

# Conditions of Order

## 1. DEFINITIONS

The following words have the following meanings:

- "The Company" means the Company first named overleaf.
- "The Supplier" means the person, firm or company that by the Contract sells or agrees to sell the Product(s).
- "The Contract" means the agreement made between the Company and the Supplier for the supply and purchase of the Product(s) in accordance with the terms of the Purchase Order and these Conditions of Order.
- "The Purchase Order" means the particulars on the face hereof.
- "The Product(s)" means the goods or equipment specified in the Purchase Order.

## 2. FORMATION OF CONTRACT

These Conditions of Order together with the Purchase Order will constitute the only terms of the Contract. All other terms and conditions are hereby expressly excluded.

## 3. PRICE

The Price to be paid for the Product(s) shall be that stated in the Purchase Order and/or to be calculated in accordance with the rates therein, and shall not be amended except in accordance with these Conditions of Order. Where the Purchase Order makes provision for variation of the Price, no increase in the Price will be effective unless and until the Supplier gives and the Company receives notice in writing of the grounds which will result in the increase. Any increase shall only be valid when confirmed in writing by the Company. On receipt of the notice, the Company may terminate the Contract by written notice to the Supplier within 28 days of receipt of the notice of the increase and the Contract shall be terminated without further liability on either party but without prejudice to any antecedent breach of contract. Any notice from the Supplier shall be sent to the place of delivery and to the head office of the Company.

## 4. PAYMENT

- The time of payment shall be 60 days following the end of the month in which the Product(s) were delivered.
- Inattention to the following details will result in delay in payment, but no prompt payment discount shall be lost by the Company by reason of the Suppliers inattention. These details are:
  - To send to the place of delivery and so as to be received before delivery for each consignment such advices of despatch as shall be specified in the Purchase Order.
  - To send invoices and a monthly statement of account to the address specified within a reasonable time quoting invoice numbers applicable to each item thereon.
  - To mark clearly the company order number on the consignment package, packing notes, advice notes, invoices, monthly statements and all correspondence.
  - To provide all necessary operating and maintenance manuals.

## 5. DELIVERY

- Delivery shall be made as required and in a manner specified by the Purchase Order and shall be accompanied by a delivery note. In respect of goods consigned by rail, an advice note shall be sent to the site office at the place of delivery so as to be received before delivery.
- The Company shall provide between the metalled highway and the point at which unloading is to be made a reasonably safe and proper access.
- The Company requires as a condition of the Contract that a Suppliers delivery note be clearly signed by a duly authorised site representative of the Company and the Supplier shall be responsible for obtaining such a signature and of depositing a copy of such signed note with him. In the event of there being a dispute concerning delivery the failure by the Supplier to produce such a signed note shall then be conclusive evidence that the Product(s) have not been delivered. The signing of a delivery note is proof of delivery only.
- These Conditions of Order shall be deemed to be governed by "Incoterms 2000" and any official amendments or additions thereto.
- Any risk of future loss or damage to the Product(s) unless due in whole or in part to the act, neglect or error of the Supplier (when the risk shall not so pass) and the property in the Product(s) shall pass to the Company upon completion of unloading and in accordance with the requirements (if any) of the Purchase Order and the due signing of the delivery note but:
  - Product(s) delivered in a damaged condition shall be replaced immediately without charge.
  - Property and any risk of loss or damage to Product(s) not in accordance with the Purchase Order shall not pass. The Company shall give notice within a reasonable time of any discrepancy or damage (as to which no duty of inspection shall be owed) and the property and risk therein shall remain with the Supplier.
  - Where the Product(s) are packaged or wrapped then the acceptance of the Product(s) will not be made until the Company has actually inspected and accepted them.
- The Supplier shall provide proper off-loading instructions and the Company will at its discretion provide reasonable assistance in the unloading of Product(s).
- Once the property in the Product(s) passes to the Company then the Supplier shall have no title or interest therein at law or in equity.

## 6. PROGRAMME

The time requirements for delivery specified in the Purchase Order shall be strictly complied with and shall be of the essence of the Contract. If no times are specified, then the Supplier shall within 7 days of notification by the Company agree to the Company's reasonable programme for delivery. If agreement is not reached, the Company may terminate the Contract and shall pay the Supplier only a fair price for the Product(s) delivered and used by the Company. Should the Company require to amend the time requirements for delivery, the Supplier shall use its best endeavours to comply with such amendments.

## 7. LIEN AND SET-OFF

- The Supplier shall not have any lien or any right to retain the Product(s) for any sums due by the Company to the Supplier under the Contract or any other contract.
- The Company reserves the right to deduct from or set-off against any monies due to the Supplier any loss, damage, expense or cost which the Company shall bona fide estimate in writing that Supplier will be liable to pay the Company under the Contract or any other contract.

## 8. SUPPLIER'S LIABILITY

- The Supplier shall be liable to the Company for and will indemnify the Company against all liabilities, demands, losses, damages, costs, claims expenses and interest made against, suffered or incurred by the Company arising out of any breach or non-performance of the Contract or any negligence of the Supplier.
- The Supplier shall make good by replacement or otherwise all defects in the Product(s) and shall bear all expenses incurred by the Company as a consequence of such defects.
- The Company reserves the right to terminate the Contract at any time and, in this event, provided that the termination is not by reason of the Supplier's default, the Supplier shall be entitled to be paid for the Product(s) actually supplied and/or work actually executed at the date of such determination. The Supplier shall not be entitled to any damages or other compensation by reason of such determination.

## 9. FORCE MAJEURE

In the event of the Supplier being unable to obtain delivery of raw materials from any available source or in case the Supplier is unable to make delivery or the Company is unable to accept delivery under the Contract owing to strike, lock out, fire, storm, tempest, flood, action of the Queen's enemies, riot, civil commotion, the Company may suspend the Contract by giving notice in writing to the Supplier to that effect. The Supplier as a condition of this Contract shall within 5 days of such happening first occurring give notice in writing to the Company with full particulars. If the circumstances leading to the suspension of the Contract shall continue for not less than one month

from the date of suspension the Company may by written notice sent to the Supplier cancel the Contract without penalty and without prejudice to any right of the Company subsisting at the date of cancellation.

## 10. VARIATIONS

- The specification and quantities within the Purchase Order may be subject to alteration at the instance of the Company and at its sole discretion. The Supplier will give effect to any such variation as soon as it is received by him.
- Where quantities within the Purchase Order are not materially amended, the rates contained in the Purchase Order shall continue to apply.

## 11. SUPPLIER WARRANTY

Notwithstanding anything contained in this contract the Supplier hereby warrants and undertakes that:

- The Product(s) shall be fit for the purpose for which they are supplied.
- The Product(s) supplied shall conform in all respect with any samples supplied and no such Product(s) shall vary from the sample unless expressly agreed in writing between the Company and the Supplier.
- The Product(s) supplied shall be of good quality.
- Upon delivery the Supplier shall pass to the Company a good unencumbered title to the Product(s).
- The Product(s) supplied do not infringe any intellectual property right of any third party.
- All Product(s) shall comply with the latest editions of all relevant British Standards, European Standards, Codes of Practice and any other relevant standard applicable to the Products.

## 12. DESIGN

The Supplier shall be liable to the Company for the design of the Product(s) to the extent that the Supplier has designed or will design the Product(s) including but without prejudice to the generality hereof:

- The design development of the Product(s).
- The selection of goods and materials in relation to the Product(s).
- The satisfaction of any performance specification or requirement expressed by or referred to by the Company or which may be inferred from a description of the Product(s) and the Supplier warrants to the Company that he has exercised and will continue to exercise in the design of the Product(s) all the reasonable skill, care and diligence to be expected of a competent professional designer who is experienced in carrying out such work for projects of a similar scope complexity nature and size to the project for which the Products are intended.

## 13. DATE RECOGNITION

The Supplier shall indemnify the Company against every liability which the Company may incur to any other person whatsoever and against all claims, proceedings, damages, costs and expenses made against or incurred by the Company by reason of the performance and functionality of all or any part of the Product(s) supplied by the Supplier not being capable of processing with accuracy and without interruption information containing dates or periods of time and shall be able to resolve any confusion and/or ambiguity as to century or leap years. Any claim under this indemnity shall, at the Company's option also constitute and be treated as a breach by the Supplier of the terms of the Contract.

## 14. SUPPLIER INSURANCE

- The Supplier shall effect and maintain the following insurances:
  - Third Party Insurance (including Product Liability) with an indemnity of at least £1 million, or such other agreed figure, in respect of any one claim or a number of claims arising out of one cause with the policy endorsed to indemnify the Company and any subsidiary and/or associated company of the Company as principals.
  - Professional Indemnity Insurance in respect of any professional liability that may arise under the Contract that the Supplier may have, for design or otherwise, with a minimum cover of £2 million or such other agreed figure.
- The Supplier shall insure the Product(s) in respect of physical loss or damage until delivery for their full replacement value and such policy shall be endorsed to indemnify both the Company and the Supplier as principals.

## 15. TESTING

The Company may carry out tests and inspections at the Supplier's premises by appointment prior to despatch of the Product(s).

## 16. SUB-LETTING

The Supplier shall not sub-let the Purchase Order or any portion thereof without the prior written consent of a duly authorised officer of the Company.

## 17. PLANT HIRE (when used as a plant hire order)

- The Product(s) are accepted on hire subject to complying in all respects with the current relevant statutory regulations. The Supplier will provide a fully competent operator with operated plant, when requested.
- Vehicles to be used on the public highway must be comprehensively insured, licensed and taxed to comply with relevant current statutory regulations. The Supplier will indemnify the Company against any claim whatsoever arising from a breach thereof.
- When no hire agreement is received by the Company, the above plant is accepted on hire under CPA conditions only.
- As all excavators may be required to be used as occasional cranes, a copy of the Exemption Certificate HSE Form no 2513 must be supplied with each machine.

## 18. INTEREST CHARGES

The Supplier will be entitled to interest on late payments at the rate of 2% per annum above the base rate for the time being of the Bank of England, which the Supplier agrees is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

## 19. STATUTORY REQUIREMENTS ETC

In performing its obligations, the Supplier shall comply with all relevant Acts of Parliament, any Instrument, Rule or Order made under any Act of Parliament, or any Regulation or Byelaw of any local authority or of any statutory body that has any jurisdiction with regard to the Contract. The Supplier shall also comply with all relevant recommendations of the Health & Safety Executive.

## 20. LAW AND JURISDICTION

The Contract is made under and shall be construed in accordance with English Law and the Supplier and the Company hereby agree to submit themselves to the jurisdiction of the Courts of England.

## 21. DRUGS AND ALCOHOL POLICY

The Company operates a drugs and alcohol policy to prevent the misuse possession or distribution of alcohol and/or illegal drugs in the workplace by its employees, contractors and subcontractors ("the Policy"). The Policy is contained in the documents entitled "Drugs and Alcohol Policy Statement" and "Drugs and Alcohol Organisation & Arrangements for Kier Group Operations in the UK", copies of which are available on the Company's website at [www.kier.co.uk/responsibility/hs3.asp](http://www.kier.co.uk/responsibility/hs3.asp) and the Supplier is deemed to have notice of the terms of the Policy.

The Supplier shall put in place a drugs and alcohol policy in all respects equivalent to the Company's Policy to ensure that when at the Company's place of work (including any site) any person performing the Supplier's obligations under the Contract ("the Supplier's Person") shall comply with the Policy. The Company shall have the right to refuse a Supplier's Person access to the Company's place of work where the Company has reasonable grounds for considering a Supplier's Person to be in breach of the Policy or its equivalent. Any failure by a Supplier's Person to act in accordance with the Policy or its equivalent shall be treated as a breach of this clause and the provisions of clause 8 of these Conditions of Order shall apply.

Save to the extent permitted by law the Company shall have no liability to the Supplier of whatsoever nature arising out of this clause.