

# VECTOR INTERNATIONAL LIMITED

## PURCHASE ORDER CONDITIONS

### 1.0 TERMS AND CONDITIONS

- (i) The conditions of order set out hereafter shall govern the Order and any amendment thereto placed by the Purchaser with the Supplier and shall take precedence over the Supplier's terms and conditions notwithstanding any provision to the contrary in the Supplier's terms and conditions of supply (*if any*) and the Supplier shall be deemed to have agreed to, the priority of the terms and conditions hereafter set out by commencing work upon the Order.
- (ii) The terms and conditions set out hereafter shall not be varied unless such variation is in writing and endorsed upon the Order.
- (iii) All orders placed by the Purchaser are placed in writing on the Purchaser's official order form. No person has any authority on behalf of the Purchaser to place an oral order and the Purchaser accepts no responsibility or liability for any verbal order so placed.

### 2.0 DEFINITIONS

- Affiliate** shall mean in relation to the parties any company which is a subsidiary or holding company or the subsidiary of any such holding company where "subsidiary" and "holding company" shall have the meanings assigned to them under Companies Act 1985 Section 736.
- Supplier** shall mean the person, firm or company stated on the Order and to whom the order is addressed.
- Supplier Group** shall mean the Supplier, its Affiliates and its or their agents together with their respective employees, directors and/or officers.
- Purchaser** shall mean Vector International Limited.
- Purchaser Group** shall mean the Purchaser, its Affiliates together with their respective employees, directors and /or officers.
- Order** shall mean the purchase order form together with these conditions of order and all the documentation issued with or referred to by the Purchaser therein.
- Goods** shall mean all materials, equipment, information and/or services supplied under the Order.
- Project** shall mean the design, procurement, construction and commissioning of the total plant, installation or facility being executed by the Purchaser.
- Delivered or Delivery** delivery terms of this Order shall be interpreted in accordance with incoterms (*international rules for the interpretation of trade terms*) 1990 and any amendment or supplement thereto.
- Site** shall mean any location other than Supplier's own workshops or other premises including without limitation supply bases, marshalling yards, fabrication yards and construction sites where Supplier is required to undertake Work.
- Work** shall mean the provision of all work and/or services (*including without limitation temporary and permanent work and/or services and management and supervision*) required to design, manufacture, test and deliver the Goods to the destination stipulated in the Order.
- Construction Aids** shall mean all plant, equipment, facilities and things whatsoever that are required at Site to execute the Work, but not for incorporating into the project.
- Force Majeure** shall mean an event beyond the reasonable control of the affected party provided that such party could not reasonably have foreseen such event at the time of entering these terms and conditions or the Order or could not have avoided or overcome it or its consequences, including by way of illustration Acts of God, lightning, earthquakes, epidemics, expropriation, requisition, strikes, whether nation-wide or industry-wide, lock-outs (*but specifically excluding local strikes and lock-outs limited to the Purchaser or the Supplier and their respective subcontractors*), wars whether declared or undeclared, nuclear radiation or fallout, civil insurrections, riots, restraints of government authority have jurisdiction over the parties, the Site or the Goods.
- Order Programme** shall mean the schedule for the Work set out in the Order.
- Owner Provided Items** shall mean those items or services set forth in the Order.

### 3.0 DOCUMENTATION

- 3.1 Documentation shall be submitted as called for in the Order. The Order shall not be considered complete for payment purposes until all documentation requirements have been fulfilled.
- 3.2 All other correspondence in connection with this Order shall state the Order number and item number and shall be marked for the attention of the department stipulated in the Order.
- 3.3 The Supplier shall be responsible for any discrepancies, errors or omissions in the drawings and other particulars whether they have been approved by the Purchaser or not.
- 3.4 The Purchaser's approval and/or comments on drawings, designs, calculations and specifications shall not absolve the Supplier from responsibility for any design, or construction errors.

### 4.0 AMBIGUITIES IN DATA SUPPLIED BY THE PURCHASER

Should there be any doubt or ambiguity in connection with the documentation or information contained within the Order and/or provided by the Purchaser, the Supplier shall notify the Purchaser as soon as the matter is identified and obtain clarification from the Purchaser in writing before the proceeding. Without such notification it shall be deemed that no such doubt or ambiguity exists.

### 5.0 GOODS AND GOODS PROVIDED BY US TO BE CONSTRUCTED INTO GOODS OF OUR DESCRIPTION AND SPECIFICATION.

- 5.1 Where (*goods*) are provided by us to be constructed into goods of our description and specification, all rights, title and interest in and to the materials will vest with us at all times. If you incorporate the (*goods*) into another product or alter by manufacture or mix them in any way with other goods not under our ownership, property in the resulting product will pass to our ownership.
- 5.2 All goods shall be supplied strictly in accordance with the specifications, drawings, data sheets, other attachments and conditions stated on the Order. No deviation from such specification or alternation of these Conditions of Order shall be made without the Purchaser's agreement in writing which must be obtained before any material is placed on order or any Work commenced.
- 5.3 Such deviation or alternation shall be requested by use of the Purchaser's formal concession request system (*details of which will be provided on application*). An administration charge, which shall from time to time be fixed by the Purchaser may be deducted from their Order price for each concession request received by the Purchaser.
- 5.4 In the event that the Goods supplied are not strictly in accordance with the Order and rectification is required at Site or such other place which the Purchaser may stipulate, the Purchaser shall notify the Supplier in writing giving details of the differences. The Supplier shall attend the Site or such other place within 48 hours, or such longer period as the Purchaser may agree, from receipt of such notice to meet the representative of the Purchaser, who shall stipulate the action required to bring the Goods up to specification and such action shall be effected at the Supplier's expense.
- 5.5 Should the Supplier fail to attend the meeting at Site or such other place within the time prescribed above, then without prejudice to the Purchaser's rights set out in Condition (*Suppliers Default*) the Purchaser may immediately put all necessary work in hand to bring the Goods up to specification at the Supplier's expense.

### 6.0 PRICES AND VARIATIONS

- 6.1 The price is as stated in the Order. Unless otherwise stated the price is fixed for the duration of the Order and shall include delivery to the destination stipulated in the Order and all test certification, data books and other documents specified in the Order, together with transit packing and protection.
- 6.2 The Purchaser may order alterations, additions and/or omissions to the scope of work by written notice to the Supplier and the Supplier shall perform any such variation. The value (*if any*) of all such variations shall be taken into account in calculating the final amount payable to the Supplier and the Order.

The value of all variations ordered by the Purchaser shall be ascertained by the Purchaser after consultations with the Supplier in accordance with the following principles:

- a) lump sums for additional or varied work quoted by the Supplier and accepted by the Purchaser.
- b) additional or varied work analogous to that for which a price is established in the Order shall be valued at such rate or price contained therein as may be applicable.
- c) Where additional or varied work cannot be priced as provided in Sub Clause 6.2(b) a fair and reasonable valuation shall be made by the Purchaser after consultation with the Supplier.

6.3 Quantities in excess of those in the order may be returned to the Supplier at the Supplier's expense and risk and the Supplier shall pay all the Purchaser's costs of Handling, Sorting, Packing and Returning such quantities.

## 7.0 PAYMENT

Payment will be made 30 days from the end of the month following receipt of a valid invoice in the agreed amount, unless otherwise formally agreed by both parties in writing.

## 8.0 TAXATION

### 8.1 V.A.T.

Value Added Tax will not be included by the Purchaser in any Order, amendment thereto or other documentation issued by the Purchaser. The Supplier shall calculate Value Added Tax at the current rate and add such amount of Value Added Tax (*if any*) as a separate entry to any invoice.

### 8.2 Other Taxes

The Supplier shall pay when due:

- a) taxes and fees imposed by reason of the performance of the Works by the Supplier including, but not limited to, sales, excise, storage, consumption, use and Value Added Taxes; licenses, permit and registration fees; and income, profit, corporation, capital gains, franchise and personal property taxes.
- b) employment taxes and social security contributions imposed by applicable law, or trade union contracts or regulations, with respect to or measured by compensation (*wages, salaries, or other*) paid to employees of the Supplier including, but not limited to taxes and contributions for unemployment compensation annuities, and disability insurance.
- c) Import/export license fees and import/export taxes or duties on services, equipment and materials, and construction tools/equipment imported or exported by the Supplier.

8.3 The Supplier shall defend, indemnify, and hold the Purchaser harmless from liability resulting from:

- i) the Supplier's payment of or failure to pay any of the above.
- ii) failure to comply with the reporting, filing or other procedural requirements with respect to their payment.

8.4 The Supplier shall obtain immunity or exemption from taxes or duties from which the Supplier or its Subcontractors are exempt under applicable law, or shall obtain a refund or credit including interest applicable for any such taxes or duties paid.

8.5 The Supplier shall promptly notify the Purchaser of matters of, or pertaining to, non payment or payment under protest of, claim for immunity or exemption from, or claim for refund of or credit against any taxes or duties.

## 9.0 INVOICES

9.1 Unless otherwise stated in the Order, invoices shall be addressed to Vector International Limited and shall be posted following despatch of the Goods. The invoices shall show:

- a) the Purchaser's Order and item number(s).
- b) whether the invoice covers "part order", "balance order" or "whole Order"
- c) quantity, cash or other discounts (*which shall be described as such*) in one original.
- d) retention (*if any*) in accordance with the Order.

9.2 All invoices shall be addressed to the:

**Accounts Department**  
**Vector International Ltd**  
**Unit 18 Baglan Industrial Park**  
**Port Talbot**  
**West Glamorgan**  
**SA12 7DJ**

## 10.0 ADVISE NOTES

One copy of the advice note shall accompany the Goods and where specified, in the manner stipulated by the Purchaser the advice note shall show:

- a) the Purchaser's Order and item number(s).
- b) whether the advice note covers "part order", "balance order" or "whole Order"

A signature, given on any advice note, other documentation, presented for signature in connection with delivery of goods is evidence only of a number of goods received. In particular, it is no evidence that the correct quantity or number of goods has been delivered or that the goods delivered are in good condition or of the correct quality.

## 11.0 RIGHT OF ACCESS

The Purchaser and/or anyone authorised by him shall be given full and free access at all reasonable times to Supplier's premises and those of his sub-suppliers as and when required for the purpose of quality assurance, source verification and audit, inspection and expediting and shall at the Supplier's expense be afforded such reasonable facilities and all appliances, materials and labour as may reasonably be required for those purposes.

## 12.0 EXPEDITING

The Supplier shall afford all reasonable facilities to the Purchaser and/or their representative(s) for the purpose of expediting the Goods and any drawings and documents etc., required under this Order. The Supplier shall have an obligation to provide:

- a) weekly progress reports in accordance with Purchaser format.
- b) sub-ordered material delivery status every 2 weeks.
- c) Prices are inclusive for the facilities required by Purchaser's field expeditor(s) and inspectors.

## 13.0 INSPECTION

In the event that Third Party Inspection is requested by Purchaser on the order the following applies.

13.1 The Goods shall be subject to the right of inspection by the Purchaser and/or the Purchaser's insurance authority during manufacture. No Goods shall be dispatched until after final inspection has been made and the Purchaser's written acceptance received by the Supplier, or notice has been given in writing that final inspection is waived. The Supplier shall advise the Purchaser at least 7 days in advance of the date when Goods will be ready for final or stage inspection.

13.2 The Purchaser's inspection shall not relieve the Supplier from his guarantee or obligation and responsibility to furnish Goods which are in accordance with the Order. The Purchaser shall be entitled to waive inspection at any point of manufacture without prejudice to his right to reject unsuitable Goods after arrival at destination. The Purchaser reserves the right to reject Goods if the Supplier fails to provide all relevant documentation called for in the Order.

- 13.3 All prices stated in the Order include the costs of witness inspection by Purchaser's representative, and to the extent stated in the Order, by third party inspection authorities together with the facilities required to perform such inspection.
- 14.0 ORIGIN AND TEST CERTIFICATES**  
The Purchaser shall have the right at any time to receive certificates of origin of raw materials and parts of the Goods and such other certificates including, but not limited to, test certificates, mill certificates, BASEEFA certificates, data books for pressure vessels etc., for equipment, as required by the Order or as the Purchaser deems appropriate. Such certificates shall clearly indicate the Purchaser's Order number and item number(s).
- 15.0 MARKING FOR IDENTIFICATION**  
Unless otherwise stated in the Order the consignment shall be marked in accordance with the specification and/or Order as appropriate.
- 16.0 COATING AND PROTECTION**  
16.1 All goods shall be coated and/or protected before despatch as specified in the Order.  
16.2 Items and substances having a limited shelf life shall be clearly marked with the date by which they should be used.
- 17.0 PREPARATION AND PACKING FOR TRANSIT**  
17.1 All goods shall be carefully and properly prepared, secured and packed in accordance with the requirements of the Order and in a manner suitable to provide adequate protection against damage in transit to destination. Any damage attributable to improper or inadequate packing shall be made good at the Supplier's expense and the Supplier shall be held entirely responsible for costs incurred in making good such damage.  
17.2 Hazardous goods shall not be packed with those of a harmless nature. Incompatible items and substances shall be segregated to avoid contamination.  
17.3 Any special handling tools and equipment provided as part of or used in connection with the Order shall be provided, controlled and maintained as necessary to ensure safe handling.  
17.4 The Purchaser accepts no responsibility for the return of packing containers or materials.
- 18.0 SUBCONTRACT AND ASSIGNMENT**  
18.1 The Supplier shall not, without the consent in writing of the Purchaser, assign, or sublet (*except for raw materials, for minor details or for any part of this Order, where the makers are named in the Order*) this Order or any part thereof to any person, firm or company.  
18.2 Supplier acknowledges the right of Purchaser to assign all or part of its rights and obligations deriving from these terms and conditions or an Order to any Affiliate which can demonstrate its financial soundness and capability of fulfilling the financial obligations hereunder.
- 19.0 TIMELY PERFORMANCE**  
19.1 The Supplier shall commence performance of the Work, continue and complete the Work in an expeditious and timely manner and in accordance with these terms and conditions and the Order Programme. The Supplier acknowledges that the timely performance of its obligations hereunder are vital, fundamental and essential and consequently time is of the essence of these terms and conditions and the Order.  
19.2 If at any time during the term of these terms and conditions or the Order, the Supplier should have any reason whatsoever to believe that the Work or any part thereof will not be completed with the terms of the Order, the Supplier shall promptly and without undue delay notify the Purchaser in writing detailing the existence or potential of each such delay, including:  
a) the reason for the delay;  
b) the estimated effect on the Order Programme;  
c) the actions the Supplier considers necessary and appropriate in order to avoid or mitigate the effects on the Order Programme, including without limitation re-organising other parts of the Work so as to avoid critical path delays  
and the Supplier shall thereafter take such actions as instructed by the Purchaser in order to complete the Work within the Order Programme.  
19.3 If at any time during the term of the Order the progress of the Work is not in accordance with the Order Programme so as to give reason to believe that any key date or milestone cannot be met that would delay the date of delivery set out in the Order, the Purchaser shall have the right to notify the Supplier in writing to require specific measures or actions to be taken, whereupon, the Supplier shall take such required measures or actions in order to complete the Work in accordance with the Order Programme.  
19.4 All costs, expenses and charges related to the required measures and actions to be taken by the Supplier, as provided by Clause 19.3 shall be for the sole and exclusive account of the Supplier, unless the reason for the delay can be reasonably attributed to facts or events attributable to the Purchaser or to Force Majeure.  
19.5 If the Order Programme is delayed because of Force Majeure the Purchaser shall:  
a) modify the Order Programme to reflect the delay attributable to Force Majeure, or  
b) require by written instruction to the Supplier to accelerate the performance of the Work, upon receipt of which the Supplier shall take such actions as are required to effect such acceleration  
and any reasonable documented cost incurred by the Supplier shall be compensated by the Purchaser.  
19.6 Should completion of the Work or any part thereof be delayed beyond the Order Programme owing to causes not attributable to the Purchaser or to Force Majeure the Supplier shall pay the Purchaser liquidated damages at a daily rate of 1% of the value of the Order. The total amount of liquidated damages payable by the Supplier shall not exceed 10% of the value of the Order unless such delay is attributable to the negligence and/or breach of duty (*statutory or otherwise*) of the Supplier. The parties acknowledge that the said liquidated damages represent a genuine pre-estimate of loss suffered by the Purchaser. The Purchaser shall have the right to set-off liquidated damages payable by the Supplier against sums due to the Supplier under an Order. This right of set-off shall be in addition to the rights that the Purchaser has at law to recover said liquidated damages as a debt.
- 20.0 TITLE**  
Title to, but not risk for the Goods, shall pass to the Purchaser at the earliest of the following occurrences:  
a) when parts of the Goods are identified, marked or separated for the purpose of this Order.  
b) when any "free issue" materials or components are incorporated into the Goods.  
c) on payment for any part of the Goods or any progress payment for the Goods.
- 21.0 LIABILITY AND RISK OF THE GOODS**  
21.1 Risk in the Goods shall pass to the Purchaser at the time that the Goods are delivered ex-works.  
21.2 Goods should be delivered CIF to site.
- 22.0 RECOURSE**  
The Purchaser shall have recourse to the Supplier for any costs, claims, demands, proceedings, damages and expenses whatsoever arising out of or in connection with any failure of the Supplier to perform any of his obligations under the terms of this Order.
- 23.0 GUARANTEES**  
23.1 The Supplier hereby expressly, unconditionally and irrevocably warrants that the Work and Goods and any component thereof shall be new fit and sufficient for its intended purpose and free from faults or defects or defects in design and manufacture for a duration of thirty six (36) months from the completion of the Work or the delivery of the Goods (*the "warranty period"*). If any fault or defect as aforesaid occurs or is revealed in the course of the warranty period, the Supplier undertakes to carry out or have carried out forthwith at its sole and exclusive cost and expense any repairs and/or replacements necessary in

order to remedy such or defect in design and/or manufacturing. The warranty herein provided for is inclusive of parts, components, labour and generally all related costs.

23.2 If any part or component is repaired, whether or not under warranty, the warranty period for the repairs shall commence on the date on which they are completed. The warranty period shall be thirty six months from the date thereof.

23.3 The warranty herein provided by the Supplier extends to all parts and components of the Goods and notwithstanding any warranty express or implied, to which sub-contractors or suppliers may be subject. The Supplier hereby undertakes to procure that, in addition to any statutory remedy available to Purchaser against the Supplier, any sub-contractor, the Supplier, the sub-contractors or suppliers shall expressly delegate and assign their statutory and contractual warranty obligations to and in favour of the Purchaser. In furtherance of the assignment of the warranties provided for hereunder the Supplier further agrees to procure that any sub-contract or contract entered into by the Supplier in connection with the Work shall incorporate warranty terms identical to those contained herein.

#### 24.0 SUPPLIER'S DEFAULT

If the Supplier shall fail, neglect or refuse to execute the Order with due diligence and expedition or shall commit any breach of the Order, the Purchaser may give 7 days notice in writing to the Supplier to make good the failure, neglect or refusal or breach complained of. Should the Supplier fail to comply with the notice within 7 days from the date of service thereof the Purchaser shall be at liberty to take part or all of the Work, subcontracts, documents and other rights which are necessary in order to enable the Purchaser to complete the work by itself or by means of third party assistance out of the Supplier's hands and execute such Work in itself or cause to have the work executed by others as the Purchaser shall think fit. Any balance of the purchase price unpaid or which may be due to the Supplier may be retained by the Purchaser and applied to payment for or cost of the execution of the work by the Purchaser or others. If the balance is insufficient to meet the cost of the work so taken out of the Supplier's hands, the Supplier shall pay any such difference on demand and the Purchaser may recover such amounts from the Supplier as a debt. The Purchaser shall not be liable to pay to the Supplier any cancellation or other charges or costs in connection with the execution of the Purchaser's rights pursuant to this Condition.

#### 25.0 TERMINATION BY PURCHASER

25.1 Without prejudice to any of the Conditions contained herein the Purchaser may for any reason whatsoever by notice in writing to the Supplier and with immediate effect cancel the Order or any part thereof. In the event of such cancellation a) the Supplier shall use all reasonable endeavours to effect the cancellation of orders and the termination of contracts which he may have placed with others and b) the Supplier shall receive payment for all materials used and work executed by him pursuant to this Order but unpaid for at the date of such cancellation.

25.2 The Supplier shall, upon receiving notice of cancellation, notify the Purchaser within a reasonable time of the amounts unpaid as aforementioned. These amounts shall be agreed in writing between the Purchaser and the Supplier and shall be paid to the Supplier within agreed payment terms. Upon payment of the amounts agreed all materials and work to which these amounts relate shall immediately become the property of the Purchaser.

#### 26.0 INSOLVENCY

In the event that Supplier, at any time during the term of this Contract, is insolvent under any of the provisions of any applicable bankruptcy act or makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt, either upon Supplier's voluntary petition in bankruptcy or upon the involuntary petition of Supplier's creditors, or any of them, or should a judgement be executed on any of the goods or equipment of Supplier or should any lien or other right inconstant with Supplier's title to such goods or equipment be enforced, or if Supplier shall have a receiver, administrator, administrative receiver and/or manager appointed of any of its assets, or if Supplier shall go into liquidation (*whether voluntarily or otherwise*) Purchaser, at its option, may terminate this Contract as provided under Clause 25.

#### 27.0 CONFIDENTIALITY/EQUIPMENT SUPPLIED BY PURCHASER

27.1 If in connection with any order for goods, any drawings, dies, moulds or other tooling are either supplied by the Purchaser to the Supplier or provided by the Supplier specifically for the purpose of the Purchaser order(s) then the Supplier undertakes:

- a) that it will not use nor permit the use of the same for the production, manufacture or design of any goods or materials other than those ordered from time to time by the Purchaser (*save with the prior written consent of the Purchaser*).
- b) that the property therein shall vest in and remain with the Purchaser, the Supplier having possession thereof for the purpose of fulfilling the Purchaser's order(s).
- c) that the Supplier will indemnify the Purchaser against loss of or damage to the Purchaser's tangible property which is at any time in the Supplier's possession or control and that the Supplier will adequately insure against loss or damage and shall produce on demand by the Purchaser the policy of such insurance and the premium receipts.
- d) that it will retain in confidence all information or data supplied to it and (*save with the prior written consent of the Purchaser*) will not disclose the same to any third party or make any copies of documents or drawings containing the same save for the purpose of executing the Purchaser's order.
- e) that it will at the request of the Purchaser at any time immediately deliver to the Purchaser all or any of such drawings, dies, moulds or other tooling and any copies thereof.

27.2 For the purpose of this Paragraph 27 "drawings" shall be deemed to include plans, photographs, models, patterns, samples, specifications, data and technical information of every description whether written or oral or three-dimensional.

#### 28.0 PUBLICITY AND ADVERTISING

The Supplier shall not, without the written permission of the Purchaser publicise in any way the name of the Purchaser or the destination or the description of the Goods supplied to the Order including the in-house publications of Supplier.

#### 29.0 PATENTS, REGISTERED DESIGNS, TRADE-MARKS AND COPYRIGHT

29.1 The Prices quoted by the Supplier shall include all charges for royalties payable in respect of the use of any letters patent, registered design, drawing or technical information which may be involved in the performance of the Order or in the construction or use of any Goods or apparatus supplied by the Supplier.

29.2 The Purchaser on his part warrants that no design, drawing, technical information or instruction furnished or given by him shall be such as shall cause the Supplier to infringe any letter patent, registered design, trademark or copyright in the fulfilling of the Order.

29.3 Subject as aforesaid and except as may be otherwise expressly agreed in writing the Supplier shall indemnify the Purchaser against any loss or damage which the Purchaser may suffer and against any liability for damages, costs or otherwise which the Purchaser may incur and against any expenses for costs, royalties or otherwise to which the Purchaser may be put by reason of any infringement or allegation or infringement by any person of any letter patent, registered design, trademark or copyright in relation to the performance of the Order or the construction or use of any Goods or apparatus supplied by the Supplier.

#### 30.0 DISPUTE RESOLUTION

30.1 If a dispute arises out of or in connection with these terms and conditions or the Order, the parties hereto agree to submit to the procedure set out herein for resolution of such dispute before pursuing any other remedy which may be available to them.

30.2 If a dispute arises out of or in connection with these terms and conditions or the Order which cannot be resolved in the normal course of business, the parties hereto shall attempt in good faith to resolve such dispute promptly by negotiation. If the parties have not been able to settle the dispute within fourteen (14) days of a formal notice of dispute being served by one party to the other, then the parties shall attempt in good faith to resolve the dispute. Within fourteen (14) days after the said fourteen (14) day period, and at mutually convenient periods thereafter, the respective parties' representatives shall meet to exchange relevant information and to attempt to resolve the dispute.

- 30.3** Proposed attendees for each meeting between the parties as provided for in Clause 30.2 shall be advised by each party to the other not less than three (3) working days prior to the agreed date for each such meeting.
- 30.4** If the matter has not been resolved within forty-five (45) days of the issue of the formal notice of dispute either party may initiate mediation of the dispute by requesting the other in writing that the dispute be referred to mediation and in such event both parties hereby agree to engage in mediation as further described hereunder.
- 30.5** Mediation shall be conducted in accordance with the then current Alternative Dispute Resolution procedure recommended by the Centre for Dispute Resolution, subject to the following:
- a) if the parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the Centre for Dispute Resolution shall appoint an expert and mediator; and
  - b) efforts to reach a settlement will continue until conclusion of the proceedings, which, for the purposes of this Clause 30, shall be deemed to have occurred on the occasion of:
    - i) written statement being reached; or
    - ii) the mediator concluding and informing both parties that further efforts in mediation would not be useful; or
    - iii) the parties jointly agreeing in writing that an impasse has been reached.
- Neither party may withdraw from mediation before conclusion of the proceedings as aforesaid.
- 30.6** For the avoidance of doubt, the procedure set out in this Clause 30 shall not be construed as arbitration nor shall the mediator be construed to be an arbitrator and the Arbitration Act 1996 shall not apply to proceedings hereunder.
- 30.7** The parties agree and affirm that the procedure set out in this Clause 30 is an essential provision for the settlement of any disputes between the parties. If there is failure to comply with the provisions of this Clause 30 or if there is any agreement that has been reached and is not implemented or complied with or if the parties have been unable to resolve the dispute (*as set out in Clause 30.5(b)*) then the issues may be referred to litigation as provided under Clause 43.

### **31.0 STATUTORY REQUIREMENTS**

- 31.1** The Supplier shall conform to all statutory requirements in the performance of the Order and shall in particular ensure that the materials, equipment, plant or any other items supplied to the Purchaser in their manufacture or construction for use anywhere within the UK shall comply with the requirements of the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health and Safety at Work etc., Act 197 including the submission of COSHH certificates, and any regulations made in respect of the aforementioned acts as appropriate.
- 31.2** Goods must be accompanied by written notification to Purchaser of any hazard of whatever nature inherent in Goods or in the handling or arising or likely to arise in combination with other materials or substances or environmental conditions of any kind and of the precautions to be taken. Where practicable, visible markings on Goods or the packaging must be provided.
- 31.3** Prior written notification must be given to Purchaser of any hazard of whatever nature inherent in such Services.
- 31.4** Where Services are carried out on any sale under Purchaser's control or supervision, prior written notice must be given of any hazard of whatever nature inherent in the Service provided, and also any form of materials used, by Seller in the provision of Services.

### **32.0 NOTICES**

- 32.1** Any notice issued by the Supplier pursuant to this Order shall be sent by post, telex or facsimile transmission to the address shown on the front of the purchase order.
- 32.2** Any notice issued by the Purchaser shall be sent by post to the address shown on the Order unless the Supplier shall advise otherwise. Notice shall be effective if sent by post two days subsequent to the date of posting and if sent by telex or facsimile transmission the first working day following the date of sending. Any notice sent by telex or facsimile shall be confirmed by letter within two working days of issue.

### **33.0 NO WAIVER**

Failure by the Purchaser at any time to enforce any of the provisions of the Order shall not be construed as a waiver by the Purchaser of such provisions or in any way affect the validity thereof.

### **34.0 FREE ISSUE MATERIALS**

Any materials supplied by Purchaser to Supplier in connection with this Order to work upon or to be assembled with Goods shall be insured for their full replacement value by Supplier against loss or damage by any cause until such time as they are received back by Purchaser or otherwise delivered to Purchaser's order, without prejudice to any other rights of Purchase any such materials supplied by Purchaser and lost or damaged or rendered useless by reason, bad workmanship or error on Suppliers part or which shall fail within twelve months from first being put into service owing to defective workmanship shall be replaced by Supplier at his own cost. All material supplied by Purchaser to Supplier shall remain Purchaser's property and be held free from lien and shall be used for the performance of Contract and for no other purpose whatsoever without Purchaser's prior written approval.

### **35.0 QUALITY ASSURANCE**

Prior to the commencement of the Work, the Supplier shall have established a quality assurance system based on ISO 9000 or a demonstrated equivalent as applicable to the Work together with a quality management system, describing in which manner the Supplier will secure that the Work will satisfy all quality requirements. Such system shall be subject to the Purchaser's review and the Purchaser shall have the right to audit the Supplier's quality assurance system at any time during the term of these terms and conditions.

### **36.0 SAFETY AT "SITE"**

- 36.1** The Supplier shall not permit the existence of conditions of unsafe working by his or his sub-supplier's personnel and shall take sufficient precautions to establish safe working conditions, such as not leaving unfenced holes, obstructions and tripping hazards on floors, gangways or elsewhere. Furthermore, only certified rigging equipment shall be used and no rigging shall be carried out unless supervised by a competent rigging supervisor. The Purchaser will have authority to require the Supplier to cease any operations that are considered dangerous or unsafe through lack of adequate precautions, until the Supplier has rectified such conditions at his own expense. The Purchaser will not be responsible for any loss or lost time that might result therefrom.
- 36.2** The Supplier shall not leave any obstruction for longer than is essential and shall provide adequate lighting to indicate its presence during the hours of darkness.
- 36.3** The Supplier shall take all precautions necessary to protect personnel who are at any time directly or indirectly affected by the Work. Such precautions shall include without limitation the provision of information on the equipment and substances to be used and hazards involved in the performance of the Work.
- 36.4** The Supplier shall be under an obligation to take all reasonable safety measures in relation to the Work and shall conduct itself and its personnel and carry out the Work in such way as to comply at all times with its obligations under the Health and Safety at Work Etc... Act 1974, and any and all enactments made by authority of that Act and all other enactments in force from time to time relating to health and safety matters, including without limitation the Control of Substances Hazardous to Health Regulations (SI 1988) No 1657 or any statutory amendment thereto at any time during the term of these terms and conditions.
- 36.5** The Supplier shall in addition, observe and comply with all regulations, guides, codes of practice and recommendations issued or made by any governmental, professional or trade organisation and other official or responsible organisations relating to health and safety at work.
- 36.6** The Supplier shall report immediately to the Purchaser all accidents and injuries arising from the performance of the Work on-site giving full details of the relevant incidents together with such other information that the Purchaser may require. The Purchaser shall have the right to carry out investigations of such incidents and the Supplier shall render such assistance as the Purchaser may reasonably require in such investigations.

- 36.7** Without prejudice to the Supplier's obligations as set out herein the Purchaser shall have the right to carry out safety inspections and safety management system audits during the performance of the Work on-site. In addition the Purchaser shall have the right to comment on and review the Supplier's safety procedures. The Purchaser shall exercise its rights under this Clause 36.7 so as not to unreasonably affect the Supplier's performance of the Work.
- 37.0 YEAR 2000 CONFORMITY**  
This Clause 37.0 is additional to the foregoing General Terms and Conditions of Purchase.  
Supplier warrants that the Goods shall conform with Year 2000 hardware/software and performance/ functionality requirements per British Standard PD2000-1. Supplier shall assume all liability for and shall indemnify, defend and hold harmless Purchaser from and against all claims, losses, damages, cost (including legal expenses), liabilities and costs of rectification arising in relation to this Order by reason of Supplier's non-conformance with Year 2000 requirements.  
If such goods and/or work are found not to be Year 2000 Compliant in addition to any obligation on Purchaser under this agreement or under law, the Supplier shall, at no additional charge to Purchaser, no later than 28 days after receipt of notice on non-compliance, render the products fully Year 2000 Compliant and manufacture and supply the contracted version of the goods and/or work free of charge.
- 38.0 INDEMNITY**
- 38.1** Without prejudice to any other remedies available to the Purchaser the Supplier agrees to indemnify the Purchaser against all costs, damages, claims or expenses incurred by or payments made by the Purchaser whether pursuant to a legal obligation or otherwise arising directly or indirectly out of or consequent upon any breach by the Supplier of any of the terms or conditions of the Order or any breach of contract or breach of duty committed by the Supplier arising out of or incidental to or in the course of fulfilment of this Order.
- 38.2** The Supplier shall indemnify the Purchaser against all claims, costs, charges, damages and expenses which may be made against or incurred by the Purchaser on account of any actual or alleged infringement of any patent, copyright or other rights affecting the goods which may result from the sale or use of the Goods by the Purchaser or by any person or persons deriving title under it otherwise than in breach of any restrictive conditions as to sale or use thereof imposed by the Supplier and accepted by the Purchaser.
- 38.3** The Purchaser shall not be liable for any injury, damage or loss sustained by the Supplier or his employees or agents whilst on the premises of the Purchaser and the Supplier shall indemnify the Purchaser against any claims, costs or demands in regard to any injury, damage or loss to whomsoever caused, arising out of or incidental to the fulfilment of the Order.
- 38.3** The terms of this Clause 38 shall survive the termination of these terms and conditions.
- 39.0 ETHICS**  
Supplier shall not hire or otherwise engage any employee of Purchaser Group, whilst such person is in Purchaser's employment. Supplier shall not pay, nor attempt to pay, any salaries, commissions, fees, remuneration or rebates to any employee of Purchaser Group (or any designee of any Purchaser employee) or favour any such person with gifts or entertainment of significant value or with services or goods sold at less than the full market value. For the purpose of this Clause 39 "employee" shall include officers or other persons in any way representing Purchaser or Purchaser's interests. Supplier shall ensure that this text mutatis mutandis is repeated in any subcontracts related to these terms and conditions for the benefit of Purchaser Group.
- 40.0 SEVERANCE**  
Any provision herein which is or becomes illegal, or unenforceable or ineffective shall be severed from these terms and conditions and shall not affect the validity of the remaining provisions hereof.
- 41.0 WAIVERS**  
The Purchaser's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver by the Purchaser in respect of any breach of the Supplier shall operate as a waiver in respect of any subsequent breach. Any neglect or failure by the Purchaser to enforce any of these terms or conditions shall not be construed as a waiver of or prejudice or affect any of the Purchaser's rights hereunder.
- 42.0 ENTIRE AGREEMENT**  
These terms and conditions form the entire agreement between the parties and supersede all earlier meetings, discussions, correspondence, agreements, faxes, telexes and communications, understandings and arrangements of any kind so relating and there are no collateral or supplemental agreements at the time these terms and conditions came into force.
- 43.0 GOVERNING LAW**  
The terms and conditions of the Order shall be construed and governed in accordance with English Law.

POCONDS.0199

PART 1 SUPPLY AND DELIVERY.0199