

The Seller's attention is specifically drawn to this clause.

This Order shall be subject to the terms and conditions stated below (including any supplementary conditions referred to therein) and shall be deemed to incorporate any Specification or other document referred to in the Order and a change notice pursuant hereto. References to the Seller's quotation in the Order shall not be construed to indicate acceptance of the terms and conditions contained therein. The Order shall be accepted upon receipt by the Purchaser of the acknowledgement, or, if earlier, upon the commencement of the Works by the Seller following receipt of the Order. Either of these events shall be deemed to be an express acceptance by the Seller to supply the Works upon the terms and conditions set out below. This shall override and exclude any terms or conditions proposed by the Seller save in so far that the Purchaser has expressly accepted them in writing as variations.

1. Definitions

"Purchaser" shall mean a Cochran group company, placing the Order, its successors and assigns.
"Seller" shall mean the person or company to whom the Order is addressed, including its successors and permitted assigns.
"Order" shall mean the Purchaser's official and valid written document used expressly for conveying original instructions and associated variations thereto that specify the extent of the Seller's supply and the conditions that will be applicable in all respects to effect completion of the Works.
"Works" shall mean all plant, goods, equipment and services of every kind and work to be done by the Seller under the Order.
"Delivery" shall mean delivery to the point specified in the Order.

2. Terms of Payment

- (a) The Purchaser shall make payment to the Seller in accordance with this Order, 60 days from receipt of a valid invoice, unless previously agreed in writing by the Purchaser.
- (b) The valid invoice is to be rendered to the Purchaser endorsed as complete shipment of the Works along with sufficient detail including Order/item numbers and documentation including appropriate signed receipts of delivery to enable the Purchaser to identify the Works to which the invoice relates.
- (c) All claims for additional expenses incurred by the Seller by reason of a delay, acceleration, or alteration of the Works by the Purchaser (otherwise than by reason of the default of the Seller or as a consequence of a cause outside the control of the Purchaser) must be submitted to the Purchaser fully documented no later than one month after the Purchaser's instruction relating thereto, or otherwise the cause thereof. Failure to comply with this provision will result in the rejection of any invoice which exceeds the value of this Order including the value of variations authorised by Purchaser's change notice.
- (d) The Purchaser shall be entitled to deduct from the payments due to the Seller under the Order, such sums for which the Seller is or may become liable under these conditions, and the Seller shall issue an appropriate credit note when called upon to do so by the Purchaser.

3. Security

If required by the Purchaser the Seller shall provide a surety, subject to the approval of the Purchaser, by way of guarantee for the due and faithful performance of the Works. Such guarantee to be binding notwithstanding variations, alterations or extensions of time as may be agreed in accordance with these conditions.

4. Sub-letting

The Seller shall not sub-let or assign this Order in part or in whole without the prior written consent of the Purchaser. This restriction shall not, unless otherwise stated, apply to sub-contracts for materials or minor details, or for any part of the works of which the makers or suppliers are named in the Order.

5. Quality Requirements

- It is a condition of this Order that:
- (a) The Works conform as to the quantity, quality, description and specification stated in the Order and/or attachments, schedules or other documents referred therein.
 - (b) The Works shall be new and in strict compliance with relevant British Standards or those specified by the Purchaser in this Order and of the best quality so as to be fit for the purpose for which they are required.
 - (c) The Works shall be supplied or performed by or on behalf of the Seller in accordance with the quality system standard ISO 9001:2015, in a manner consistent with the best practices of the industry in which the Purchaser is engaged. The Works shall be safe and without undue or unreasonable risk to health when used.
 - (d) EC Directives: Unless separately agreed by the Purchaser in writing, all Works are to be supplied and/or executed in strict compliance with all applicable EU Directives. Where necessary the Works shall be suitably CE marked and accompanied by EU Certification of Conformity, supported by the appropriate technical file. If the Seller considers that their Works are exempt, then they are to advise the Purchaser in writing of all the relevant details.

6. Intellectual Property

The Seller grants to the Purchaser the irrevocable, non-exclusive, perpetual, worldwide, royalty-free right and licence, with the right to grant sub-licences, to possess and use any of the Seller's intellectual property rights contained in the Works, including the right to import, export, operate, sell, maintain, modify and repair the Works. The Seller warrants that the Works, their importation, use or resale do not infringe any patent, copyright, design right, trade mark or other intellectual property rights of any third party.

7. Inspection

- (a) The Purchaser or their nominee shall have the right to inspect the Works and the Seller's drawings relating thereto at any time and to nominate such tests as may be necessary to prove the performance and sufficiency of the Works. Such inspections, tests and/or approval of drawings shall not relieve the Seller of any of his obligations under this Order. The Seller where required by the Order shall promptly provide test certificates.
- (b) The Seller shall at their expense provide all necessary supplies of labour and facilities to enable tests and inspections to be carried out.
- (c) Times and dates for the conduct of specific tests shall be agreed by the Purchaser and may be varied by the Purchaser at their discretion, after consultation with the Seller.
- (d) The Purchaser shall have the right to reject the Works or any part thereof, which does not in their opinion conform to the requirements of this Order. Failure to reject the Works or any part thereof shall not prejudice the Purchaser's right to reject the same at any stage until final acceptance by the Purchaser's client.

8. Programme

The Seller shall submit to the Purchaser for approval, within the times named in the Order, such drawings, samples, patterns, models and programmes as may be called for therein. Any expenses resulting from an error or omission in any form, delay in delivery of the drawings and information shall be borne by the Seller.

9. Delivery

It is a condition of this Order that:

- (a) Delivery of the works shall be completed at the time and in the sequence at the place and in the manner specified in this Order, including packaging to the Purchaser's requirements.
- (b) All Works to be supplied by the Seller under this Order shall be at the Seller's risk until Delivery has been completed in accordance with this order.
- (c) Any Works delivered in error, rejected Works or surpluses in excess of trade practice will not be charged to the Purchaser and may be returned to the Seller at the Seller's expense.
- (d) Unless agreed otherwise by the Purchaser, all shipments and deliveries of the Works are to be complete and to the Order requirements.

10. Property

Ownership of the Works shall pass to the Purchaser when any payment in respect thereof is made to the Seller, or the works or any part thereof are allocated to the Purchaser, or upon Delivery, whichever is the earliest. The Seller warrants that the title given to the Purchaser is free of any charge or encumbrance or defect whatsoever. The Seller hereby indemnifies the Purchaser against any claim as to title to the works passed or purported as to title to the Works.

11. Forwarding Instructions and Documentation relating to Delivery

The Seller shall be responsible for obtaining forwarding instructions from the Purchaser, or their nominee, in order to comply with the obligations for delivery. The Seller shall provide the following documents as a minimum, unless stated otherwise on the Order.

- (a) Advice notes - Two (2) copies to be posted to the Procurement Dept. at the invoice address.
- (b) Packing note - One (1) copy, stating the Purchaser's order number to which the items refer and the Seller's name and address, must accompany the goods.
- (c) Shipping specifications - To be submitted as per the instructions on the Order.

12. Defects in the Works after Delivery

- (a) At the Purchaser's option the Seller shall, with all speed, make good by repair or by the supply of a replacement part, any defect which under proper use develop in the Works within the period commencing with the date of Delivery and ending after 8000 hours commercial operation but not later than twenty-four calendar months after the Works have been put into commercial use ("Defects Liability Period"), or such other period as may be stated in the Order and which arise from faulty materials, workmanship or design (not being a design specified by the Purchaser for which the Seller has disclaimed responsibility).
- (b) Where the Purchaser requires the Works or any part thereof to be repaired or replaced hereunder the same shall be removed and the repaired Works or replacement Works shall be installed at the cost of the Seller within a time specified by the Purchaser. If the Seller cannot achieve this time, or in the opinion of the Purchaser, could default in attempting to do so, then the Purchaser is at liberty to correct the fault and charge the Seller for the cost incurred.
- (c) The Seller's liability under this clause shall not affect other rights the Purchaser may have arising from the Order.
- (d) Provisions of the like nature to 11(a), 11(b) and 11(c) shall apply in respect of repairs or replacements to defective parts of the Works.

13. Delay in Delivery

If the Seller shall fail to Deliver the Works in accordance with the Order within the time fixed by the Order for Delivery (or any extension thereof permitted by the Purchaser) there shall be deducted from the value of the Order, as liquidated damages, the percentage named in the Order of the value of the Order for each week or part of a week between the due date for Delivery and the actual date of Delivery. The amount so deducted shall not exceed the maximum percentage stated on the Order of the Order value, or the value of the Order if no percentage is stated. When liquidated damages are not an integral part of the Order the Seller shall indemnify and hold harmless the Purchaser from all claims, costs and losses resulting from the delay.

14. Indemnity and Insurance

The Seller shall indemnify and hold harmless the Purchaser against all direct and indirect liability, loss, damage or injury to, and costs and expenses (including legal expenses) by, the Purchaser or others arising out of the Seller's performance of the Works under this Order. The Seller shall maintain adequate insurance in respect of this indemnity including, but without prejudice to the generality of the foregoing: Public Liability, Professional Indemnity, Employers Liability, Goods in Transit and All Risks insurance policies. The Seller upon request by the Purchaser shall provide reasonable proof of the validity of the Seller's cover under the aforementioned and other policies.

15. Free Issue Materials

The Seller shall be responsible for the safety, proper use and, if appropriate, maintenance of free issue materials entrusted to them by the Purchaser and such materials shall be and remain the property of the Purchaser. The Seller shall use such materials safely for the purposes of the order and all surpluses shall be disposed of at the Purchaser's discretion. Waste of free issue materials arising from deterioration of finish and/or quality, bad workmanship or loss whilst in the custody of the Seller shall be made good at the Seller's expense.

16. Variations

The Purchaser may at any time by notice in writing to the Seller direct the Seller to alter, amend, omit, add to, or otherwise vary the Order and the Seller shall carry out such variations and be bound by the same conditions so far as applicable as though the said variations were part of the Purchaser's specified requirements. In circumstances where a change in the value of the Order is agreed by the Purchaser, revision of value and changes in payments consequent thereon will only be effected by an official change notice issued by the Purchaser. If such variation shall involve a cancellation in whole or in part of the Order then if the Seller is not in default under the Order the Purchaser shall make payment to the Seller of costs reasonably and properly incurred by the Seller in the performance of the Order at the date of such cancellation. Save as herein expressed the Purchaser shall not be liable to the Seller for payment of any compensation for such cancellation.

17. Law and Jurisdiction

The contract formed by this Order and its acceptance by the Seller ("Contract") and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the law of Scotland. The courts of Scotland shall have exclusive jurisdiction to settle any such dispute or claim.

SUPPLEMENTARY PURCHASE CONDITIONS 'A' – SITE WORK

These conditions are supplementary to the Purchaser's General Conditions of Purchase for Contract Plant, Goods, Equipment and Services and are incorporated into all Contracts which include Seller carrying out activities on Purchaser's, its customer's or end user's site.

A1. The General Conditions of Purchase for Contract Plant, Equipment and Services shall be modified as follows:

- (a) the term "Delivery" defined in clause 1 shall be deemed to include the activities defined in the Order as being the terminal point(s) for the Works.
- (b) The insurances required under clause 14 shall extend to cover the activities of the Seller's employees or agents whilst on site for any purpose including rectification of defects pursuant to clause 12. The Seller shall, unless otherwise directed in writing by the Purchaser, insure the Works as may for the time being be on site, in the joint names of the Seller and the Purchaser against loss or destruction by fire, explosion, lightning, earthquake, malicious and accidental damage, theft, flood, storm, tempest, aircraft and other aerial devices or articles dropped or falling therefrom for the full replacement value thereof.
- (c) The following words are to be added to clause 14. "The Seller shall properly cover up and protect until taken over under clause A.2.(f) of these Supplementary Conditions any section or portion of the Works liable to injury by exposure to the weather and shall take every precaution to protect the Works which shall arise from or be occasioned by any act of the Seller or by a failure of the Seller to comply with any obligation imposed on them by this clause shall be made good by and at the sole cost of the Seller."
- (d) Property in the Works shall also vest under clause 10 when any section or portion is delivered to the site.

A2. The following clauses shall be additional to the clauses contained in the General Conditions of Purchase for Contract Plant, Goods, Equipment and Services and are incorporated into the Contract.

- (a) The Seller shall at his own expense provide all equipment, materials, labour, supervision, haulage, power, tools, tackle and apparatus necessary for the proper execution of the Works. The Seller shall however be permitted to use for the execution of the works those supplies of electricity water and gas as are available to the Purchaser on the site subject to terms to be stipulated by the Purchaser.
- (b) The Seller shall be deemed to have examined the site, including but not limited to the Health and Safety requirements, this Order, these Purchase Conditions and specifications with such schedules, drawings and plans as are annexed thereto, or referred to therein and to have satisfied themselves before tendering as to the correctness and sufficiency of their tender for all matters, cost implications and things necessary for the timely and proper completion of the Works
- (c) The access to and occupation of the site shall not be exclusive to the Seller, but only such as shall enable the Seller to execute the works. The seller shall afford to the Purchaser and to other contractors every reasonable facility for the execution of other work concurrent with the works and shall carry out the Works without undue interference with the operations of the Purchaser or of the other contractors.
- (d) The Purchaser may direct the Seller to work outside normal working hours such as prevail in the district where the site is located. The Seller is deemed to be aware of the programme requirements of the Purchaser and the Purchaser's client and shall be responsible for adhering strictly thereto. The Seller shall work such hours as necessary to adhere to both completion dates and required order of completion of the Works.
- (e) The Seller shall be responsible for all constructional plant tools and tackle brought by them onto the site and for constructional plant tools and tackle loaned to them by the Purchaser. The Seller shall supply the Purchaser with a complete list of all constructional plant tools and tackle on arrival at site and all items on the list shall become vested in the Purchaser. In the event that the Purchaser shall assume their rights under clause 16 of the General Conditions of Purchase for Contract Plant, Goods, Equipment and Services title therein shall remain vested in the Purchaser until the Works are completed and the Seller shall not be entitled to remove items from the site until permitted to do so by the Purchaser.
- (f) The Works shall be deemed to have been completed in accordance with the Order when the Purchaser shall have taken over the Works by issuing a certificate to the Seller indicating that the Works are substantially complete. This certificate shall not however relieve the Seller of their responsibilities under clause 12 of the General Conditions of Purchase for contract Plant, Equipment and Services.

SUPPLEMENTARY PURCHASE CONDITIONS 'B' – EXPORT ORDERS

These conditions are supplementary to the Purchaser's General Conditions of Contract Plant, Goods, Equipment and Services and are incorporated into all Contracts where delivery point specified in the Order is outwith the United Kingdom.

B1. The General Conditions of Purchase for Contract Plant, Goods, Equipment and Services shall be modified as follows.

- (a) The term Delivery defined in clause 1 shall be construed as being in accordance with the express terms of the Order and any standardised abbreviations ordinarily used in the context of shipment shall be construed in accordance with "Incoterms 2020".
- (b) The insurances under clause 14 shall, where the context of the Order so requires extend to cover all risks from the time of despatch of shipment from the Seller's premises until 30 days after arrival at their ultimate overseas destination.

B2. The following clauses shall be additional to the clauses contained in the General Conditions of Purchase for Contract Plant, Goods, Equipment and Services and are incorporated into the Contract.

- (a) Consignments shall be suitably packed and protected for overseas shipment and delivered in accordance with the terms of the Order. All packing must be to BS1133-8:2011+A1:2016 as a minimum and where applicable must, in addition, comply with the Purchaser's relevant packing instructions. The Purchaser reserves the right to inspect packing and free access must be granted to the Purchaser or their nominee for this purpose. Any packing which does not comply with BS 1133-8:2011+A1:2016 and the Purchaser's packing instructions must be rectified at the Seller's expense.
- (b) Packages must be clearly marked by the Seller in accordance with the requirements of the Purchaser. The Purchaser may inspect all marking and any rectification they require will be carried out by the Seller, at the Seller's expense.
- (c) Invoices must state the country of origin of the goods to which they relate, bear any clauses required for import into the country of destination and be duly certified.
- (d) Any Customs fines or other charges including but not limited to demurrage on vehicles incurred due to incorrect information supplied by the Seller, or the Seller's failure to follow the Purchaser's instructions, will be for the Seller's account.

SUPPLEMENTARY PURCHASE CONDITIONS "C" – CONSTRUCTION CONTRACTS

These conditions are supplementary to the Purchaser's General Conditions of Contract Plant, Goods, Equipment and Services and are incorporated into the Contract, to the exclusion of any conflicting conditions contained elsewhere in the Contract, when the Contract is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 (as amended).

C1. The General Conditions of Purchase for Contract Plant, Goods, Equipment and Services shall be supplemented and modified as follows.

- (a) **Milestone Payments.** If the Order provides for milestone payments, the Purchaser shall make payments to the Seller on achieving each milestone ("Milestone") as set out in the Order. The Purchaser shall make the final payment to the Seller on achieving the final Milestone as set out in the Order. When the Seller considers that it has achieved a Milestone, it shall give a written notice to this effect to the Purchaser together with such evidence as may be reasonably necessary to demonstrate that the Milestone has been achieved. The Purchaser within 10 working days of receipt of such notice shall inspect the Works which are subject of the relevant Milestone and shall notify the Seller in writing either that the Milestone has been achieved, or that the Milestone has not been achieved, in which case the Purchaser shall give written particulars of the work which remains outstanding in order for the Milestone to be achieved. If the Purchaser fails to notify the Seller as provided in this clause, then the Milestone shall be deemed to have been achieved. On achieving a Milestone as set out above the Seller may apply to the Purchaser for the relevant milestone payment. Such payment application shall consist of an invoice in Seller's standard form containing sufficient details including the Order number along with the Purchaser's notice of achieving the relevant Milestone. The due date for each Milestone payment shall be within 30 calendar days from receipt by the Purchaser of the relevant Seller's invoice and the final date for payment shall be within 30 calendar days from its due date. Subject to any Pay Less Notice given by the Purchaser under clause C1(b) the sum to be paid by the Purchaser shall be the sum stated in the Milestone Payment application.
- (b) **Pay Less Notices.** If the Purchaser intends to pay less than the sum stated as due from him in a Milestone payment application, he shall not later than 10 working days after receipt of the application, give the Seller notice of that intention specifying both the sum that it considers to be due to the Seller at the date the notice is given and the basis on which that sum has been calculated.
- (c) **Suspension of Performance by Seller.** If the Purchaser fails to pay the Seller a sum payable in accordance with clause C1(a) above by the final date for payment and the failure continues for 10 working days after the Seller has given the Purchaser notice of his intention to suspend the performance of his obligations under the Contract and the grounds thereof, the Seller may suspend performance of any or all of those obligations until payment is made in full.