Purchase Order up to the limit of the price of the Goods covered by that Purchase Order provided that buyer shall not in any event claim damages in respect of loss of profits. The foregoing states the entire liability in contract and in negligence of Seller in respect of Goods which are defective, other than liability arising under Clause 7 (Loss or damage in transit) and Seller shall not, save as expressly provided herein, be liable for any other claim in regard to defects in the Goods. The Supplier shall ensure that compatible spares are available to facilitate repairs (where applicable) for a period of 10 years from the date of the Purchaser's acceptance of the Goods.

20. Termination.

The Purchaser may terminate the Contract in whole or in part by written notice to the Supplier, with immediate effect if the Supplier breaches any of its obligations under the Contract and fails to rectify such breach to satisfaction of the Purchaser within such reasonable period of time imposed by the Purchaser in its written notice to the Supplier notifying it of the said breach; or if the breach is incapable of remedy. The Purchaser reserves the right, in non/late delivery or performance other than as specified in the Contract, to have the Goods supplied or the Services performed by an alternative

means and any additional costs reasonably incurred in doing so shall be borne by the Supplier.

21. Recovery of Sums Due

Whenever under this Contract any sums of money shall be recoverable from the Supplier, they may be deducted from any sums then due, or which at any later date may become due to the Purchaser under the Contract or under any other Contract which the Purchaser may have with the Supplier.

22. Insolvency and bankruptcy

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

23. Indemnity and Insurance

23.1 The Supplier shall indemnify the Purchaser fully against all loss, actions, costs, claims, demands, expenses and liabilities which the Purchaser may incur either at common law or by statute in respect of:

23.1.1 the personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of the Purchaser or of any person for whom the Purchaser is responsible) which shall have occurred in connection with any Services earned out by the Supplier under the Contract or shall be alleged to be attributable to any defect in the Goods.

23.1.2 The personal injury to or death of any of the Supplier's or Purchaser's employees, agents, sub-contractors or other representatives while on the Purchaser's premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.

23.2 The Supplier shall indemnify the Purchaser against any and all loss, costs, expense and liability caused to the Purchaser whether directly or as a result of the action, claim or demand of any third party by reason of any breach by the Supplier of the Contract or of any terms or obligations on the Supplier's part under the Sale of Goods Act 1979, the Sale and Supply of Goods Act 1994 or any other statute or statutory provision relevant to the Contract or to Goods or Services covered thereby. This indemnity shall not be prejudiced or waived by any exercise of the Purchaser's rights under Condition 9 hereof.

23.3 The Supplier shall be obliged to furnish the Purchaser with documentary evidence that they have satisfactory insurance cover with a reputable insurer to fulfill their statutory insurance obligations and have public liability insurance cover of at least ten million pounds sterling, such insurance's to be kept in full force for the duration of the Contract.

24. Corrupt Gifts and Payment

The Supplier shall not give, provide or offer the Purchaser's staff or agents any loan, fee, reward, gift or any emolument or advantage whatsoever in connection with the Contract. In the event of a breach of this condition the Purchaser shall, without prejudice to any other rights, be at liberty to terminate the Contract and any other contract with the Supplier and to recover from the Supplier any loss or damage resulting from such termination.

25. Waiver

A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself,

26. Discrimination

The Supplier, its agents, sub-contractors or employees shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976 or any other legislation relating to discrimination in employment.

27. Race Equality

The Contractor shall:

27.1 abide by all European and UK legislation and codes of practice relating to the race Relations Act or such re-enactment as shall be in force for the time being.

27.2 comply with the provisions of S71(1) of the Race Relations Act 1976 (as amended) as if the Contractor/Supplier were a body within the meaning of schedule 1A of the Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups).

27.3 Comply with the provisions of Parts II, III and IV of the Act where appropriate.

27.4 comply with the provisions of S& of the Act in all dealings with the sub-contractors.

27.5 not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic or national origin in decisions to recruit, train, promote, discipline or dismiss employees; and **27.6** for purposes of ensuring compliance with the above clauses 1.3 to 1.5 above, observe as far as possible the provisions of the Commission for racial Equality's Code of Practice. (details of which are available on the Commissions website)

27.7 The supplier/contractor will comply at all times with the University's own employment policy and codes of practice relating to racial discrimination and equal opportunities. (copies of which are available on the University's website)

27.8 The supplier/contractor shall 12 months from the date of this Agreement and annually thereafter submit a report statement to the University demonstrating compliance with clauses 27.1, 27.6, 27.7 above.

28. General Conditions in the tender

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

29. Construction of Contract

The construction, validity and performance of the Contract shall be governed by the law of England.