

Terms and Conditions of Purchase



Group PLC
Innovation Quality Service

1. Interpretation

1.1 Definitions

In these Conditions, the following definitions apply:

Business Day

A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions

The terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.

Contract

The contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Customer

SMP Group plc registered in England and Wales with company number 2627262.

Damaged Goods

Means Goods that do not conform to the Specification.

Goods

The goods (or any part of them) set out in the Order.

Intellectual Property Rights

Means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case whether registered or not, including any applications to protect or register such rights, including all renewals and extensions of such rights or applications, whether vested, contingent or future, to which the Supplier is or may be entitled, and in whichever part of the world existing.

Order

The Customer's order for the Goods, as set out in the Customer's purchase order form.

Specification

Any specification for the Goods, including any related plans and drawings that is agreed in writing by the Customer and the Supplier.

Supplier

The person or firm from whom the Customer purchases the Goods.

1.2 Construction

1.2.1 In these Conditions, the following rules apply:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted.

(d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to writing or written includes faxes and e-mails.

2. Basis of contract

2.1 Unless the Customer has accepted the Supplier's standard terms in writing, these Conditions will 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in

accordance with these Conditions. A quotation for the Goods given by the Supplier shall not constitute an offer.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 The Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order;

At which point the Contract shall come into existence.

3. Goods

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 Correspond with their description and any applicable Specification;

3.1.2 Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 Where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery (**Warranty Period**); 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 Seller agrees that the approval by the Buyer of any design or specification provided by the Seller will not relieve the Seller of any of its obligations under this clause.

3.3 The Supplier shall ensure that at all times:

3.3.1 It has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract; and

3.3.2 All its premises, equipment, machinery and other apparatus used in connection with the manufacture, storage and supply of the Goods comply with the appropriate standards of cleanliness and hygiene.

3.4 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

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

3.7 The Supplier will, without prejudice to the Customer's other rights and remedies, repair, replace, correct, re-perform or refund the price of Damaged Goods, provided that the Buyer informs the Seller during the Warranty Period of discovery that some or all of the Products do not comply with the Contract.

4. Delivery

- 4.1 The Supplier shall 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 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; and
- 4.1.3 If the Supplier requires the Customer to return any external packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 On the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order (**Delivery Date**);
- 4.2.2 To the Customer's premises at 2 Swan Road, London, SE18 5TT, or such other location as is set out in the Order, or as instructed by the Customer prior to delivery (**Delivery Location**); and
- 4.2.3 During the Customer's normal business hours, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed only on completion of unloading the Goods at the Delivery Location.
- 4.4 Time of delivery is of the essence.
- 4.5 If the Supplier:
- 4.5.1 Delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
- 4.5.2 delivers more than 110% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,
- And any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.6 The Supplier shall not deliver the Goods in instalments without the Customer'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 Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 7.

5. Price and Payment

- 5.1 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 Supplier's published price list in force as at the date the Contract came into existence. No increase in price may be made after the Order is placed.
- 5.2 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 Customer.

- 5.3 The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 5.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery of the Goods.
- 5.5 The Customer shall pay correctly rendered invoices within 60 days of the end of the month in which the invoice was received. Payment shall be made by cheque or to the bank account nominated in writing by the Supplier.
- 5.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 5.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

6. Remedies

- 6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3, then, without limiting any of its other rights or remedies, the Customer shall have the

right to any one or more of the following remedies, whether or not it has accepted the Goods:

- 6.1.1 to terminate the Contract (in whole or in part);
- 6.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 6.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party, including the amount by which the price payable by the Customer to acquire those products from another supplier exceeds the price payable under the Contract and any loss of profit; and
- 6.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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

7. Title and risk

Title and risk in the Goods shall pass to the Customer on completion of delivery

and when the Customer has accepted the Goods in writing as conforming in every respect with the Contract. The passing of title will not prejudice any other of the Customer's rights and remedies, including its right to reject.

8. Customer Materials and Intellectual Property Rights

- 8.1 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.
- 8.2 The Supplier shall indemnify the Customer from and against any and all liability, actions, proceedings, claims, costs, expenses, losses or damage incurred by the Customer in relation to any actual or alleged infringement of any Intellectual Property Right arising out of the sale or use of the Goods.
- 8.3 The use by the Supplier of any material in which the Intellectual Property Rights are vested in the Customer shall be limited solely to performance of the Order.
- 8.4 Labels, packaging and any other materials bearing or subject to the Intellectual Property Rights shall, upon termination or cancellation of an Order, be at the Customer's option either delivered up to the Customer with carriage paid or destroyed.
- 8.5 All data, Specifications, or other materials supplied by or paid for by the Customer in connection with the supply of the Goods shall be and remain the property of the Customer. The Supplier hereby waives any lien or other rights that it might otherwise have on or in respect of any of the Customer's property.
- 8.6 Where the Customer commissions the Supplier under or in connection with the Order to create any work, design, concept, data, invention, new product or improvement:
- 8.6.1 Ownership of such works, designs, concepts, data, inventions, new products and improvements including all Intellectual Property Rights therein shall vest in the Customer upon their creation and any right, title or interest which may be vested in the Supplier is hereby assigned to the Customer with the intent that all such Intellectual Property Rights shall be the sole and absolute property of the Customer; and
- 8.6.2 The Supplier shall not be permitted to sell such unique Goods to any third party without the Customer's prior written consent.
- 8.7 Without limitation to Clause 8.6 above, the Supplier hereby assigns to the Customer all works, designs, concepts, data, inventions, improvements and discoveries (whether such is patentable or not or capable of any kind of registration) created or conceived after the Customer commissioning the Supplier to create or conceive the same made by any person employed by or working under the direction of the Supplier including all Intellectual Property Rights therein.
- 8.8 The Supplier shall on request give to the Customer the originals and copies of all

documents, designs, drawings, data and information of whatsoever nature in its possession or under its control belonging to the Customer pursuant to Clauses 8.6 and 8.7.

9. Indemnity

- 9.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:
- 9.1.1 any claim made against the Customer 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 Supplier, its employees, agents or subcontractors;
- 9.1.2 any claim made against the Customer 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 defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 9.1.3 any claim made against the Customer 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 Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer'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. Confidentiality

11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

11.2 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 12.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 12.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 12.2.2 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 or limited liability partnership) 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;
- 12.2.3 the Supplier 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 Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 12.2.4 (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 Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 12.2.5 (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 Supplier;
- 12.2.6 (being a company) the holder of a qualifying floating charge over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- 12.2.7 (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- 12.2.8 a creditor or encumbrancer of the Supplier 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;
- 12.2.9 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- 12.2.10 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 12.2.2 to clause 12.2.9 inclusive;

12.2.11 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

12.2.12 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

12.2.13 (being an individual) the Supplier 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.

12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

12.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. Force majeure

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion,

interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

13.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

14. General

14.1 Assignment and other dealings

14.1.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

14.2 Notices

14.2.1 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 or other next working day delivery service, commercial courier, fax or e-mail.

14.2.1 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.4 Waiver

A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 Third party rights

A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.6 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

14.7 Governing law

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 the law of England and Wales.

14.8 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).