

# CONDITIONS OF PURCHASE

## **1 Interpretation**

1.1 In these Conditions:

"Contract" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services

"BUKL" means Bunzl UK Limited trading as Greenham (Co. No. 2902454), the registered office of which is at York House 45 Seymour Street London W1H 7JT and the trading address of which is at 671 London Road, Isleworth Middlesex TW7 4EX.

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any supplemental terms and conditions agreed in Writing between BUKL and the Supplier and annexed hereto.

"Confidential Information" means all information obtained by one party from the other pursuant to this Contract which is expressly marked as confidential or which is manifestly of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure.

"Delivery Address" means the address stated on the Order

"Goods" means the goods (including any instalment of the goods or any part of them) described in the Order

"Order" means BUKL's purchase order to which these Conditions apply

"Price" means the price of the Goods and/or the charges for the Services

"Services" means the services (if any) described in the Order

"Specification" includes any specification, scope of work, terms of reference, plans, drawings, data or other information relating to the standard or supply of the Goods or Services

"Supplier" means the company or person to which BUKL's Order is addressed

"Writing" includes facsimile transmission, electronic mail and comparable means of communication.

1.2 In these Conditions, the headings are for convenience only and shall not affect their interpretation and the singular includes the plural and vice versa.

## **2 Basis of purchase**

2.1 The Order constitutes an offer by BUKL to purchase the Goods and/or to have the Services performed subject to these Conditions. BUKL's Order number must appear on all relevant correspondence and documentation issued by the Supplier.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to BUKL or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 The Order will lapse unless unconditionally accepted by the Supplier in Writing within the period specified by BUKL at or after the time of placing the Order. The Order can only be accepted by returning the acceptance/acknowledgement of Order supplied by BUKL, which should be done immediately on receipt, unless otherwise agreed by BUKL in writing.

2.4 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of BUKL and the Supplier.

## **3 Specifications/Scope of Work/Terms of Reference**

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by BUKL to the Supplier or agreed in Writing by BUKL. It is a pre-condition of this Contract and, in particular, any obligation to pay the Price of the Goods and/or Services that all Goods and Services supplied must be in accordance with legal requirements and standards applicable in the country of use or performance.

- 3.2 Any Specification supplied by BUKL to the Supplier, or specifically produced by the Supplier for BUKL, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, in any work or deliverable resulting directly or indirectly from the Services and in the Goods (if bespoke), shall be the exclusive property of BUKL. The Supplier shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 3.3 The Supplier waives all and any moral rights it may have now or in the future in any works created as part of the Services.
- 3.4 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing, export, import and delivery of the Goods and the performance of the Services.
- 3.5 The Supplier shall not unreasonably refuse any request by BUKL to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide BUKL (free of charge) with all facilities, labour, materials, power and instruments reasonably required for inspection and testing.
- 3.6 If as a result of inspection or testing BUKL is not satisfied that the Goods will comply in all respects with the Contract, and BUKL so informs the Supplier within 14 days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance. However, no inspection, testing or comment by BUKL shall relieve the Supplier of its obligations under the Contract.
- 3.7.1 The Goods shall be marked in accordance with BUKL's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.7.2 If required by BUKL, BUKL and the Supplier will before commencement of the Services each nominate an authorised representative who will be the prime point of contact and whose decisions will bind the parties for the purpose of the Order. The Supplier will implement appropriate methods and frequency of monitoring the progress of the Services and of the fulfilment of any phases of the Order, as specified by BUKL from time to time.

#### **4 Price of the Goods and Services**

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall:
- 4.1.1 be exclusive of any applicable value added tax (which shall be payable by BUKL subject to receipt of a VAT invoice); and
- 4.1.2 unless otherwise agreed in writing in advance, be inclusive of all charges for packaging, packing, export, shipping, import, carriage, insurance, delivery, off loading, erection and installation of the Goods to and at the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 The details of any quotation must be agreed in writing by BUKL before any purchase Order will be placed with the Supplier.
- 4.3 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of BUKL in Writing.
- 4.4 BUKL shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown in the Contract documents.

- 4.5 If during the Contract period, the Supplier quotes or charges a price lower than the Contract Price to a customer purchasing comparable quantities of goods similar to the Goods and/or Services then if BUKL has paid the Contract Price the Supplier will make an immediate repayment to BUKL of such amount as is equal to the difference between the Contract Price and the lower price charged to such customer or, if BUKL has not paid the Contract Price then the Contract Price shall be deemed to be varied and shall be such lower price.

## **5 Terms of payment**

- 5.1 The Supplier shall be entitled to invoice BUKL at the address stated at the top of the relevant Order on or at any time after delivery of the Goods or performance of the Services in accordance with the terms of the Specification and of this Contract, and each invoice shall quote the number of the Order. Invoices shall be submitted in duplicate.
- 5.2 Unless otherwise stated in the Order, subject to satisfactory delivery of the Goods and/or performance of the Services and subject to the rights of BUKL to set off and counter-claim, BUKL shall pay the Price of the Goods and the Services within the period stated in the BUKL Order or subsequently agreed in writing, or, if not so stated or agreed, within 60 days after the end of the month of receipt by BUKL of a proper invoice or, if later, after acceptance of the Goods or Services in question by BUKL.
- 5.3 BUKL shall be entitled to set off against the Price any sums owed to BUKL by the Supplier.

## **6 Delivery**

- 6.1 The Goods shall be delivered to and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during BUKL's usual business hours.
- 6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Supplier shall give BUKL reasonable notice of the specified date (which shall be the Supplier's then best date for delivery or performance).
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. Any costs, expense, liquidated damages or other liabilities of or incurred by BUKL arising from late or non-delivery shall be the responsibility of the Supplier.
- 6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently. The packaging of the Goods must be suitable to withstand conditions likely to be experienced during transport to and at the Delivery Address stated on the Order. These include, but are not limited to climatic variations of heat and cold. Packaging must also be re-sealable, to allow for customs and other inspections in transit.
- 6.5 Packaged Goods must be suitably marked and labelled, to make identification easier for customs and other purposes and to reduce the need for inspections during transit. Labelling must be appropriate and in accordance with legal requirements in the country of destination.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 BUKL shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until BUKL has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. The Supplier must submit to the Delivery Address a copy of its delivery note/work sheet which must be signed by an appropriate employee of BUKL acknowledging delivery/satisfactory completion of the Goods or Services before payment will be considered. BUKL reserves the right to make a claim for shortages or damaged stock notwithstanding having signed for satisfactory delivery.
- 6.7 The Supplier shall supply BUKL in good time with any instructions or other information required to enable BUKL to accept delivery of the Goods and performance of the Services.

6.8 BUKL shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by BUKL.

6.9 If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other remedy, BUKL shall be entitled to deduct from the Price or (if BUKL has paid the Price) to claim from the Supplier by way of liquidated damage for delay [5] per cent of the Price for every week's delay, up to a maximum of [25] per cent.

## **7 Risk and Property, Acceptance of Services**

7.1 Risk of damage to or loss of the Goods shall pass to BUKL upon delivery to BUKL at the Delivery Address in accordance with the Contract.

7.2 The property in the Goods shall pass to BUKL upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to BUKL once payment has been made and the Goods have been appropriated to the Contract.

7.3 On completion of the Services to the satisfaction of BUKL, the works performed shall be formally accepted by BUKL by the issue to the Supplier of a certificate in writing to this effect. The date of the issue of the certificate shall be the "Acceptance Date".

## **8 Warranties and liability**

8.1 The Supplier warrants to BUKL that at the time of delivery and for [12] months from the time of first use of the Goods or reliance on the Services, the Goods and/or Services:

8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier in Writing at the time the Order is placed;

8.1.2 will be free from defects in design, material and workmanship;

8.1.3 will correspond with any relevant Specification or sample; and

8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods (in both the country of export and the country of import, if applicable), including, without prejudice to the generality of the foregoing, the Food Safety Act 1990 and the Consumer Protection Act 1987 and any relevant Industry Standards, Code of Practice, British Standard or ISO standard.

8.2 The Supplier further warrants that:

8.2.1 at all times it will be responsible for the provision of transport for the Goods, its employees, sub-contractors or agents to and from the Delivery Address and ensure that any vehicle brought within the vicinity of such address has all necessary insurance cover ;

8.2.2 at all times ensure that vehicles arrive at the Delivery Address in good order and to BUKL's satisfaction and that vehicles comply with all regulations issued by the Government or Local Authorities, including Building (Safety, Health & Welfare) Regulations and with the Road Traffic Acts and any other applicable legislations, and on departure from the Delivery Address comply with the Highways Act 1980;

8.2.3 comply with the specific logistical requirements of the Delivery Address;

8.2.4 it will not change the Specification, packaging, labelling or site of manufacture of the Goods without the prior written consent of BUKL;

8.2.5 it will supply BUKL with such information as BUKL shall reasonably require to enable BUKL to satisfy itself that the Supplier shall insure and during the continuance of the Contract maintain insurance with a reputable insurer and on terms satisfactory to BUKL against all liabilities mentioned in these Conditions and shall further maintain employers and public liability insurance and provide, at BUKL's request, evidence satisfactory to BUKL that the Supplier has such insurances and that the level of cover of such insurances are satisfactory.

- 8.3 The Supplier warrants to BUKL that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for BUKL to expect in all the circumstances.
- 8.4 In addition to all other warranties contained herein or implied by law, the Supplier warrants that:
- 8.4.1 it has the skill and expertise to enter into, perform the obligations and give the warranties and undertakings specified in this Contract;
  - 8.4.2 it has the authority to act on behalf of all third party suppliers for the purposes of this Contract;
  - 8.4.3 it will continue to be in a position to support the deliverable(s) resulting from the Services for a period of not less than two (2) years from acceptance by BUKL if so required by BUKL.
  - 8.4.4 no software forming part of the Goods or resulting from the Services (including any bespoke software) contains or will contain any viruses, worms, trojan horses or other contaminants including but not limited to any codes or instructions that may be or will be used to access, modify, delete or damage any data files or other computer programs used by BUKL. For such purpose, the Supplier warrants that it has, prior to any software installation and prior to delivery of the software and bespoke software and all updates thereto, used the most comprehensive and up-to-date virus checker. The Supplier will indemnify BUKL for any loss or damage suffered as a result of any breach of this provision.
  - 8.4.5 it is adequately insured for all liabilities specified herein.
  - 8.4.6 any design or work forming part of the Goods or created through the provision of the Services will be original and that the Supplier will not infringe any third party copyright or other intellectual property rights in the course of performing its obligations under this Contract.
  - 8.4.7 where applicable, neither the performance nor functionality of the Services and any software or other deliverable supplied under this Contract shall be affected by dates prior to, during and after the year 2000 and they shall conform to the BSI definition of conformity (DISC PD 2000-1)
  - 8.4.8 where applicable, all Goods and any deliverables comprising software will be capable of converting accurately to and from the euro.
- 8.5 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then BUKL shall be entitled:
- 8.5.1 to require the Supplier, at BUKL's sole option, to repair the Goods or to supply replacement Goods or Services in accordance with the Contract, including all transit, freight and insurance costs and expenses from the destination stated on the order and return to that destination, within 14 days; or
  - 8.5.2 at BUKL's sole option, and whether or not BUKL has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- 8.6 The Supplier shall indemnify BUKL in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by BUKL (including death or personal injury, direct loss and damage, loss of profits and indirect or consequential loss or damage) as a result of or in connection with:

- 8.6.1 breach of any warranty given by the Supplier in relation to the Goods or the Services:
- 8.6.2 any claim (including but not limited to any claim for royalties) that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by BUKL;
- 8.6.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 8.6.4 any breach of Contract, negligence or breach of statutory duty in relation to the Goods or Services;
- 8.6.5 any act or omission of the Supplier or its employees, agents or sub-contractors in designing, supplying, delivering and installing the Goods; and
- 8.6.6 any act, omission or default of the Supplier or any of the Supplier's employees or agents in connection with the performance of the Services.
- 8.7 Without prejudice to the generality of clause [8.6], any money paid by BUKL to the Supplier in respect of any rejected Goods not replaced by the Supplier or any faulty workmanship shall be repaid by the Supplier to BUKL within seven days of a written request by BUKL and the Supplier shall upon demand indemnify BUKL against additional expenditure over and above the price of the rejected Goods and/or of the faulty workmanship incurred by BUKL in obtaining other goods or services in replacement.
- 8.8 In the event that the Services Goods, software or any other deliverable or any part thereof fails to be accepted or to satisfy BUKL's requirements (of which BUKL will be the sole judge), BUKL will be entitled, in addition to any other rights it may have under this Contract or in law, to have assigned to it all intellectual property rights in any work in progress and the material created by the Supplier up to the date of failure to be accepted by BUKL and to have another supplier or developer complete the Services, Goods software and deliverables. The Supplier will be liable to refund immediately any monies paid by BUKL for such rejected Services, Goods software and/or deliverable or part thereof and to indemnify BUKL for (a) all additional fees, costs and expenses for completion of the Services, Goods software and deliverables and (b) all liabilities to third parties arising from the Supplier's failure.
- 8.9 BUKL is relying wholly and exclusively upon the Supplier's skill, judgment and expertise for the purposes of this Contract and accordingly the Supplier will be liable to BUKL for any loss or damage whatsoever, howsoever or wherever caused arising directly or indirectly in connection with this Contract, the Goods and/or Services and any deliverable.
- 8.10 Neither the Supplier nor BUKL shall be liable to the other or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control ("force majeure"). If the force majeure continues for [4] weeks, BUKL shall be entitled to terminate this Contract by notice taking immediate effect, without liability to the Supplier.

## **9 Manufacturers' Guarantees**

- 9.1 The Supplier will ensure that all manufacturers' guarantees given to the Supplier in relation to any proprietary items incorporated in the Goods or any of the Goods which are not of the Supplier's manufacture or used in the provision of the Services continue to be valid without restriction of any kind and will assign the benefit of such guarantees to BUKL or to such person as BUKL may direct.

## **10 Delivery Address**

- 10.1 The Supplier warrants that in the design, manufacture, supply and installation of the Goods and/or performance of the Services (including all work at the Delivery Address) it will comply with the duties imposed on it by the Health & Safety at Work Act 1974 or any amendment thereto or re-enactment thereof and all other statutory provisions, byelaws, rules and regulations

so far as they are applicable to such address or the Goods and that it will perform the Contract so that no liabilities are incurred by BUKL under such statutory provisions, byelaws, rules and regulations or at common law.

- 10.2 Without prejudice to the generality of [10.1] above, the Supplier (together with any authorised sub-contractor) or any person employed by or carrying out work on its behalf shall comply with all requirements as to security on entering or leaving the Delivery Address and comply with any instructions of the Company or its authorised representatives pertaining to the carrying out of the Services at the Delivery Address

## **11 Termination / Cancellation**

- 11.1 BUKL shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time prior to delivery or performance, in which event BUKL's sole liability shall be to pay to the Supplier the Price for the Goods or Services in respect of which BUKL has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation (in each case as reasonably determined by BUKL).

- 11.2 BUKL shall be entitled to terminate this Contract without liability to the Supplier by giving notice to the Supplier at any time if:

11.2.1 the Supplier commits a serious breach of this Contract or repeats a breach after receiving notice from BUKL specifying the breach and requiring its remedy; or

11.2.2 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

11.2.3 a person or body with the benefit of a mortgage or charge takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

11.2.4 the Supplier ceases, or threatens to cease, to carry on business; or

11.2.5 anything analogous to any of the above occurs in relation to the Supplier in any jurisdiction; or

11.2.6 BUKL reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

- 11.3 Unless otherwise agreed by the parties, either party may give one month's prior written notice to the other to terminate any or all Contracts, without further liability to the other party, except as expressly set out in the Contract.

## **12 Confidentiality, Data and Trade Marks**

- 12.1 Each party shall treat as confidential all Confidential Information and shall not divulge such Confidential Information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is required to be disclosed by law or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If the Supplier shall appoint any sub-contractor then the Supplier may disclose Confidential Information to such sub-contractor subject to such sub-contractor giving BUKL a direct undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

- 12.2 In performing the Services under the Contract the Supplier may process personal data relating to BUKL's employees or customers. The Supplier hereby warrants to BUKL that in such circumstances it will observe the obligations pertaining to a data processor under the Data Protection Act 1998.
- 12.3 To the extent that it is necessary for the Supplier to use any of the registered or unregistered trade marks, service marks, trade names or brand names of BUKL ("Trade Marks") in relation to the supply of Goods or the provision of any Services or deliverable, the Supplier shall obtain the prior written consent of BUKL on each occasion of proposed use and shall comply with such stipulations and requirements as BUKL may impose from time to time in relation to the use of Trade Marks.

### **13 General**

- 13.1 The Supplier shall supply all documentation required by BUKL promptly including, but not limited to, acknowledgement/acceptance of Order, advice of delivery, delivery note, invoices in duplicate, packing list and insurance and shipping documents. The Supplier shall maintain systems to enable it to inform BUKL of the location of the Goods at any time during this Contract, including during any warranty claim.
- 13.2 The Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 13.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Hand delivered notices shall take effect on receipt, postal notices three working days after despatch and facsimile notices, electronic mail (or those sent by comparable means) shall be deemed received one hour after transmission, if still within normal business hours in the country of receipt or at 9.00 a.m. on the next business day, if not. In relation to electronic mail, such notice shall only be valid if the sender tracks the e-mail and does not receive an error or non delivery message.
- 13.4 The Supplier shall keep the fact of and details of this Contract strictly confidential and may not issue and press release or other information relating or referring to this Contract, BUKL, the Goods or Services, without the prior written consent of BUKL. BUKL may, having consulted with the Supplier, publicise its purchase of any Goods or Services in any manner it thinks fit.
- 13.5 No waiver by BUKL of any breach of this Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.7 This Contract shall be governed by and construed in accordance with English law. The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract promptly through negotiations between the respective senior executives of the parties who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through Alternative Dispute Resolution ("ADR") taking place in England. If the matter has not been resolved by an ADR procedure within 30 days of the initiation of such procedure (or such other period as the parties may agree), or if either party will not or ceases to participate in an ADR procedure, the dispute shall be referred to the exclusive jurisdiction of the English Courts.

13.8 This Contract is intended to confer benefits on BUKL and such other company or person as BUKL may specify in any Order and the Contracts (Rights of Third Parties) Act 1999 shall apply to that extent.