

PURCHASE ORDER TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES – DATE: 16th May 2013 onwards

1. In these terms and conditions (Conditions) the following definitions apply: (a) Contract: the contract between the Company and the Supplier for the supply of Goods and/or Services based on the Order and these Conditions; (b) Company: the company named in the Order; (c) Goods: the goods, materials or supplies set out in the Order; (d) Order: the Company's order for the supply of Goods and/or Services, as set out in the Company's purchase order form or in the Company's written acceptance of the Supplier's quotation, as the case may be; (e) Services: the services to be provided by the Supplier under the Contract; (f) Supplier: the person or firm from whom the Company purchases the Goods and/or Services.
2. The Order constitutes an offer by the Company to purchase Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Order; or (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence. These Conditions apply to the 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 signing for receipt of the Goods and/or Services on the Supplier's pro-forma or delivery note will not signify acceptance by the Company of the Supplier's terms and conditions or alter the terms of the Order. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
3. Supply of Goods - The Supplier warrants that the Goods shall: (a) correspond with their description and any applicable specification, (b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication; (c) be free from defects in design, materials and workmanship; and (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. The Company reserves the right of inspection in the Supplier's premises prior to dispatch and acceptance of the Goods.
4. Delivery - The Supplier shall ensure that: (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; (b) the Goods are properly labelled identifying the position, plot and/or location that the Goods are to be used in; (c) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered. Packaging material shall be returned only at the cost of the Supplier.
5. The Supplier shall deliver the Goods: (a) on the date specified in the Order or, if no such date is specified, then within 14 days of the date of the Order; (b) to the location as is set out in the Order or as instructed by the Company before delivery (Delivery Location); (c) during the Company's normal hours of business or as instructed by the Company; and (d) in consignments of such size to suit the Company's requirements. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Title in the Goods shall pass to the Company on completion of delivery. All and any liability for loss of or damage to the Goods shall remain with the Supplier until such delivery has been accepted by an authorised employee of the Company. After the Supplier has delivered and unloaded the Goods the Company may inspect the Goods within 14 days to satisfy themselves that the Goods comply with the Contract.
6. Supply of Services - The Supplier shall provide the Services to the Company in accordance with the terms of the Contract. In providing the Services, the Supplier shall: (a) comply with all instructions of the Company; (b) perform the Services with the care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number and the Supplier shall comply with any instruction of the Company to remove any person engaged in performing the Services if, in the Company's reasonable opinion, that person's performance or conduct is unsatisfactory; (d) ensure that the Services conform with the Company's requirements expressly or impliedly made known by the Company; (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services; (f) observe all insurance, health and safety rules and regulations and any other security requirements that apply.
7. All Goods and/or Services shall as a minimum requirement only, be provided in accordance with (a) The Building Regulations current at the time of order and delivery; (b) appropriate Local Authority Standards; (c) relevant British Standards and British Standards Codes of Practice; (d) relevant industry and trade standards and codes of practice; and (e) good industry practice.
8. The parties acknowledge and agree that: (a) any pro-forma or delivery note signed by the Company on receipt of the Goods and/or Services; or (b) failure to reject defective Goods and/or Services, will not be taken as evidence that the Goods and/or Services comply with the Contract and will not limit the responsibilities and obligations of the Supplier.
9. If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Company may (without limiting its other rights or remedies): (a) terminate the Contract with immediate effect by giving written notice to the Supplier; and/or (b) refuse to accept any subsequent performance of the Services and/or delivery of the Goods; and/or (c) recover from the Supplier any costs incurred by the Company in obtaining substitute goods and/or services; and/or (d) where the Company has paid in advance, to have such sums refunded by the Supplier; and/or (e) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to meet such dates.
10. If the Goods and/or Services do not comply with the Contract, the Company may (without limiting its other rights or remedies and whether or not it has accepted the Goods and/or Services): (a) reject the Goods and/or Services (in whole or in part) whether or not title has passed and return them to the Supplier at the Supplier's own risk and expense; and/or (b) terminate the Contract with immediate effect; and/or (c) require the Supplier to repair or replace the rejected Goods and/or Services, or to provide a full refund of the price of the rejected Goods and/or Services; and/or (d) recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods from a third party; and/or (e) claim damages for any additional costs, loss or expenses incurred by the Company arising as a result.
11. The Supplier shall deliver with each consignment of Goods such written information as may reasonably be necessary for the proper and safe handling, storage, processing, installation and use of the Goods without risk of damage or injury to persons or property.
12. The Control of Substances Hazardous to Health Regulations (COSHH) must be complied with in all aspects. Data and/or Hazard Sheets covering all substances provided by the Supplier, together with assessments of risk and information on instructions and training requirements shall be submitted with each consignment of Goods, or prior to commencement of Services allowing adequate time for inspection and comment.
13. Unless otherwise agreed in writing by the Company time is of the essence in relation to the provision of Goods and/or Services.
14. The Company's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
15. The price for the Goods and/or Services shall be the price set out in the Order and shall be inclusive of the costs of packaging, insurance and carriage of any Goods, unless otherwise agreed in writing.
16. Claims for payment must be supported by an Order and in respect of Goods, a related Delivery Note signed by the Company. Invoices must be rendered separately for each site. The Order number must be quoted in all correspondence, including invoices and delivery notes.
17. Unless otherwise agreed in writing, in respect of Goods, the Supplier shall invoice the Company on or at any time after completion of delivery and in respect of Services, the Supplier shall invoice the Company on completion of the Services.
18. Payment for Goods and/or Services supplied as required shall be made at the end of the month following the month in which the delivery shall have been completed or in which the Services are completed. The Company accepts no obligation to pay for Goods, whether used or not, which are delivered in excess of the quantity ordered. Payment will be on account and will not be evidence of satisfactory performance by the Supplier of the Contract.
19. For all Goods to be paid for by weight, authenticated weight tickets must accompany delivery notes; the cost of obtaining such tickets must be borne by the Supplier. The Supplier shall ensure that all vehicles making deliveries of sand, aggregate, hardcore, ashes, soil and the like, shall comply with the Weights and Measures Act and applicable road transport vehicles legislation and regulations.
20. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier under any other contract against any amount payable by the Company to the Supplier under the Contract.
21. Where or to the extent that the Company operates quality control /management procedures which require stage checks to verify and record compliance with the Order, whether on or off the premises of the Supplier, then the Supplier shall co-operate with the Company in implementing those procedures and by providing documentation reasonably required to record verification.
22. Generally and notwithstanding any other provision in the Contract, the Supplier shall act as stated in the Contract and in good faith and co-operation in its dealings with the Company and with any other party engaged in connection with the provision of the Goods and/or Services and will take all reasonable action as is necessary in undertaking its obligations under the Contract to enable the

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- Company to derive the full benefit of the Contract and/or for the overall benefit and success of the development.
23. The Supplier shall ensure that all persons employed in connection with the provision of the Goods and/or Services will be competent, skilled, experienced and certificated (as necessary) in their profession, trade and calling and adequately supervised by the Supplier.
 24. The Supplier shall undertake its obligations under the Contract in compliance with all current statutory provisions, including legislation, bye-laws rules and directives applicable to the Goods and/or Services including but not limited to Health & Safety at Work Act, the CDM Regulations and relevant British Standards all as may be modified or re-enacted from time to time.
 25. The Supplier hereby grants to the Company an irrevocable exclusive royalty-free licence to copy and use all intellectual property, designs, plans, photographs, illustrations, designs, documents, film and any other media or information prepared by or on behalf of the Supplier in connection with the Goods and Services and to reproduce the contents of it in whole or in part for any purpose in connection with or associated with the Company's business. Such licence shall carry the right to grant sub-licences and shall be transferable in whole or in part to third parties.
 26. The Supplier shall be responsible for all royalties, licence fees or such other sums payable in respect of the supply or use of any patented articles, processes or inventions or any other items which are the subject of copyright or other protected rights.
 27. All documents and information provided to the Supplier shall remain the Company's property and such documents and information must be treated as confidential and not be disclosed to any third party.
 28. The Supplier shall not for the purpose of publication take nor permit to be taken any visual records nor make any other publication in connection with the supply of Goods or Services to the Company unless written permission has been obtained from the Company.
 29. The Supplier shall keep the Company indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Company as a result of or in connection with: any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; any claim made against the Company by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
 30. For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employers liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. The minimum amount of cover required will not be less than £10 million with respect to employers liability insurance and £5 million for all others (or such other sum as may be specified by the Company or may be required by law).
 31. Those Suppliers associated with Goods and/or Services with a design implication will be expected to enter into a warranty agreement with the Company and/or any third party with an interest. Design calculations and drawings provided by the Supplier must be prepared and checked by a qualified person or by a qualified external architect or engineer who shall carry appropriate professional indemnity insurance. All design calculations and drawings shall be provided to the Company allowing adequate time for inspection and comment.
 32. The Supplier shall make good by replacement or otherwise any defects in the Goods supplied and shall bear any expenses incurred by the Company as a consequence of such defects.
 33. No waiver by the Company of any breach of these Conditions shall be effective or binding on the Company unless expressed in writing and any waiver so expressed shall not limit or affect the Company's right with respect to any other or future breach.
 34. The Company may terminate the Contract with immediate effect by giving written notice to the Supplier if: the Supplier commits a material or persistent breach of the Contract; the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; the Supplier makes a proposal for or enters into any compromise or arrangement with its creditors; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company); the Supplier (being an individual) is the subject of a bankruptcy petition order; aches; an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company); a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (inclusive); the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.
 35. The Company may terminate the Contract: (a) in respect of the supply of Services, by giving the Supplier 4 calendar weeks written notice; and (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Company shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss. The Company reserves the right to cancel this order at any time, in whole or in part, should the Supplier fail to comply with one or more of these Conditions and any other requirements of this Order and any proper variation thereof.
 36. Although neither the Company nor the Supplier expects the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply on termination of the Contract the Supplier will promptly comply with any obligations imposed by TUPE as modified or re-enacted from time to time relating to the provision of information and consultation. At any time upon request the Supplier will give to the Company full and accurate information in writing relating to any person engaged in providing the Services ('Service Personnel') and any claims and liability which may transfer to the Company or any successor supplier under TUPE.
 37. The Supplier will indemnify the Company against all damages, liabilities (including any liability to taxation) claims, costs and expenses including fines, penalties, legal and other professional fees and expenses which the Company may incur on account of or arising from: (a) any claim from any Service Personnel in respect of any fact or matter to the extent that such claim concerns or arises from employment on or before the date the Contract terminates; (b) any claim by any Service Personnel in respect of which the Company incurs or is alleged to incur responsibility or liability as a result of the operation of TUPE; (c) any claim or allegation arising from or connected with any failure by the Supplier to comply with its obligations under Regulations 13 or 14 of TUPE; (d) any redundancies or termination of employment by the Company or any successor supplier of any Service Personnel subsequent to their transfer to the Company or any successor supplier by way of operation of TUPE.
 38. 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 Contract without the prior written consent of the Company. The Company may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. Any consent of the Company shall not relieve the Supplier of any obligation to comply with the Contract.
 39. If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the 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.
 40. A person who is not a party to the Contract shall not have any rights under or in connection with it. The Contract shall be governed by and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.