

## CONDITIONS OF PURCHASE

### 1. DEFINITIONS

The following definitions shall apply:

"the Conditions" shall mean the terms and conditions set out in this document as amended from time to time in accordance with clause 10.1

"the Company" shall mean Bourne Group Limited

"the Contractor" shall mean the entity from whom the Company purchases the Goods

"the Contract" shall mean the contract between the Company and the Contractor for the sale and purchase of the Goods in accordance with these Conditions

"the Goods" shall mean the goods, materials and/or equipment and/or services as applicable set out in the Order

"the Order" shall mean the Company's purchase order or similar document for the Goods together with any appended documents or documents referred to therein and including always these Terms and Conditions.

### 2. GENERAL

2.1 All orders on behalf of the Company for Goods and any addition, variation or amendment thereof are given and made subject to these Conditions to the exclusion (unless otherwise expressly agreed in writing by the Company) and (if applicable) wholly in place of any other terms that the Contractor seeks to impose or incorporate (whether before or after the date of the relevant Order or whether referred to in the Order or not), or which are implied by trade, custom, practice or course of dealing. The Order constitutes an offer by the Company to purchase the Goods in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of:

- 2.1.1 the Contractor issuing a written acceptance of the Order; and
- 2.1.2 the Contractor doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

### 3. THE GOODS

3.1 The Contractor shall ensure that the Goods shall where applicable:

- 3.1.1 correspond with their description and any applicable specification for the Goods that has been agreed by the Company and the Contractor in writing;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended or the Supply of Goods and Services Act 1982 as amended, as the case may be) and fit for any purpose held out by the Contractor or made known to the Contractor by the Company expressly or by implication, and in this respect the Company relies on the Contractor's skill and judgement;
- 3.1.3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery (unless such other period is agreed by the Company and the Contractor in writing); and
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 The Company shall have the right where applicable to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Contractor's undertakings at clause 3.1, the Company shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Contractor shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Contractor has carried out its remedial actions.

### 4. TIME AND DELIVERY

4.1 The Contractor shall where applicable ensure that:

- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- 4.1.2 the Goods are delivered to the address specified in the Order or, if no address is so specified, the address agreed otherwise by the Company and the Contractor in writing;
- 4.1.3 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- 4.1.4 the Company is provided with 48 hours clear notice of the Contractor's intention to effect delivery; and
- 4.1.5 if the Contractor requires the Company to return any packaging material to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the cost of the Contractor.

4.2 The Contractor shall deliver the Goods (during the Company's normal business hours, or as otherwise instructed by the Company) on the date(s) specified in the Order, or, if no such date(s) is(are) specified, such date(s) or during such period(s) as the Contractor and the Company shall agree in writing.

4.3 Insofar as the Goods includes goods, materials and/or equipment to be delivered, delivery of the Goods shall be completed on the completion of unloading the Goods at the delivery address specified in clause 4.1.2. Goods shall not be deemed to be accepted within the meaning of Section 35 of the Sale of Goods Act 1983 by reason of their delivery to the delivery address provided for in clause 4.1.2.

4.4 Where clause 4.3 applies, the Contractor shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Contractor to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 5.

4.5 Time is of the essence of the Contract so far as concerns the delivery date detailed in clause 4.2. Accordingly, in the event of non-compliance with any such delivery date, the Company shall have the right to the remedies set out in clause 5.

### 5. REMEDIES

5.1 If the Goods are not delivered on the date(s) they are due as referred to in clause 4.2 or not in accordance with clause 4.4 or do not comply with the undertakings set out in clause 4.1, then, without limiting any of its other rights or remedies, the Company shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- 5.1.1 to terminate the Contract;
- 5.1.2 to reject the Goods (in whole or in part) and return them to the Contractor at the Contractor's own risk and expense;
- 5.1.3 to reject the Goods (in whole or in part) and require the Contractor to collect the rejected Goods at the Contractor's own risk and expense;
- 5.1.4 to require the Contractor to repair or replace the rejected Goods or re-perform any defective services comprised therein, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.1.5 to refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make;
- 5.1.6 to recover from the Contractor any costs incurred by the Company in obtaining substitute Goods from a third party; and
- 5.1.7 to claim damages for any other costs, loss or expenses incurred by the Company which are in any way attributable to the Contractor's failure to carry out its obligations under the Contract.

5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Contractor.

5.3 The Contractor shall keep the Company indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Company as a result of or in connection with:

- 5.3.1 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 supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors;
- 5.3.2 any claim made against the Company by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or subcontractors;
- 5.3.3 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 Contractor, its employees, agents or subcontractors; and
- 5.3.4 any tort (including negligence), breach of contract or breach of statutory duty caused by the Contractor, his subcontractors or agents or any servant of them in any way arising out of or connected with the performance of the Contract or any defect in or incorrect assembly of any Goods or work supplied or executed under or for purpose of performing the Contract notwithstanding the same may have been inspected and/or accepted by the Company.

This clause 5.3 shall survive termination of the Contract.

5.4 The Company's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## 6. ACCEPTANCE OWNERSHIP OF GOODS AND WORK IN PROGRESS

6.1 Save as provided otherwise in this clause 6.1, title in the Goods shall pass to the Company on completion of delivery in accordance with clause 4.3. Where payment is to be made by instalments, all work done and all Goods marked and intended for the completion of the Contract wherever the same shall be, shall after payment of the first instalment applicable to such work and/or Goods be deemed to have been unconditionally appropriated to the Contract and shall become the absolute property of the Company free from all debts, contracts and engagements on the part of the Contractor.

6.2 Without prejudice to clause 6.1, all Goods and work in progress shall be at the Contractor's risk until completion of delivery in accordance with clause 4.3.

6.3 All materials supplied by the Company to the Contractor shall at all times belong to the Contractor. The Contractor shall keep such materials in safe custody at its own risk, maintain them in good condition until returned to the Company, and not dispose or use the same other than in accordance with the Company's written instructions or authorisation. The Company shall have full right to re-possess the same at any time and the Contractor and/or those claiming under or through the Contractor shall afford to the Company or its representatives full access for the purposes of re-possession and inspection and any claim that the Contractor or those claiming under or through it may have in relation to all such materials whether in respect of services or other materials or other undertaken shall be a financial claim only and shall not affect the Company's right of inspection and re-possession.

## 7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Contractor's published price list in force as at the date the Contract came into existence.

7.2 The prices applicable to the Contract as detailed in clause 7.1 above shall be deemed as fixed and agreed up to the date of delivery (and subsequent payment) or to the extent of the fixed price period otherwise agreed in the Order.

7.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Company.

7.4 The Company shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 Application for payment shall be by means of valid VAT invoice following the delivery of the Goods or as otherwise stated in the Order. The Company shall pay correctly rendered invoices a minimum of 45 days from the date of receipt of the invoice with payments being made on the next payment run. Payment runs are mid month and end of month. Payment shall be made to the bank account nominated in writing by the Contractor.

7.6 The Company may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Contractor against any amounts payable by it to the Contractor under the Contract.

## 8. TERMINATION

8.1 The Company may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Contractor written notice, whereupon the Contractor shall discontinue all work on the Contract. The Company shall pay the Contractor fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

8.2 The Company may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor becomes subject to any of the following events:

- 8.2.1 the Contractor 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;
- 8.2.2 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Contractor is a company) when these events take place for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- 8.2.3 (being a company) 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 Contractor, other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- 8.2.4 (being an individual) the Contractor is the subject of a bankruptcy petition or order;

- 8.2.5 a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.2.6 (being a company) 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 Contractor;
- 8.2.7 (being a company) a floating charge holder over the Contractor's assets has become entitled to appoint or has appointed an administrative receiver;
- 8.2.8 a person becomes entitled to appoint a receiver over the Contractor's assets or a receiver is appointed over the Contractor's assets;
- 8.2.9 any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 inclusive;
- 8.2.10 the Contractor suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 8.2.11 the Contractor's financial position deteriorates to such an extent that in the Company's opinion the Contractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 8.2.12 (being an individual) the Contractor dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. **FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Contractor shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Contractor from carrying out its obligations under the Contract for a continuous period of more than thirty (30) days (or such other period as the Company and the Contractor shall in writing agree), the Company may terminate this Contract immediately by giving written notice to the Contractor.

## 10. **CORRUPTION**

10.1 The Contractor shall comply with the provisions of the Bribery Act 2010 and shall take all measures necessary to ensure that its employees, contractors and other advisers do not do anything on behalf of the Company which would constitute a breach of the Bribery Act by the Company.

10.2 The Contractor shall promptly report to the Company any incidents or allegations of bribery in connection with this Contract.

10.3 The Contractor shall ensure that its contract with any sub-contractors or suppliers appointed in accordance with the provisions of this Contract) imposes an obligation on such sub-contractor(s) or suppliers to comply with the provisions of this clause 10.

10.4 The Contractor hereby agrees to save, protect, defend, indemnify and hold the Company harmless from and against all claims, liabilities, demands, damages, judgements, awards, settlements, expenses or losses, including costs of litigation, reasonable legal fees and criminal penalties (to the extent permitted by law) incurred by the Company arising out of the breach by the Contractor of this clause 10.

## 11. **MISCELLANEOUS**

11.1 The Company shall not be liable to pay or be responsible for any additions, variations or amendments to the order unless the Company confirm the same in writing and agrees to:

- 11.1.1 any consequential change in the price; and/or
- 11.1.2 any consequential change in the delivery or completion date.

11.2 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Contractor may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Company's prior written consent.

11.3 Copyright in the any documents provided by the Contractor shall remain vested in the Contractor and insofar as to do so does not breach the express terms of any proprietary software licence granted by software producers the Contractor hereby grants to the Company an irrevocable royalty-free non-exclusive licence of copyright and design right without limitation of time (and without payment of any fee) to use copy modify and reproduce inter alia the documents for any purpose whatsoever connected with the Contract and/or Goods provided that the Contractor shall not be liable for the consequences of any use of the documents for any misuse or purpose other than that for which the same were prepared. The Contractor agrees that the Company may assign the licence referred and/or grant a sub-licence or sub-licences from such licence to any person with an interest in the Contract and/or the Goods.

11.4 During the term of the Contract and for a period of 6 years thereafter, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as 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.

11.5 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the aforementioned address; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission. A copy of a notice or communication sent by e-mail shall also be sent to the Company's project director. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.6 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be 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.

11.7 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.

**GOVERNING LAW AND JURISDICTION**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.