

**SEH FRENCH CONSTRUCTION LIMITED & SUBSIDIARY COMPANIES
TERMS AND CONDITIONS FOR PURCHASE OF MATERIALS OR EQUIPMENT**

1 Interpretation

In these terms and conditions the following expressions shall have the meanings shown: "Conditions" the terms and conditions of purchase set out herein and overleaf "Contract" the Order, Conditions, any documents which are attached or referred to in the Order and any relevant quality programme of the Supplier, which shall supersede any previous agreement between the Company and the Supplier in relation to the matters dealt with in the Contract "Documents" plans, photographs, documents, models, patterns, samples, specifications, data, technical information or any other document relating to the Goods, whether written or oral or three-dimensional "Order" this order including all related Documents

2 Basis of Purchase

- 2.1 The Order constitutes an offer by S E H French Construction Ltd (the "Company") to purchase the materials, articles and equipment as specified overleaf (the "Goods") from the person, firm or company to whom the Order is addressed (the "Supplier") subject to the terms of the Contract.
- 2.2 The Conditions shall govern, and be incorporated in, every contract or other course of dealings made or undertaken by the Company with the Supplier to the exclusion of any other express or implied terms and conditions on which any quotation has been given to the Company or subject to which the Order is accepted or purported to be accepted by the Supplier, and any similar provision in the Supplier's terms and conditions shall be of no effect.
- 2.3 Subject to condition 3.2, and unless specified otherwise in the Conditions, the Contract may only be modified in writing signed on behalf of the Company by an authorised person and no other action on the part of the Company, whether by accepting the Goods or otherwise, shall be a variation of the Contract.

3 Ordering Procedure and Orders

- 3.1 Any forecast of the Company's likely requirements, dates or frequency of delivery of Goods ("Forecasts") shall not be binding.
- 3.2 The quality and quantity of, and Documents relating to the Goods and the date and place of delivery may be altered by the Company from time to time by written notice to the Supplier. If the Company so requests, the Supplier shall provide a reasonable sample of the Goods to the Company.
- 3.3 No Order shall be binding on the Company unless and until it has been accepted by the Supplier and bears the Company's order reference number. This Order shall be automatically withdrawn if the Supplier has not accepted it within 30 days of the date as stated overleaf.
- 3.4 The Supplier shall immediately inform the Company if the Supplier knows or believes that (i) any Goods for which the Company has placed a Forecast are, or are likely to be out of stock or it will not be, or is unlikely to be, able to deliver all or any of the Goods by the date required; or (ii) it will not be, or is unlikely to be, able to deliver all or any of the Goods by the date required on the Order and the Company shall be entitled to cancel any Order placed without liability and without prejudice to any other right or remedy.
- 3.5 The Supplier shall quote the Company's order reference number on all dispatch or consignment notes, advice notes, invoices and any other documentation related to the Contract.

4 Deliveries

- 4.1 All Goods shall be delivered Carriage and Insurance Paid (in accordance with Incoterms 2000) to the address specified overleaf or otherwise notified to the Company ("Delivery Address")
- 4.2 The Goods ordered by the Company shall be at the Supplier's risk until the Goods are received and signed for by the Company at the Delivery Address and until then the Supplier shall insure the Goods to their full replacement value.
- 4.3 Delivery shall be made by the Supplier at the dates and times as specified overleaf or as otherwise agreed.
- 4.4 The title and risk in the Goods shall pass to the Company on receipt of the Goods at the Delivery Address, except where payment for the Goods has been made prior to delivery, in which case title shall pass to the Company when payment is made and the Goods are appropriated to the Contract.
- 4.5 Time shall be of the essence in respect of the obligations of the Supplier.
- 4.6 The Supplier shall ensure that all Goods delivered are accompanied by a dispatch or consignment note and a packing note clearly quoting the Order reference number and that a duplicate is sent to the address as specified overleaf at the time the Goods are dispatched. Any indication by the Company on delivery that a consignment accords with the consignment note shall not be taken as indicating that the Company has accepted the Goods.
- 4.7 If the Goods are to be delivered by installments, the Contract will be treated as a single contract and not severable.
- 4.8 The Company shall be entitled to reject any Goods delivered which are not in accordance with the Contract within 30 days of the date of any defect coming to the attention of the Company.
- 4.9 The Company shall not be obliged to return any packaging, crates or packing materials to the Supplier.
- 4.10 If any Goods are rejected or are in excess of the quantities ordered the Supplier shall forthwith collect them from the Delivery Address at its own expense and risk in such Goods shall pass to the Supplier when they are tendered for collection by the Company. If the Supplier fails to collect Goods in accordance with this condition, the Company may charge the Supplier all reasonable storage and transport costs of the Goods.
- 4.11 The Defects Liability Period as specified overleaf (the "Defects Liability Period") shall commence on the commencement of the Company's defects and liability period as set out in the relevant Main Contract (as defined in condition 5.4) (or, if there is no Main Contract or the commencement of the Company's defects and liability period is not specified in the Main Contract, on such other date as the Company shall specify). The Company may at any time prior to the expiry of the Defects Liability Period request the Supplier to replace any defective Goods as soon as reasonably practicable. No adjustment shall be made to the Price in respect of such adjustment.
- 4.12 No storage charges or other charges shall be charged by the Supplier if delivery is delayed by the Company for reasons that are reasonably beyond its control.
- 4.13 Delivery Vehicles to be registered with FORS or CLOCS [or equal Organization] where possible.
- 4.14 All delivery operatives are to wear adequate and suitable PPE whilst carrying out their duties on all S E H French Construction Ltd sites. A minimum standard of Personal Protective Equipment (PPE) shall consist of:
 - 1) Safety Helmet conforming to BS5240 or BS EN397
 - 2) Safety Footwear conforming to BS1870 Pt1 or BS EN345
 - 3) High Visibility Waistcoat conforming to BS EN471 Class 2
 - 4) Safety Eye Protection (minimum standard to EN166.IF)
 - 5) Safety Gloves (minimum standard to EN388) (Marigold Px130 or similar)

All PPE must comply with Personal Protective Equipment (EC Directive) Regulations 1992. Failure to comply will result in no admission onto site.

5 The Goods

- 5.1 The Supplier shall ensure that the Goods and any design which forms part of them shall:
 - i. be fit for the purpose for which they are expressly and impliedly supplied and commonly used during the design life as specified overleaf
 - ii. comply with all aspects of the Contract and the Main Contract, including without limitation as to the description, specification, quality, quantity and condition
 - iii. correspond with any sample provided
 - iv. be of satisfactory quality and the best of their kind
 - v. at all times conform with all relevant legal requirements, any relevant British Standards and codes of practice
 - vi. be fully compatible with any goods, material and equipment to which the Company proposes to adjoin, affix or otherwise use with the Goods
 - vii. be to the reasonable satisfaction of the Company and/or any person appointed in connection with the Main Contract
- 5.2 The Supplier shall (a) advise the Company if any Goods require the Company to take any special step or make any special provision in order to comply with any statutory requirements and (b) provide the Company with information concerning any dangerous property associated with the Goods likely to be encountered as a result of the use for which it is being supplied, including an assessment of its risk including the manufacturer's recommended application and symptoms associated with effects of over-exposure, together with the controls and safety procedures that are required for its use and hazard data sheets and all such information shall be provided at regular intervals and in any event when reasonably required by the Company.
- 5.3 Without prejudice to any other right or remedy, if Goods are not supplied in accordance with the Contract then the Company shall be entitled to require the Supplier to supply replacement Goods in accordance with the Contract as soon as practicable and in any event within 5 days.
- 5.4 The Supplier will indemnify and keep indemnified the Company on demand against all claims, loss, costs, damage and expenses which it incurs or which are brought against the Company directly or indirectly as a result of or arising in connection with (a) the Goods not being delivered in accordance with and/or not being or performing in accordance with the Contract including but not limited to any sums paid under any contract under which the Company is engaged to execute or procure plant and/or works and/or any specifications, conditions of contract and documents of a similar nature prepared for any such plant and/or works ("Main Contract") which Main Contract may be inspected on reasonable notice at the address as specified overleaf subject to the Company's right to withhold details of prices or any other confidential information (b) loss of or damage to the Information (as defined in condition 10) which is at any time in the Supplier's possession or control (c) any claim that the Goods or their importation, use or resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person (d) any liability under the Consumer Protection Act 1987 in respect of the Goods (except to the extent caused by the Company's negligence) (e) any claim arising from injury to any person or damage to property arising from the use of the Goods or the fulfillment of the Contract or sustained by the Supplier (except to the extent caused by the Company's negligence) (f) the removal of Goods and reinstallation of non-defective Goods should a defect in the Goods not be discovered until the Goods have been incorporated into other goods or works or until the Goods fail to perform

- 5.5 If so required by the Company the Supplier shall provide a Guarantee Bond in such form as the Company may reasonably require from a first class Bank or Insurance Company to warrant that the Goods shall comply with the Conditions. The Bond shall provide sufficient funds to allow the Company to obtain the Goods from an alternative Supplier at no additional cost to the Company if they do not so comply.
- 6 **Price**
- 6.1 The price of Goods shall be as stated overleaf (the "Price") and, unless otherwise stated shall be (i) exclusive of any applicable VAT (which shall be payable by the Company subject to receipt of a VAT invoice) and inclusive of all charges for crates, packaging, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, taxes or levies other than Value Added Tax.
- 6.2 The Company shall be entitled to the benefit of any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.
- 7 **Payment**
- 7.1 The Supplier may invoice the Company with the Price on or at any time after delivery of the Goods in accordance with the Contract. Each invoice shall quote the order reference number and be accompanied by a detailed statement of the Goods to which the invoice relates and the dates delivered.
- 7.2 The Company shall pay the Price within the time as stated overleaf.
- 7.3 Subject to the receipt of a VAT invoice payment for the goods will become due 50 days after the end of the month in which delivery takes place or in accordance with other agreed terms between the Company and the Supplier. The Supplier shall quote the purchase order number on all invoices and shall send a statement to the Company at the end of the month following delivery.
- 8 **Termination**
- 8.1 The Company shall be entitled to cancel the Contract with immediate effect at its convenience without fault on the part of the Supplier in respect of all or part of the Order at any time. If the Company exercises this right of termination, the Company's sole liability shall be to pay the Supplier the reasonable direct costs incurred in connection with the cancellation of the order and the Company shall not be liable to the Supplier for any loss of profit, business, contracts or revenues whether directly or indirectly arising from such termination.
- 8.2 The Company shall be entitled to terminate all or part of the Contract with immediate effect by written notice if (a) the Supplier becomes unable to pay its debts within the meaning of sections 123 or 268 of the Insolvency Act 1986 (as amended or re-enacted) passes a resolution for winding-up or has a petition for a winding-up or administration order presented in relation to it, or has a receiver, liquidator or administrator appointed over all or any part of its property or makes a proposal for a voluntary arrangement with its creditors or if any event analogous to any listed in this condition 8.2(a) or if the Company reasonably apprehends that any of the events listed in this condition 8.2(a) or similar thereto is about to occur in relation to the Supplier or (b) if the Supplier commits a material breach of the Contract or any other contract between the Company and the Supplier and in the case of a breach which is capable of remedy, fails to remedy the same within 30 days of a request to do so by the Company (c) if the requirements of the Main Contract are varied or reduced or if the Main Contract is terminated. If the Contract is terminated pursuant to condition 8.2, the Company shall not be liable to the Supplier for any costs or damages as a result of such termination and if part only of the Contract is terminated there shall be a pro rata reduction in the Price.
- 9 **Progress, Inspection and Testing**
- 9.1 The representative(s) of the Company shall at all reasonable times be granted access to the premises of the Supplier for the purpose of determining progress in the execution of the Order, inspecting the Goods at all stages of manufacturing and packaging, and (where possible) witnessing or carrying out tests. Such representative shall have no authority to accept Goods and any inspection shall not be an acceptance of the Goods. The exercise by the Company of its rights hereunder shall not absolve the Supplier from its obligations under the Contract.
- 9.2 At regular intervals during the design and manufacturing process the Supplier shall provide to the Company a detailed progress report giving details of the progress to date and likely completion of the Contract together with any further details reasonably requested by the Company in connection with the supply of the Goods.
- 10 **Date reliance warranty**
- 10.1 The Supplier hereby warrants that where any of the Goods include time and/or date processing or reliant components or software, such components and/or software will process times and/or dates accurately and efficiently so that neither the performance nor the functionality of the Goods is affected by such reliance and so that no value or expression of any date will cause any interruption in the operation of such Goods.
- 10.2 To the extent that the Supplier fails, in any respect, to comply with the warranty given in condition 10.1, the Supplier shall indemnify and hold the Company harmless against any loss, damage or expense sustained or incurred, directly or indirectly, by the Company as a result of such failure.
- 11 **Ownership of Property**
- 11.1 During the term of the Contract and after termination, except as required by law or by any relevant national or supranational regulatory authority, or to the extent that information has come into the public domain through no fault of the Supplier, the Supplier shall treat as strictly confidential all information and intellectual property rights provided to it by the Company (the "Information"). The Company (i) will not use nor permit the use of the Information for the production, manufacture or design of any goods or materials other than the Goods ordered from time to time by the Company (ii) will refer to the Company enquiries for goods or parts thereof intended to be replacements for the Goods; (iii) it will at the request of the Company at any time immediately deliver to the Company all or any of the Information and all copies thereof.
- 11.2 All Information created, prepared or provided by the Supplier for the purposes of or in connection with the Contract shall, at the option of the Company (which it may exercise at any time in its absolute discretion), be assigned to the Company absolutely by the Supplier, with full title guarantee at such reasonable cost as the Company may specify.
- 12 **General**
- 12.1 Any notice given under the Contract Conditions shall be in writing addressed to the other party at its registered office, principal place of business or other address as may be notified.
- 12.2 No waiver by the Company of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach or any other provision.
- 12.3 The Supplier shall not assign, hold on trust or sub-contract any part of the Contract.
- 12.4 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract shall not be affected.
- 12.5 If any dispute between the Company and the Supplier cannot be resolved amicably, at the Company's option, the matter may be referred to an appropriate professional body for adjudication in accordance with version 1.3 of the TeCSA rules for adjudication as such rules may be amended from time to time. If any dispute arises under the Contract concerning the same or substantially the same facts and matters as any dispute between the Company and any other person which has been referred to adjudication pursuant to Section 108 of the Housing Grants Construction and Regeneration Act 1996, the Company and the Sub Contractor agree that such dispute may be dealt with in the same adjudication proceedings.
- 12.6 Neither party shall be liable to the other for any default under the Contract caused by war, fire, flood, riot, drought, governmental action or act of God ("Force Majeure Event") provided that the Supplier shall immediately inform the Company of the existence of any Force Majeure Event and the Company shall be entitled to cancel the Order (or any part of it) without liability and without prejudice to its other rights and obligations where the Force Majeure Event subsists for a period of 10 days or more.
- 12.7 The Supplier shall not without the prior written permission of the Company advertise or announce that it supplies Goods to the Company and shall discontinue any advertisement or announcement on demand.
- 12.8 The Supplier will at all times insure and keep itself insured with a reputable insurance company in respect of all liability which it may incur to the Company under the Contract and in respect of the Goods and shall produce on request by the Company the policy of such insurance and the premium receipts.
- 12.9 The Contract shall be governed by and construed in accordance with the laws of England and, subject to the provisions of condition 12.5, the parties submit to the exclusive jurisdiction of the English courts.
- 12.10 Unless expressly provided, no express term of the Contract or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 12.11 If there is any conflict between the provisions of the documents comprising the Contract, the following shall prevail in descending order of priority (i) any written contract negotiated and agreed between the parties (ii) the Order form overleaf (iii) the Documents (iv) the Conditions.
- 12.12 All rights and obligations of the parties shall cease to have effect on termination of the Contract except where otherwise stated and provided that termination shall not affect any accrued rights, remedies and obligations of the parties at the date of termination.