

FAIRPORT STANDARD CONDITIONS FOR SUPPLYING

1. Definition

In these conditions

The "Company" means the issuing company named on the face of the Order form.

The "Purchase Order" means the Company's official numbered Purchase Order Form including all attachments thereto which together set out the requirements of the Company which supersedes and excludes all previous correspondence between the Company and the Supplier on the subject of the Purchase Order.

The "Supplier" means the party to whom the Purchase Order is addressed.

The "Contract" means the Purchase Order accepted by the Supplier.

The "Contract Price" means the price or prices shown in the Purchase Order.

"Goods" means the Articles or Materials to be supplied and / or services to be rendered and / or to be performed under the Contract.

The "Main Contract" means any Specification, Conditions of Contract, Drawings etc. prepared for the Main Contract Works for which the Goods are required and may be inspected at the Company's offices named in the Purchase Order (other than the rates or prices therein) and which form part of the Purchase Order except where they conflict with the terms of this Purchase Order which shall take precedence over those of the Main Contract.

The "Engineer" means the Engineer, Architect, Supervising Officer, Main Contractor, or any other person appointed under the terms of the Main Contract.

2. Specification

- a) All Goods shall be of the description and quality set out in the Purchase Order and in the absence of any such specification all goods shall be the best of their respective kind, complying with the appropriate BSS (if any) and shall in all cases be free from any defect in design, workmanship or materials and to the reasonable satisfaction of the Company and, if appropriate of the Engineer and fit for the purpose of the Main Contract, or other purpose as described in or to be inferred from the Purchase Order.
- b) The Supplier shall be responsible for and at his own expense shall correct any discrepancy, error or omission in drawings, designs, information, materials or workmanship supplied by him whether approved and / or accepted by the Company or not.
- c) Where required by the terms of this Purchase Order the Supplier at his own cost will provide installation and commissioning information, instruction and maintenance manuals.
- d) Where any documentation provided by the Supplier defines any performance characteristic of the goods, then the goods shall additionally meet any such definition.
- e) The Supplier must provide and supply to the Company, and, if the Company so requires to the Engineer, any particulars as the Company requires including any designs necessary under the Main Contract to enable the Company and other suppliers in connection with the Main Contract Works to achieve continuity of work in accordance with the Company's requirements. Such particulars shall be provided to suit the programme or revised programme.
- f) As the Goods are of a description which it is in the course of the Supplier's business to execute the Supplier undertakes and agrees with the Company, notwithstanding anything contained or implied herein or in any other document or obligation as between the Supplier and any other person
 - i) that the Supplier will promptly inspect the Main Contract and all tender documents and specifications set out or referred to herein and / or in the Order Form and any instructions given to him, that if he finds therein any error or irregularity or departure from the best practice adopted in the trades relating to the Goods he will immediately give written notice thereof to the Company to enable the Company to issue instructions in regard thereto;
 - ii) that when the Contract include the preparation of designs or the selection of materials and goods the Supplier has exercised and will exercise all proper skill and care in such preparation and selection, including but not limited to the satisfaction of any performance specification or requirement insofar as the same is included or referred to in the Contract or Main Contract;
 - iii) that the designs, when required, workmanship, materials and goods used or supplied under the Contract will be of a quality and standard fit and proper for the purpose for which the Goods are required.

3. Price and Terms of Payment

- a) The Company shall pay for the Goods at the price or prices set out in the Purchase Order or such price as shall be ascertained from the terms of the Purchase Order.
- b) The price is inclusive of all delivery costs unless otherwise stated in the Purchase Order.
- c) Any invoice rendered at a price or prices other than that set out in the Purchase Order shall not be payable unless such price has been previously notified to and accepted in writing by the Company by issue of a formal amendment to the Purchase Order.
- d) The Supplier is to submit invoices sent as directed in the Purchase Order.
- e) Payment will be made against invoices by the end of the calendar month following the month in which the Goods are delivered and invoices are received less any retentions noted in the Purchase Order unless the terms of the specific order vary. Provided always that corresponding monies have been included in a Certificate for payment due to the Company under the Main Contract and that the Company has received the monies so certified.
- f) Where required in the Purchase Order the Supplier shall provide the Company with a Bank Guarantee and / or a Parent Company Guarantee or Insured Bond at the Company's discretion in respect of advance payments and / or performance which shall be in the form shown and forwarded to the Company within 28 days of the date of the Purchase Order. Failure to provide such a Guarantee or Bond shall entitle the Company to cancel the Purchase Order in accordance with Clause 5 hereof.

- g) The Supplier will notify the Company in writing of any event causing or likely to cause delay in delivery within two days of its occurring or becoming apparent. If such delay is caused by variation of for any reason (other than breach of the Main Contract by the Main Contractor) for which the Company could obtain an extension of time under the Main Contract the Company will (but not without prior written consent of the Engineer if the Company deems such consent to be necessary) grant a fair and reasonable extension of the period for completing delivery.
- h) The Company may issue written instructions requiring the Supplier to alter, amend, omit, add to, substitute or otherwise vary the Goods (hereinafter called "variations") but no such variation will vitiate the Contract. Site representatives signatures will not be recognised as authorisation for variations without written official confirmation from the Company. Payment will not be made to the Supplier unless such instructions have been issued in accordance with the terms hereof.
- i) The Supplier shall not act upon an instruction or order for the variation of the Goods which is directly received by him from the Employer or the Engineer whether given verbally or in writing. If the Supplier shall receive any such direct instruction or order, he shall forthwith inform the Company's site manager in charge of the Main Works thereof and shall supply him with a copy of such direct instruction or order, if given in writing. The Supplier shall only act upon such instruction or order as directed in writing by the Company, but the Company shall give its directions thereon with all reasonable speed.
- j)
 - i) All authorised variations of the Goods shall be valued in the manner provided by this clause and the value thereof shall be added to or deducted from the sum or sums specified in the Purchase Order hereto as the case may require.
 - ii) The value of all authorised variations shall be ascertained by reference to the rates and prices (if any), specified in this Contract for the like or analogous work, but if there are no such rates and prices, or if they are not applicable, then such value shall be such as is fair and reasonable in all the circumstances.
 - iii) Save where the contrary is expressly stated in any bill of quantities forming part of this Contract, no quantity stated therein shall be taken to define or limit the extent of any work to be done by the Supplier in the execution and completion of the Contract, but any difference between the quantity so billed and the actual quantity executed shall be ascertained by measurement, valued under this clause as if it were an authorised variation and the necessary addition to or deduction from the sum specified in the Order Form hereto shall be made accordingly.

4. Delivery and Title

- a) It is of the essence of the Purchase Order that delivery is made at the place and the time specified in the Purchase Order. If no place and / or time is specified delivery is to be made at such place and / or at such time as shall be notified in writing by the Company to the Supplier and it is the responsibility of the Supplier to liaise with the Company to ensure that the Company's requirements are complied with.
- b) The ownership of the Goods and the risk of loss or damage thereto shall pass from the Supplier to the Company on completion of the delivery at the delivery address or, if the delivery is made by instalments, upon completion of delivery as aforesaid of each instalment. For the purposes of this clause completion of delivery shall be deemed to have taken place when the Company acknowledges completion of delivery in writing. Such acknowledgement shall not relieve the Supplier of his obligations under the terms of the Purchase Order.
- c) Where payment is made in advance of delivery, then all Goods in respect of which such payment is made shall immediately vest in the Company but risk of loss and damage shall remain with the Supplier until completion of delivery as aforesaid.

5. Default

- a) If the Supplier fails to comply with any of the terms of the Purchase Order then, without prejudice to any other rights and remedies which may be available to the Company, the Company may take any one or more of the following actions:
 - i) Return the Goods to the Supplier at the Supplier's expense.
 - ii) Require the Supplier at the Supplier's expense to repair and / or replace the Goods so that they comply with the requirements of the Purchase Order.
 - iii) Repair and / or replace the Goods from other sources at the Supplier's expense.
 - iv) By notice in writing to the Supplier and without incurring any obligation to make further payment to the Supplier cancel the Purchase Order or any part of it.
- b) If the Supplier fails to execute the Contract in accordance with his obligations he will pay or allow to the Company any loss of damage suffered or incurred by the Company and caused by such failure, including (but not limited to and without prejudice to the generality of the foregoing) any damages which may be payable under the Main Contract, additional labour charges whether by way of overtime or otherwise, hire or rent of plant or equipment and payments to suppliers, specialists or other sub-contractors.
- c) Without prejudice to any other rights and remedies which the Company may possess, the Company will be entitled to deduct from or set off against money (including any retention money) payable by the Company to the Supplier or any other company being part of a group of companies of which the Supplier is a member any sum or sums bona fide claimed by the Company to be due from the Supplier to the Company arising out of the provisions of this Sub-Contract or any other contract between the Company or any other company being part of a group of companies of which the Company is a member and the Supplier (but not exceeding in all a fair estimate of the value of claims in respect of breach of such provisions). If any such sum or sums shall exceed the amount of money which would otherwise become due to the Supplier in accordance with the Contract, the Supplier shall pay such excess to the Company on demand. The Supplier will not assign, charge or in any way dispose of his interest in any money to be become due to him under the Contract without the prior written consent of the Company.
- d) All Goods rejected will lie at the Supplier's expense and risk.

6. Inspection and Testing

- a) The Supplier shall at no cost to the Company carry out all such tests and operate such quality control procedures as may be necessary for ensuring that all Goods comply with Clause 2 hereof.
- b) The Company may specify what inspections, tests and procedures should be carried out by the Supplier at the Supplier's cost in order to demonstrate compliance with Clause 2 hereof.
- c) The Company and parties authorised by the Company shall at all reasonable times have access to the premises of the Supplier and his sub-contractors and suppliers in order to monitor progress, carry out inspections and witness tests.
- d) The exercise of the foregoing rights and obligations shall not relieve the Supplier from his obligations under the terms of the Purchase Order.

7. Approval

- a) Where the Supplier is required to submit drawings, specifications, samples or any other item for the Company's approval such approval when given will not relieve the Supplier of any of his responsibilities or obligations under the terms of this Purchase Order.
- b) Where the Company does not give approval the Supplier shall take all necessary steps to rectify the situation and re-submit the matter for the Company's approval.
- c) The Supplier will be responsible for any delay caused by his failure to obtain the Company's approval.

8. Free Issue Items

Where the Contract requires the Company to provide the Supplier with goods or materials to be incorporated in the Goods the Supplier shall inspect such goods or materials forthwith upon receipt and shall immediately notify the Company in writing of any defect, fault, damage or shortcoming. The Company will not accept responsibility for any such defect, fault, damage or shortcoming notified to it at a later date, the responsibility for which shall be the Supplier's and will be dealt with under the terms of Clause 9 herein.

9. Defects

All defects, shrinkages or other faults in the Goods will be made good by the Supplier at his own expense immediately upon the receipt of instructions from the Company to do so. If as a result of any defects, shrinkages, or other faults in the Goods, or any damage occasioned by the Supplier to any part of the Main Contract Works the Company or any other supplier or sub-contractor carries out any additional work the Supplier will pay or allow to the Company the cost of execution of such work but such payment or allowance will be without prejudice to the liability of the Supplier in respect of any damages (whether consequential or otherwise) arising out of the failure by the Supplier to comply with his obligations.

10. Property Rights

The Supplier shall indemnify and keep indemnified the Company against all costs, losses and expenses howsoever incurred by the Company through any infringement of any patent, copyright or trademark or any like property right arising out of the supply of the Goods.

11. Sub-Letting

The Supplier shall not sub-let or assign all or any part of this supply without first receiving the written consent of the Company.

12. Indemnity

The Supplier will indemnify the Company against any loss or damage including any claim made by any third party and any associated costs where there has been injury or damage to any persons or property arising out of the performance or failure to perform the requirements of the Purchase Order. The Company shall have the benefit of any insurances which the Supplier may carry in respect of such claims.

13. Right of Cancellation

- a) The Company may cancel the whole or any part of the Purchase Order and shall pay to the Supplier the cost of work executed by the Supplier up to the date of cancellation.
- b) In the event of the Supplier being a limited company, commencing to be wound up for any purpose other than reconstruction; or becoming bankrupt or insolvent or compounding with his creditors, the Company reserves the right to cancel the Purchase Order.
- c) Cancellation under Sub-Clauses a) or b) above shall be without prejudice to any rights that have accrued or may accrue thereafter to the Company under the terms of the Contract.

14. Health and Safety

- a) The Supplier is to comply with the duties imposed on it by the Health and Safety at Work etc. Act 1974 and in particular reference to Section 6 and any amendment thereto as it may apply to the Goods.
- b) Where the Goods comprise machinery or equipment the Supplier is responsible for ensuring that it complies on delivery with all legislation then current including those governing contractor's plant and road vehicles.

15. Hazardous Substances

- a) Where any substance being supplied under the Purchase Order is hazardous to health as defined in the Health and Safety Regulations No. 1657 dated 1988, Regulations 2 (a) to (e) (inclusive), the Supplier shall separately identify any such substance upon delivery to the Company. The Supplier shall also supply guidance notes on the safe handling and usage of all such substances supplied under the Purchase Order at the time of delivery to the Company.
- b) If the total quantity of such substances covered by the Purchase Order is to be delivered in several consignments, each consignment is to be accompanied by the information required in this clause.

16. Packing etc.

The cost of packages or crates is included in the Contract Price but the package or crates will at the written request of the Supplier if practicable, be returned by the Company to the Supplier at the Supplier's risk and expense.

17. Drawings

All drawings supplied by the Company for the purpose of this Contract remain the property of the Company and must not be copied or used for any other purpose whatsoever without the prior consent of the Company in writing. All such drawings supplied must be returned to the Company immediately upon completion of the Contract.

18. Advertising

No advertisement relating to the Contract is to be made without the prior written approval of the Company.

19. Terms

The Purchase Order shall constitute an offer on the part of the Company subject to these Conditions except that where any statement or provision endorsed on the Purchase Order is inconsistent with any of these Conditions the endorsement shall prevail. The offer hereby made shall be accepted by the Supplier either in writing or by the actual execution of part or all of the Contract. Acceptance in writing shall only be valid upon receipt by the Company. After acceptance by the Supplier the terms of the Contract thereby concluded shall be deemed to be as set out in the Purchase Order and these Conditions and in any document incorporated in the Contract thereby. No other terms and Conditions or variations shall be applicable unless expressly agreed to in writing by an officer of the Company. Provided always that these Standard Conditions shall take precedence over the Main Contract.

20. Proper Law

This Contract shall be governed by and construed with English Law and the parties agree to submit to the jurisdiction of the English courts.