

BURY COLLEGE (The Buyer)

GENERAL CONDITIONS OF PURCHASE

1. DEFINITIONS

(1) In these conditions:-

'Contract' means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services. 'Goods' means the Goods (including any instalment of the Goods or any parts of them) described in or required by virtue of the Buyer's purchase order.

'Services' means the services (if any) described in or required by virtue of the Buyers purchase order.

'Specification' includes any plans, drawings, data, other information.

or know-how relating to the Goods or Services.

(2) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. APPLICATION

(1) These Conditions apply to all Buyer's purchases and shall not be modified or excluded in whole or in part unless a duly authorised representative of the Buyer otherwise agrees in writing. Without prejudice to the generality of the foregoing the delivery of Goods or provisions of Services following receipt of these Conditions shall constitute and may be relied on by the Buyer as indicating the Seller's acceptance of these Conditions.

(2) These Conditions shall apply in the Contract to the exclusion of all and any other conditions or contractual provisions (whether in conflict with these Conditions or not) included or appearing in any quotation form, the acceptance delivery form, invoice or other document emanating from the Seller or which may be implied as a result of our previous course of dealing. For the avoidance of doubt, the Buyer shall not be deemed to accept such other conditions or contractual provisions by failing to object to provisions contained in any such document.

3. SPECIFICATIONS

(1) The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

(2) Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights and all other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

(3) The Seller shall comply with all applicable regulations or other legal requirements including all directions given thereunder by the Buyer concerning the manufacture, packaging and delivery of the Goods and the performance of the Services.

(4) The Seller 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 Seller or any third party prior to despatch, and the Seller shall provide, free of charge, the Buyer with all facilities reasonably required for inspection and testing.

(5) If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

(6) 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 secured so as to reach their destination in an undamaged condition or the ordinary course.

4. PRICE OF THE GOODS AND SERVICES

(1) The price of the Goods and the Services shall be as stated in the purchase order or (if not so stated) as published by the Seller or notified by the Seller to the Buyer at the date of the purchase order and, unless otherwise specified shall be:-

(i) Exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

(ii) Inclusive of all charges for testing, packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts or levies other than value added tax.

(2) No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer (in writing).

(3) The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

5. PAYMENT AND RETENTIONS

(1) The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Buyer's purchase order.

(2) Unless otherwise agreed in writing, the Buyer shall pay the net invoice price for the Goods and the Services within 60 days after the end of the month of receipt by the Buyer of the proper invoice or, if later, after acceptance of the Goods or Services by the Buyer.

(3) All the costs, damages or expenses for which under the terms of the Contract the Seller is liable may be deducted by the Buyer from any monies due or becoming due to the Seller under the Contract, such right being without prejudice to the Buyer's rights to take action against the Seller to recover the same.

6. DELIVERY

(1) Goods delivered in excess of the quantity ordered need not be paid for and the Buyer shall have no responsibility in respect of them except to notify the Seller of receipt.

(2) Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the purchase order, the Seller shall give the Buyer reasonable notice of the specified date.

(3) The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

(4) A packing note must accompany each delivery or consignment of the Goods and must be displayed prominently; such packing note must quote the number of the purchase order, and also describe the Goods with quantities.

(5) The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Buyer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

(6) If the Goods are to be delivered or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not several.

(7) The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

(8) The Buyer shall not be obliged to return to the Seller any packaging materials for the Goods, whether or not any Goods are accepted by the Buyer.

(9) If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other remedy, the Buyer shall be entitled to cancel the Contract in whole or in part.

7. ORIGIN AND INSTRUCTIONS

(1) The Seller shall, upon receipt of a request from the Buyer, provide to the Buyer evidence of the place of origin of Goods and parts thereof or of raw materials utilised in their manufacture.

(2) The Seller shall submit with the Goods full instructions for use and clear warnings with respect to anything which may reasonably be done or omitted to be done in relation to the Goods and which could render them unsafe.

8. RISK AND PROPERTY

(1) Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

(2) The property in Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical know-how inventions or processes which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees are subject to the same obligations of confidentiality as bind the Seller.

10. WARRANTIES AND LIABILITY

(1) The Seller warrants to the Buyer that the Goods:-

- (i) will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the purchase order is placed;
- (ii) will be free from the defects in design, material and workmanship;
- (iii) will correspond with any relevant specification or sample;

and

(iv) will comply with all statutory requirements and regulations to the sale of the Goods.

(2) The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

(3) Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract then the Buyer shall be entitled:-

- (i) to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
- (ii) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the price which has been paid.

(4) The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-

- (i) breach of any warranty given by the Seller in relation to the Goods or the Services;
- (ii) any claim that the Goods infringe, or their importation, use or resale, infringe, the patent, copyright, design right trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- (iii) any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
- (iv) any act or omission of any of the Seller's personnel in connection with the performance of the Services; and

(v) all claims made against the Buyer in respect of any loss, damage or expenses sustained by the Buyer's servants or agents or by any customer or third party to the extent that such loss, damage or expense was caused by, relates to or arises from the Goods of the Services including (without prejudice to the generality of the foregoing)

any claim against the Buyer under the Consumer Protection Act 1987 in respect of the Goods.

(5) Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-

- (i) Act of God, explosion, flood, tempest, fire or accident;
- (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (iii) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (iv) import or export regulations or embargoes;
- (v) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party).
- (vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (vii) power failure or breakdown in machinery.

11. TERMINATION

(1) The Buyer shall be entitled to cancel the purchase order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

(2) The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:-

(i) the Seller makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction).'

or

(ii) an encumbrance takes possession or a receiver is appointed, of any of the property or assets of the Seller;

or

(iii) the Seller ceases or threatens to cease, to carry on business; or

(iv) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

12. SAFETY

(1) Noise. No machine shall be supplied to the Buyer which at any time makes more noise than 83dB(A) measured under the conditions laid down in the Buyer's noise specification, a copy of which is available upon application. Any machine which fails

to meet this specification will not be accepted unless a waiver has been given in writing. A certificate giving details of noise check to accompany the machine.

(2) Asbestos. The Buyer's policy is not to use asbestos except wherever there is no adequate alternative. If asbestos is used in the material product ordered, except as a brake or clutch cover, the Seller should contact the Buyer's office before supplying unless the Seller has already received the Buyer's written agreement as to its use.

13. NO ASSIGNMENT

The purchase order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without the written consent of the Buyer.

14. NOTICES

Any notice given hereunder must be in writing and may be effected by personal delivery, telex or by registered mail postage and (subject, in each case, to prove that such notice was properly addressed and despatched) if effected by telex shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after the date of posting.

15. GOVERNING LAW

The Contract (and these Conditions) shall be governed by and construed in accordance with the laws of England.

16. NO WAIVER

No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

17. INVALIDITY

If any provision of the Contract (or of these conditions) is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of the Contract (or of these conditions) and the remainder of the provision in question shall not be affected thereby.