

E POPPLETON & SON LTD

GENERAL CONDITIONS OF PURCHASE

1. DEFINITIONS

In these General Conditions of Purchase (the "Conditions") the following expressions shall have the following meanings:

"Company" means E Poppleton & Son Limited.

"Delivery Schedule" means a written schedule (if any), set out in the Purchase Order or attached thereto, setting out the delivery timescales and/or delivery sequences within the Supply Period, and other related requirements of the Company as advised to the Supplier at any time.

"Goods" means the goods to be supplied in accordance with the Purchase Contract.

"Price" means the price of the Goods and/or the Services.

"Purchase Contract" means the agreement between the Supplier and the Company comprising the Conditions, the Purchase Order, the Special Conditions, the Delivery Schedule and any documents referred to in the Purchase Order.

"Purchase Order" means an instruction by the Company to supply Goods and/or Services in accordance with the Purchase Contract.

"Services" means the services to be supplied in accordance with the Purchase Contract.

"Special Conditions" means the conditions set out in the Special Conditions of Purchase (if any) appended to the Purchase Order.

"Specification" means the description of the Goods and/or the Services to be supplied under the Purchase Contract. The description may be contained in drawings.

"Supply Period" means the period (if any) specified in the Company's Purchase Order.

"Supplier" means the person, firm, partnership, or company to whom the Company have issued a Purchase Order.

2. GENERAL

2.1 The Conditions shall apply to the Purchase Contract to the exclusion of all other terms and conditions except insofar as expressly agreed in writing by the Company. The Conditions may be subject to the Special Conditions (if any). In the event of any conflict between the Conditions and the Special Conditions, the Special Conditions shall prevail.

2.2 Any terms and conditions contained in any document provided or submitted by the Supplier shall not apply unless specifically agreed in writing by the Company.

2.3 The Conditions are in addition to, and shall not be deemed to prejudice or affect, any terms or rights implied by or available under statute or common law. Otherwise the Purchase Contract forms the entire agreement between the Company and the Supplier.

2.4 No variation to the Purchase Contract shall be effective unless agreed in writing between the parties.

2.5 The headings in the Conditions are for ease of reference only and shall not affect their interpretation.

3. PRICE

3.1 The Price shall be fixed unless otherwise agreed in writing between the Company and the Supplier.

3.2 The Price of the Goods shall, unless otherwise stated, be deemed to include delivery to the location specified on the Purchase Order and shall include for packing, cost of packing materials, loading, off-loading (subject to clause 4), shipping, carriage, duties, insurance and any other associated cost.

3.3 If the Supplier increases or proposes to increase the Price without the Company's written consent, the Company shall be entitled to terminate the Purchase Contract without liability for any costs incurred by the Supplier, including loss of profit.

4. PACKING OF GOODS

4.1 All Goods shall be properly packaged to withstand transit to the delivery point without sustaining any damage, corrosion or contamination. All Goods shall be clearly and legibly labelled and addressed. All statutory requirements applying to labelling and disclosure of information shall be met without exception.

4.2 The Supplier shall be liable to pay and indemnify the Company against any fines, duties or costs incurred as a result of the Suppliers failure to ensure that the foregoing provisions of this condition are fully complied with.

5. DELIVERY OF GOODS

5.1 The Supplier shall deliver the Goods in accordance with the requirements of the Purchase Contract and (if called upon to do so) safely unload the Goods at the point or points of delivery stated on the Purchase Order.

5.2 Upon delivery the Goods must be signed for by an authorised representative of the Company and unless a signature is obtained it shall be deemed that the responsibility for the Goods remains with the Supplier. Signature of any delivery note or similar document by the Company shall not constitute evidence that the Goods are in good condition.

5.3 Time for the delivery of the Goods is of the essence under the Purchase Contract. If the Supplier does not deliver the Goods in accordance with the requirements of the Purchase Contract, or indicates by its actions, inactions or otherwise that it will be unable to deliver the Goods in accordance with the requirements of the Purchase Contract, the Company may, in its absolute discretion and without prejudice to its other rights and remedies:

5.3.1 require the Supplier to deliver the Goods as soon as practicable; or

5.3.2 obtain alternative goods from other sources, in which case the quantity of Goods to be provided under the Purchase Contract shall be reduced accordingly; or

5.3.3 elect to terminate the Purchase Contract forthwith by serving notice on the Supplier.

5.4 In the event of the Company exercising its rights under clauses 5.3.2 or 5.3.3, the Company shall be relieved from any obligation to pay for Goods ordered but not delivered. Any additional costs incurred by the Company in exercising its rights under clause 5.3, including any difference in price between the Goods which should have been delivered under the Purchase Contract and alternative goods, shall be recoverable from the Supplier as a debt. The Supplier shall have no right to revise the Price as a result of the Company exercising its discretion under this clause 5 and the Suppliers obligations under the Purchase Contract in connection with Goods supplied previously and Goods which remain to be supplied shall remain in full force and effect. The

Supplier shall have no entitlement to recover any costs, expenses or losses it incurs as a result of the Company exercising its rights under this clause 5, including (without limitation) any loss of profit or additional costs incurred.

5.5 Where the Supplier is requested to unload the Goods upon delivery, the Supplier shall be liable for any damage caused to the Goods when they are unloaded.

5.6 The Company shall inspect the Goods within a reasonable time after delivery. If the Goods are damaged or there is a shortfall in the quantity of the Goods the Company shall notify the Supplier and the Supplier shall immediately replace the damaged Goods or supply Goods which are missing. Any sums payable by the Company in respect of defective or missing Goods shall cease to be payable until the Supplier complies with this clause 5.6.

6. PROVISION OF SERVICES

6.1 The Supplier shall provide the Services in accordance with the requirements of the Purchase Contract and in a good and workmanlike manner.

6.2 The Supplier shall provide everything necessary to carry out and complete the Services.

6.3 Time for provision of the Services is of the essence under the Purchase Contract. If the Supplier does not provide the Services in accordance with the requirements of the Purchase Contract, or indicates by its actions, inactions or otherwise that it will be unable to provide the Services in accordance with the requirements of the Purchase Contract, the Company may, in its absolute discretion and without prejudice to its other rights and remedies:

6.3.1 require the Supplier to provide the Services as soon as practicable; or

6.3.2 obtain alternative services from other sources, in which case the quantity of Services to be provided under the Purchase Contract shall be reduced accordingly; or

6.3.3 elect to terminate the Purchase Contract forthwith by serving notice on the Supplier.

6.4 In the event of the Company exercising its rights under clauses 6.3.2 or 6.3.3, the Company shall be relieved from any obligation to pay for Services ordered but not provided. Any additional costs incurred by the Company in exercising its rights under clause 6.3, including any difference in price between the Services which should have been provided under the Purchase Contract and alternative services, shall be recoverable from the Supplier as a debt. The Supplier shall have no right to revise the Price as a result of the Company exercising its discretion under this clause 6 and the Supplier's obligations under the Purchase Contract in connection with Services provided and Services which remain to be provided shall remain in full force and effect. The Supplier shall have no entitlement to recover any costs, expenses or losses it incurs as a result of the Company exercising its rights under this clause 6, including (without limitation) any loss of profit or additional costs incurred.

7. PAYMENT

7.1 The Supplier shall invoice the Company on delivery of the Goods/provision of the Services.

7.2 Each invoice shall be addressed to the Company, quote the number of the Purchase Order and relate to a single Purchase Order only. Invoices shall show clearly whether they relate to the whole or part of a Purchase Order.

7.3 Invoices must be received by the Company within 7 days of the end of the month in which the Goods/Services to which they relate are delivered/provided, otherwise they will be deemed to relate to Goods delivered/Services provided in the following month.

7.4 Unless otherwise stated in the Purchase Order, the Company shall pay the Price (or relevant portion of the Price) within 60 days after the end of the month of receipt by the Company of a proper invoice from the Supplier.

7.5 The Supplier shall provide to the Company a monthly statement detailing all invoices submitted by the Supplier to the Company and all payments, credits or other variations made in relation thereto. Failure to provide a monthly statement may result in payment of the Supplier's invoices being delayed.

7.6 In the event of late payment by the Company, the Supplier shall be entitled to charge the Company interest at the rate of 2% per annum above the base rate of the Bank of England from the date when payment became due until the date of payment. The parties agree that this rate of interest is a substantial contractual remedy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

7.7 Notwithstanding any other provision of the Purchase Contract, in the event of the Company not receiving payment in respect of Goods from any third party (such as the Company's employer under a building contract), the Supplier shall only be entitled to payment of any sums due if the Company receives payment of sums identified as relating to the Goods.

8. RIGHT OF SET OFF

8.1 The Supplier agrees that the Company may set off against any sums due to the Supplier under the Purchase Contract any amounts which are due or which will become due to the Company from the Supplier under the Purchase Contract and any other contracts between the parties.

9. DOCUMENTATION

9.1 All correspondence must quote the Company's official Purchase Order number. All advice notes and despatch notes must be sent to the delivery address on the Purchase Order.

9.2 The Supplier shall obtain all necessary export licences, clearances and other consents necessary for the supply and delivery of the Goods and/or the provision of the Services.

10. QUALITY

10.1 It shall be a condition of the Purchase Contract that the Goods or Services comply in all respects with the Specification and all requirements of the Purchase Contract and with any statements or undertakings made by the Supplier or his servants or agents prior to the issue of the Purchase Order. The Supplier warrants to the Company that the Goods and/or Services provided will be of satisfactory quality, free from defects, fit for purpose and compliant with all applicable statutory requirements and regulations.

10.2 Insofar as the Supplier is responsible for any design, the Supplier warrants to the Company that it has exercised and will continue to exercise all reasonable skill, care and diligence in carrying out such design work.

10.3 The approval by the Company of any designs provided by the Supplier shall not relieve the Supplier of its obligations under any provision of the Purchase Contract.

10.4 If the Goods and/or Services are found to be defective in any respect within 12 months of the date they were delivered/provided, the Company may, without prejudice to its other rights and remedies:

10.4.1 return the Goods to the Supplier, or require the Supplier to collect the Goods, and be reimbursed the full price paid and any costs the Company has incurred in returning the Goods or having them collected; and/or
10.4.2 require the Supplier to repair or replace the defective Goods or make good any defects in the Services at the Supplier's expense; and/or
10.4.3 if the Supplier refuses or fails to repair, replace or make good defects when requested, the Company may make other arrangements for such repair or replacement and recover any costs so incurred from the Supplier as a debt; and/or
10.4.4 recover from the Supplier as a debt any costs the Company incurs in dealing with defective Goods/Services.
10.5 If it is necessary to open up or dismantle any other works or assemblies to permit any repair or replacement of defective Goods then the Supplier shall bear the cost of such opening up or dismantling and of re-assembly and making good after repairs, replacements and testing of such Goods have been completed to the Company's reasonable satisfaction.
10.6 Goods and/or Services repaired, rectified or replaced shall be subject to the provisions of the Purchase Contract and shall be subject to the provisions of clause 10.4 for a period of 12 months from the date they were repaired, rectified or replaced.
10.7 No modification to the quality or Specification of the Goods and/or Services shall be made without written authorisation from the Company. The Supplier must make applications for permission to make any such modifications in sufficient time to allow full consideration of the proposal by the Company's personnel.

11. PROPERTY & RISK IN GOODS

11.1 The property in the Goods shall pass to the Company on delivery or on payment, whichever is the earlier.
11.2 The Supplier warrants that it has good title to the Goods and that the Goods are free and clear of any lien, encumbrance or rights of any third party.
11.3 The Supplier shall have no right to claim or retake possession of the Goods once delivered to or paid for by the Company (whichever is the earlier).
11.4 Risk of damage to or loss of the Goods shall pass to the Company only when the Goods are delivered to it in accordance with the Purchase Contract and accepted by the Company.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies the Company may possess, the Company may, at its sole discretion, terminate the Purchase Contract by giving one week's written notice to the Supplier.
12.2 In the event of the Supplier becoming bankrupt or entering into compulsory or voluntary liquidation, winding up, administration, receivership or any other composition or arrangement with its creditors, the Company shall be entitled to terminate the Purchase Contract upon serving written notice or shall at its option give the administrator, receiver, liquidator or other person in charge of the Supplier the option of continuing to fulfil the Supplier's obligations under the Purchase Contract, subject to the provision of a guarantee for due performance of said obligations.
12.3 If the Supplier is in breach of the Purchase Contract, the Company shall be entitled to give the Supplier 7 days written notice specifying the breach and requiring it to be remedied. If the Supplier fails to remedy the breach within the 7 day period, the Company shall be entitled to terminate the Purchase Contract forthwith upon giving a further written notice.
12.4 Following termination of the Purchase Contract pursuant to this clause 12, the Company shall pay the Supplier for Goods and/or Services already properly delivered or provided in accordance with the Purchase Contract but shall have no other liability of whatsoever nature to the Supplier under or in connection with the Purchase Contract.

13. CONFIDENTIALITY

13.1 The Supplier shall keep confidential all information belonging to or held by the Company which may come into the Supplier's possession in consequence of the Purchase Contract and shall not without the prior consent of the Company divulge any such information to a third party or use the information for any purpose, other than as is necessary for performance of its obligations under the Purchase Contract.
13.2 The Supplier shall ensure that any sub-supplier used in relation to the Purchase Contract is bound by similar confidentiality obligations.

14. INTELLECTUAL PROPERTY

14.1 The Supplier warrants that the Goods and/or Services do not infringe any intellectual property rights (including without limitation, patents, copyright, registered designs, and design rights) and undertakes to indemnify the Company against any claims in respect of such infringements or alleged infringement.

15. INSURANCE

15.1 The Supplier shall insure the Goods in respect of physical loss or damage caused during delivery and/or unloading for their full replacement value and such policy shall be endorsed to indemnify both the Company and the Supplier.
15.2 The Supplier warrants that it shall effect and maintain the following insurances:
15.2.1 public liability insurance with a limit of indemnity of at least £5 million or such other figure as may be specified in the Purchase Order in respect of any claim or a number of claims arising out of one event and no limit on the number of claims during the period of insurance; and
15.2.2 where the Supplier has design responsibility, professional indemnity insurance or product liability insurance in respect of any potential liability that may arise under the Purchase Contract with a limit of indemnity of at least £5 million or such other figure as may be specified in the Purchase Order for any claim or a number of claims arising out of one event and no limit on the number of claims during the period of insurance.
15.3 The Supplier warrants that it shall maintain the insurances specified in clause 15.2 at all times until 6 years after delivery of the Goods/provision of the Services, provided such insurances are available at commercially reasonable rates. Payment of any increased rates or additional premiums required by insurers by reason of the Supplier's own claims record or other acts or omissions or things peculiar to the Supplier is to be disregarded in determining whether such insurance is available at commercially reasonable rates. If insurance is not available at commercially reasonable rates the Supplier shall inform the Company immediately and shall obtain such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Supplier to obtain.

16. TESTS AND INSPECTIONS OF GOODS

16.1 The Company reserves the right to make visits at any reasonable time to any or all of the Supplier's premises and the premises of any sub-suppliers for the purpose of inspecting and/or testing the Goods and shall give not less than 24 hours notice of any such visit.

16.2 The Supplier shall, if required, supply samples of the Goods free of charge to the Company for the purpose of inspection and testing. Samples may be collected by the Supplier on completion of such tests in such condition as the nature of the tests permit.

16.3 The Supplier shall produce to the Company on demand true and accurate copies (certified to be as such) of all test certificates and reports.

16.4 If following a test or inspection the Company considers that the Goods are not or are not likely to be as warranted under the Purchase Contract, the Company shall inform the Supplier and the Supplier shall take such action as is necessary to ensure that the Goods are or will be as warranted. The Company shall have the right to re-conduct tests and inspections after the Supplier has carried out its remedial actions.

17. INDEMNITY

17.1 The Supplier shall indemnify the Company against all losses, damages, claims, royalties, liabilities, expenses, costs and proceedings arising under statute or common law in respect of any breach of contract, negligence, breach of statutory duty, act or omission by the Supplier, its servants or agents which results in:

17.1.1 any loss or damage to property real or personal or death or injury to any person;

17.1.2 breach of any warranty given by the Supplier in relation to the Goods and/or the Services;

17.1.3 any claim that the Goods and/or the Services or anything supplied by the Supplier in the provision of the Goods and/or Services infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any third party, except to the extent that the claim arises from compliance with any Specification supplied by the Company;

17.1.4 any claim by employers, clients or customers of the Company and its subsidiary companies arising out of any breach, non-performance or non-observance by the Supplier of its obligations under the Purchase Contract;

17.1.5 any liability under the Consumer Protection Act 1987 in respect of the Goods; or

17.1.6 any act or omission of the Supplier or its employees, agents, or sub-contractors in supplying, delivering and installing the Goods or providing the Services.

17.2 It shall be deemed to be within the contemplation of both the Company and the Supplier that where there is a default on the part of the Supplier, such default may disrupt and/or delay the Company in the execution of works it is carrying out pursuant to a building contract or other construction contract, thereby causing the Company to suffer and/or incur loss and/or damage. Further, it shall also be deemed to be within the contemplation of the Company and the Supplier that the Company may be required to pay liquidated damages or loss and expense pursuant to the terms of the said building contract or other construction contract.

17.3 The Company shall not be liable to the Supplier for any loss of profit or other consequential losses arising out of, under or in relation to the Purchase Contract.

18. FORCE MAJEURE

18.1 Neither party shall be liable for any delay or failure to perform any of its obligations under the Purchase Contract if the delay or failure results from events or circumstances beyond their reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, flood or industrial disputes. If any force majeure event continues for longer than 1 month the Company shall be entitled to terminate the Purchase Contract by service of a written notice.

18.2 Neither party shall have any liability to the other for costs incurred as a result of a force majeure event.

19. NOTICES

19.1 Any notice to be given under the Purchase Contract may be sent by first class post or recorded delivery or delivered by hand.

19.2 Notices delivered by hand shall be deemed to be received on the working day on which they were delivered, or if the notice was not delivered on a working day, on the next working day after the date of delivery. Notices sent by first class post or recorded delivery shall be deemed to be received on the second working day after the date of posting.

20. ASSIGNMENT

20.1 The Supplier shall not assign, transfer or sub-let the Purchase Contract without the written consent of the Company. The Company shall be entitled to assign the benefit of the Purchase Contract without the Supplier's consent.

21. THIRD PARTY RIGHTS

21.1 Subject to clause 20, the Purchase Contract is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. GOVERNING LAW

22.1 The Purchase Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

23. WAIVER

23.1 No failure or delay on the part of either party to exercise any right or remedy under the Purchase Contract shall be construed or operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

24. SEVERANCE

24.1 If any provision of the Purchase Contract is held by a Court or other relevant tribunal to be invalid or unenforceable it shall be severable and shall be deemed omitted from the Purchase Contract to the extent necessary to prevent such invalidity or unenforceability and the remaining provisions shall continue to have full effect.