

**1. DEFINITIONS**

In these Conditions the following words shall have the following meanings:-

"Purchaser" means the company issuing the Purchase Order as identified on the face of the Purchase Order.

"Supplier" means the person, firm or company to whom the Purchase Order is addressed.

"Client" means any party to whom the Purchaser provides equipment and/or services into which the Goods are integrated or incorporated.

"Conditions" means these printed Conditions of Order.

"Contract" means the contract between the Purchaser and the Supplier for the supply of the Goods, comprising (1) any supplementary or special conditions detailed on the face of the Purchase Order, (2) the Conditions, (3) any specification of the Goods detailed on the Purchase Order and (4) subject always to Clause 2 hereof, any correspondence, specifications, drawings or other documents expressly referred to in any of the foregoing.

"Contract Price" means the sum stated on the Purchase Order as the price payable to the Supplier for the supply of the Goods.

"Defects Liability Period" means twelve months or such other period as may be specified on the face of the Purchase Order from the date of the delivery of the Goods, or from the date of incorporation or integration of the Goods into the equipment, machinery or plant owned or operated by the Client, or from the date of the conclusion of the provision of services whichever of these events shall last occur.

"Delivery Point" means the place of delivery of the Goods specified on the Purchase Order; or, if no such place is specified, the place notified in writing by the Purchaser to the Supplier.

"Goods" means all equipment or things of any kind and any services (excluding commissioning and those services as defined in Section 105 of the Housing Grants Construction and Regeneration Act 1996) to be provided by the Supplier under the Contract.

"Purchase Order" means the official purchase order issued by the Purchaser to the Supplier.

"Statutory Requirements" means all applicable laws, orders, regulations or by-laws having the force of law.

The headings in the Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.

**2. CONDITIONS**

Notwithstanding anything to the contrary in any quotation, tender, delivery note, invoice, order acknowledgement, correspondence or other document issued by the Supplier, these Conditions shall apply to any Purchase Order dated on or after 1<sup>st</sup> January 2009 except insofar as expressly agreed otherwise in writing by a duly authorised representative of the Purchaser. No servant or agent of the Purchaser has the authority to vary the Conditions orally. Any conditions appearing on the Supplier's acknowledgement of order, delivery note(s) or invoice(s) are expressly excluded from the Contract and shall be deemed deleted. The several documents comprising the Contract are mutually explanatory but in the event of conflict the order of precedence of documents shall be that given in the definition of "Contract" in Clause 1. If the Supplier has not previously accepted the Conditions, the Supplier shall be deemed to have accepted the Conditions on the date when it can be demonstrated that the Supplier has commenced to comply with the requirements of the Purchase Order. The Supplier's obligations and liabilities under the Conditions are in addition to and not in substitution for the Supplier's liabilities at common law and under statute.

**3. GOODS**

The Goods shall be in accordance with the Contract and shall:-

- (i) be of first class quality and workmanship;
- (ii) be fit for the purposes specified in or reasonably to be inferred from the Contract; and
- (iii) comply with Statutory Requirements, including but not limited to the Electromagnetic Compatibility Regulations 1992 (SI 1992/2372) (where applicable).

The Supplier warrants that the performance of all software and embedded chips contained in or used in conjunction with the Goods shall not be affected by dates prior to, during or after the year 2000 and in particular warrants that all electronic systems and services provided by the Supplier comply with the British Standard Definition of Year 2000 Conformity Requirements current at the date of the Purchase Order. The Supplier shall further comply with the Purchaser's document entitled "Year 2000 Compliance" (Ref. BKL/Y2K dated 1/10/97) a copy of which shall be available for inspection at the Purchaser's Registered Office (if not already expressly incorporated in the Contract) and of which the Supplier shall be deemed to have full knowledge.

**4. DELIVERY OF GOODS**

Unless otherwise agreed in writing by the Purchaser and the Supplier, the Goods shall be sent carriage paid. The Goods shall be delivered to the Delivery Point. The Goods shall be packaged so as to prevent any loss of or damage to the Goods howsoever arising during transit to the Delivery Point and during the subsequent distribution and/or storage of the Goods (whether by the Supplier, Purchaser, Client or others). The Goods shall be clearly labelled and addressed and shall be accompanied by delivery notes which detail (i) the Purchaser's Order Number, (ii) the specific Goods supplied, and (iii) whether the delivery is a full or part delivery. All packaging, labelling, delivery notes and other documentation shall comply with all applicable Statutory Requirements and shall clearly identify any Goods which are hazardous or toxic in nature. If so required by the Purchaser or requested by the Supplier, packaging will be returned to the Supplier at the Supplier's expense, provided that full descriptions of such packaging (including identification marks, numbers and values) are included in the Supplier's advice notes and invoices; otherwise, the Purchaser shall have no responsibility for such packaging and no debit will be made for the value of such packaging.

Risk of loss of or damage to the Goods shall remain with the Supplier until delivery of the Goods to the Delivery Point. Property in the Goods shall pass to the Purchaser upon delivery or payment, whichever is the earlier, without prejudice to any right of the Purchaser to reject the Goods.

The Goods shall be delivered to the Delivery Point at the date(s) specified in the Contract or such later date(s) as may reasonably be specified by the Purchaser. If the Supplier fails to deliver the Goods as aforesaid, or if in the reasonable opinion of the Purchaser the Supplier will be unable to deliver the Goods to the Delivery Point by the said date(s), the Purchaser shall be entitled without prejudice to his other rights and remedies to cancel the whole or any part of the Contract and recover all costs incurred as a result of such cancellation (including the cost of purchasing equipment and services in substitution for the Goods).

**5. PAYMENT**

In consideration for the supply of the Goods, the Purchaser shall pay to the Supplier the Contract Price stated on the Purchase Order, in accordance with the terms of payment specified thereon. If no terms of payment are specified on the Purchase Order, payment for the Goods shall be made sixty (60) days after the last date of delivery of the Goods to the Delivery Point against a valid invoice submitted by the Supplier. In the event that the Client or any person on whom the Purchaser depends for payment in connection with this Contract shall be come insolvent, the Purchaser shall not be obliged to make payment to the Supplier unless payment of sums referable to the goods under this Contract are received by the Purchaser.

Each Supplier's invoice must state the Purchaser's Order Number and the amount of VAT charged, failing which the invoice will be invalid. Without prejudice to the Purchaser's other rights and remedies, the Purchaser shall be entitled to withhold payment for any Goods which do not comply with the Contract. The Purchaser shall provide prior written details of the amounts withheld and the reasons for so doing. No payment made by the Purchaser shall constitute an admission that the Supplier has complied with the Contract or prejudice the Purchaser's right to reject Goods which are not in accordance with the Contract.

In the event that the Purchaser fails to pay any sum properly due to the Supplier in accordance with the terms hereof, the Supplier shall be entitled to be paid simple interest on the unpaid sum for the period commencing on the day following the due date for payment until the date of payment of the unpaid sum. The rate of interest shall be three per cent (3%) over the base lending rate of The Royal Bank of Scotland plc which is current on the date when such simple interest starts to run. In the event that the rate of interest referred to in this Clause 5 is held not to be a substantial remedy (within the meaning of section 9 of the Commercial Debts (Interest) Act 1998 (and any regulations made pursuant thereto) there shall be substituted such higher rate of interest as is necessary to ensure that it is a substantial remedy (within the meaning of section 9 of the said Act).

#### **6. SUB-CONTRACTING AND ASSIGNMENT**

The Supplier shall not sub-contract in whole or in part any of his obligations under this Contract except with the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed. Any consent of the Purchaser under this Clause 6 shall not relieve the Supplier of his obligations under the Contract.

The Supplier shall not transfer, charge or assign any rights whatsoever accruing under these Conditions without the express written consent of a duly authorised representative of the Purchaser. Any transfer, charge or assignment in breach of this Clause 6 shall be void.

#### **7. INSPECTION AND TESTING**

If so stated on the Purchase Order the Purchaser and the Client shall be entitled at any time before delivery of the Goods upon giving not less than 24 hours' notice to inspect and test on the Suppliers premises the materials, workmanship, performance and progress of all Goods to be supplied under the Contract. If any parts of the Goods are being manufactured or stored at other premises the Supplier shall obtain permission for the Purchaser and the Client to inspect and test the Goods as if the Goods were on the Supplier's premises. The Supplier shall provide all things as may be necessary to carry out such test or inspection. If so stated on the Purchase Order the Supplier shall upon request provide all test certificates required by the Purchaser. Such inspection and testing shall not release the Supplier from any obligation under the Contract.

#### **8. REJECTION OF GOODS**

If the Purchaser shall decide that any Goods or any parts thereof supplied under the Contract are defective or not in accordance with the Contract, the Purchaser may reject such Goods. Following any such rejection, the risk and property in all rejected Goods shall immediately revert to the Supplier who shall immediately remove and make good or otherwise repair or replace the rejected Goods without prejudice to the Purchaser's other rights and remedies. All Goods which have been made good, repaired or replaced may be subject to further inspection and testing by the Purchaser and/or the Client at the cost of the Supplier.

#### **9. INTELLECTUAL PROPERTY RIGHTS**

The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent registered design, copyright, trade mark or trade name or other intellectual property rights protected in the United Kingdom and in the country where the Goods are to be used as a result of the use or possession by the Purchaser or by others of any Goods.

#### **10. SUPPLIER'S LIABILITY**

The Supplier shall be liable for and shall indemnify the Purchaser against all actions, suits, claims, demands, damages, costs, charges and expenses arising out of or in any way caused by any defect in the Goods or packaging or by the Supplier's negligence or breach of contract or statutory duty.

#### **11. NOVATION/ASSIGNMENT AND COLLATERAL WARRANTIES**

When so requested by the Purchaser the Supplier shall be obliged to consent to and implement a novation or assignment of the Contract from the Purchaser to the Client, and to provide such collateral or direct warranties as may be specified on the Purchase Order.

#### **12. CANCELLATION FOR CONVENIENCE**

The Purchaser shall be entitled at any time by written notice to the Supplier to cancel the Contract for its own convenience. If the Purchaser so cancels the Contract, the Purchaser shall pay the Supplier the reasonable and proper costs of such Goods as are and which it is reasonable to expect to be complete as at the date of cancellation. Such payment shall be the Purchaser's sole and exclusive liability to the Supplier in respect of such cancellation and shall be without prejudice to the Purchaser's other rights and remedies in relation to the Goods.

#### **13. BANKRUPTCY AND INSOLVENCY**

If the Supplier becomes bankrupt or insolvent or is the subject of similar proceedings or has a receiving order made against him or compounds with his creditors or (being a corporation) commences to be wound up (not being a members' voluntary winding up for the purpose of amalgamation or reconstruction) or has an administration order made against him or carries on his business under an administrator or a receiver or manager for the benefit of his creditors or any of them, the Purchaser shall be entitled either (i) to terminate the Contract forthwith by written notice to the Supplier or to the administrator, receiver, manager or liquidator or to any person in whom the Contract may become vested, in which event the Purchaser may without prejudice to his other rights and remedies recover all costs incurred as a result of such cancellation (including the cost of purchasing equipment and services in substitution for the Goods), or (ii) to give such administrator, receiver, manager or liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract.

#### **14. DEFECTS LIABILITY PERIOD**

The Supplier shall make good by repair or replacement (at the Purchaser's option) immediately upon the Purchaser's request to do so and at the Supplier's expense any defect in or damage to any part of the Goods which may appear or occur during the Defects Liability Period and which arises either from any defective materials, workmanship or design, or from any act or omission of the Supplier done or omitted during the said Period. The Supplier's obligations hereunder shall be without prejudice to the Purchaser's other rights and remedies, and shall apply to all Goods repaired or replaced as aforesaid.

#### **15. SAFETY**

The Supplier shall in relation to the performance of the Contract comply with all Statutory Requirements, including but not limited to all Statutory Requirements relating to health and safety at work, toxic and hazardous substances and the protection of the environment. The Supplier shall also comply with the terms of the Purchaser's Safety Manual, a copy of which is available for inspection at the Purchaser's Registered Office and the contents of which shall be deemed to be known by the Supplier. The Supplier shall give the Purchaser prior written notification of any Goods which are toxic or hazardous in nature, specifying the hazards and the precautions to be taken in relation to the safe use, handling, storage and disposal of the Goods.

#### **16. CONFIDENTIALITY**

The Supplier shall treat the details of the Contract and any documents and information made available in relation thereto as private and confidential and shall not publish or disclose the same to any person (save insofar as may be necessary for the purposes of the Contract) without the prior written consent of the Purchaser.

#### **17. DISPUTE RESOLUTION AND GOVERNING LAW**

17.1 If at any time either party is dissatisfied with any matter arising under or in connection with the Contract that matter

shall be referred to a senior official of each of the Purchaser and the Supplier to be nominated respectively by the parties ("the Representative") who shall meet with a view to resolving the matter. Any agreement reached between the Representatives shall be final, conclusive and binding on the parties. No matter shall constitute or give rise to a dispute until the Representatives have met and/or failed to resolve the matter or one month has elapsed since the matter was referred to them (or such longer period as agreed by them after the matter is referred). Any dispute or difference which remains unresolved after consideration by the Representatives or, after expiry of the foregoing time limit, shall be referred to arbitration in accordance with Clause 17.2.

17.2 Subject to Clause 17.1 above, either party shall give to the other notice of the existence of such dispute or difference specifying the point at issue, and the same shall be referred to an arbitrator to be agreed upon, or failing agreement within 30 days of such notice, to an arbitrator appointed on the application of either party by the President of the Institution of Electrical Engineers. The arbitration shall be conducted in accordance with the appropriate Arbitration Rules of the Chartered Institute of Arbitrators. The Contract shall in all respects be governed by and construed in accordance with the Laws of England and English Law shall govern the procedure of any arbitration, which shall take place in London, and any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof. Provided that if the Supplier has its Registered Office or a place of business in Scotland, notwithstanding the foregoing provisions of this Clause, the Contract shall be governed and construed in accordance with Scots Law and Scots law shall govern the procedure of any arbitration, which shall take place in Glasgow.

## **PART B: COMMISSIONING AND SERVICES**

In the event that the Purchase Order makes reference to the Supplier providing commissioning services or any other service of a type which might be classified as "construction operations" within the meaning of Section 105 of the Housing Grants Construction and Regeneration Act, then the following conditions (a) - (f) inclusive shall apply to the provisions of such services. The definitions in Part A of the Conditions of Order shall apply to this Part B of the Conditions of Order unless the context otherwise requires and except as follows:

"Conditions" means Part B of the Conditions of Order.

"Services" means any services which can be classified as "construction operations" within the meaning of Section 105 of the Housing Grants Construction and Regeneration Act 1996 and which are to be provided by the Supplier in relation to the Goods which have been supplied under the Contract.

"Defects Liability Period" means twelve months or such other period as may be specified on the face of the Purchase Order from the date of the conclusion of the provision of any Services.

The existing definitions of "Defects Liability Period" and "Goods" shall not apply to this Part B.

(a) The rights and obligations of the Purchaser and the Supplier in relation to the provision of the Services shall be governed by a contract which is separate and severable from the Contract and which shall be constituted by (i) the Purchase Order insofar as relating to the Services and (ii) this Part B of the Conditions of Order. The contract for the Services shall be in addition to the Contract and the enforcement of rights by either the Purchaser or the Supplier under the Contract shall be independent of any entitlement which the Purchaser or Supplier has to enforce its rights under the contract for the Services.

- (b) The Purchaser shall pay the Supplier the amount stated in the Purchase Order for the Services (the "Commissioning Cost" or the "Services Cost"). The Commissioning Cost or the Services Cost shall be distinct and separate from the Contract Price and shall be payable separately from the Contract Price in accordance with sub clause (c) of this Part B of the Conditions of Order.
- (c) The amount payable under sub-clause (b) above shall be due 30 days after completion of the Services ("the Due Date"). The final date for payment shall be 30 days after the Due Date.
- (d) In the event that the Purchaser fails to pay any sum properly due to the Supplier hereunder, or any part thereof, by the Final Date for Payment the Sub-Contractor shall be entitled to be paid simple interest on the unpaid sum for the period commencing on the day following the Final Date for Payment until the date of payment of the unpaid sum. The rate of interest shall be three per cent (3%) over the base lending rate of The Royal Bank of Scotland plc which is current on the date when such simple interest starts to run. In the event that the rate of interest referred to in this Clause (d) is held not to be a substantial remedy (within the meaning of section 9 of the Commercial Debts (Interest) Act 1998 (and any regulations made pursuant thereto) there shall be substituted such higher rate of interest as is necessary to ensure that it is a substantial remedy (within the meaning of section 9 of the said Act).
- (e) The Services shall be carried out in accordance with the best industry practices and in accordance with any terms stated in the Purchase Order and shall be performed to the satisfaction of the Purchaser and (where appropriate) the Client.
- (f) The provisions of Clauses 2, 6, 10, 13, 15, 16 and 17 of Part A of the Conditions of Order shall apply *mutatis mutandis* to the performance of the Services and the contract for the Services.