

TERMS AND CONDITIONS OF PURCHASE OF PRATER LIMITED

1. Definitions

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

1.1.1 "Prater" shall mean Prater Limited (registered in England under company number 2107097);

1.1.2 "The Contract" shall mean the Order and the Seller's acceptance of the Order subject to these Conditions;

1.1.3 "The Order" shall mean Prater's written instruction to the Seller to supply the Goods and/or the Services, incorporating these Conditions and the Order form attached hereto and any other documents specified in the Order or in these Conditions;

1.1.4 "The Goods" shall mean any Goods agreed in the Contract to be purchased by Prater from the Seller (including any part or parts of them) or pursuant to or in connection with any Services to be supplied pursuant to the Order;

1.1.5 "The Services" shall comprise any Services the Seller agrees to supply to Prater, or pursuant to or in connection with any Goods to be supplied pursuant to the Order;

1.1.6 "The Seller" shall mean the person, firm, or company who accepts the Order;

1.1.7 "The Price" shall mean the price of the Goods and/or the Services;

1.1.8 "Principal Contract Works" means the project and/or construction (as applicable) of which the Goods and/or Services are intended to form part;

1.1.9 "The Premises" shall mean the place where the Services are to be performed and/or the Goods delivered as specified in the Order or by Prater from time to time.

1.2 In these Conditions:

1.2.1 references to the masculine include the feminine and the neuter and to the singular include the plural and vice a verse as the context admits or requires; and

1.2.2 the headings are for clarity only and will not affect the construction of these Conditions.

2. Interpretation of Contract

2.1 These Conditions are the only conditions upon which Prater is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms and conditions even though such other terms or conditions may be submitted in a later document or purport to exclude or supersede any terms or conditions inconsistent with them.

2.2 No variation of the Contract (or any of the documents referred to in it) shall be valid unless it is in writing and signed by both the Seller and an authorised representative of Prater.

2.3 If any provision of the Contract shall be found by any Court or administrative body to be invalid or unenforceable such invalidity or un-enforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect to the fullest extent permitted by law.

2.4 No waiver or forbearance by Prater enforcing any of its rights under the Contract shall prejudice or affect the ability of Prater to enforce such rights or any of its other rights at any time in the future. No waiver shall be effective unless it is in writing and signed by Prater.

2.5 Each Order for Goods and/or Services by Prater to the Seller shall be deemed to be an offer by Prater to purchase the Goods and/or the Services subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance in writing or impliedly by fulfilling the Order (in whole or in part) accepts the offer.

2.6 The rights and remedies provided by the Contract are cumulative and (subject as otherwise provided in the Contract) are not exclusive of any rights or remedies provided by law.

3. Quality and Fitness for Purpose of Goods

3.1 The Seller warrants that the Goods:

3.1.1 shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended), free from defects in design, manufacture, and workmanship and shall conform in all respects with the particulars specified in the Order, with any samples and in all respects with the requirements of any statutes, orders, regulations or by laws from time to time in force; and

3.1.2 shall in all respects be fit for the purpose held out by the Seller or made known to the Seller at the time the Order is placed.

3.2 The Seller shall allow Prater to have access to the Seller's premises at any reasonable time before delivery to inspect the Goods. For the avoidance of doubt, this does not absolve the Seller from its normal inspection and test procedures.

3.3 The Seller shall only use the designs, drawings and other intellectual property that is supplied to it by Prater for the purposes of the Contract and for no other purpose whatsoever.

3.4 Upon acceptance of the Order the Seller shall be deemed to have granted to Prater a non-exclusive licence to use and reproduce all drawings, technical drawings and other copyrighted material relating to the Goods and/or Services for the purposes of the Principal Contract Works.

4. Standard of Services

4.1 The Seller warrants and represents to Prater that:

4.1.1 the Services will be performed by appropriately qualified and trained persons in a good and workmanlike manner with all of the due speed, care, and diligence and to such high standards as it is reasonable for Prater to expect in all the circumstances;

4.1.2 prior to carrying out the Services and at all times it shall ensure that all of the necessary licenses, work permits or other authorisations have been obtained;

4.1.3 the Services shall at all times accord with Prater specifications in the Order unless otherwise agreed in writing by an authorised representative of Prater.

4.2 In the event that any two or more components of the Order are inconsistent or if the Seller has any uncertainty regarding the specifications of the Goods or Services in the Order then the Seller shall not proceed with the performance of the Order until it has contacted Prater and all inconsistency and/or uncertainty has been resolved.

5. Price

5.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

5.1.1 exclusive of any applicable value added tax; and

5.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies.

5.2 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 Prater in writing.

5.3 Prater shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase as is specified in the Order or otherwise agreed in writing between the parties or that is customarily granted by the Seller to its customers, whether or not shown on its own terms and conditions of sale.

5.4 The Seller acknowledges that the scope of the Principal Contract Works is beyond the reasonable control of Prater and accepts that should the Principal Contract Works be varied or reduced in scope Prater shall have no liability to the Seller for any resulting loss of profit.

6. Delivery

Delivery must be made on the date or dates specified on the order quoting the order reference to the place or places specified on the order and, in the event of the Seller default, Prater may (without prejudice to its other rights) cancel the order or terminate the contract in whole or in part on written notice to the Seller, in the event of Prater purchasing similar goods elsewhere, the Seller shall reimburse Prater with any extra expense so incurred and indemnify Prater in respect of any damage which Prater may suffer.

7. Warranty

The Seller warrants that all goods sold and, to the extent applicable, services performed hereunder:

- i. Shall be new and unused, unless specified in the purchase order
- ii. Shall be free from defect in design, materials and workmanship
- iii. Shall be of merchantable quality and fit for their purpose
- iv. Shall comply with all specifications, drawings, samples or other descriptions/ furnished or specified by Prater
- v. Shall comply with all other warranties implied or provided for by law

7.2 The Seller shall reimburse Prater for all damages or costs (including labour charges) incurred by Prater as a result of the Seller's breach of any such warranty and shall comply in all respects with the order. These shall be in addition to rights Prater may have in statute, common law or otherwise.

8. Proprietary Rights/ Patents

8.1 The Seller warrants as a condition of the order that the sale or use of the goods or services to which this order relates will not infringe any patent, registered design, industrial design, trade mark or trade name or other proprietary right of the Seller or of any other person in any part of the world. The Seller accepts that if required by Prater the Seller will be responsible for defending, together with the out come of any claim or dispute that may have been brought against Prater. The Seller shall hold harmless and indemnify Prater, its successors, assigns, clients and users of the Sellers product against all suits at law and from all damages, claims and demands for actual or alleged infringement of, or inducement to infringe any patent registered design, industrial design, trade mark or trade name or other protected right in any country by reason of the manufacture, use or sale of goods or service to which this order relates including infringement which may arise out of compliance with specifications or recommendations of the seller or which are furnished by Prater.

8.2 The Seller shall not use in any manner trade marks, trade names, which are owned or controlled by Prater, its holding company or any subsidiary of such holding company expect to apply, use affix or them to goods supplied by the Seller at such place and in such manner as shall be designated in writing by Prater.

9. Risk/Ownership

9.1 Risk of damage to or loss of the Goods shall pass to Prater upon delivery to it in accordance with the Contract.

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

9.3 Neither payment by nor passage of title or risk in the Goods or the Services to Prater shall be deemed to constitute acceptance of the Goods or the Services. Prater 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 it 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.

9.4 Any goods or materials (for the avoidance of doubt including intellectual property rights) provided by Prater to the Seller in the course of providing the Goods and / or the Services remain the property of Prater and must be returned immediately on request. Any loss or damage arising to such goods or materials whilst in the possession of the Seller shall be charged to the Sellers account.

10. Payment

10.1 Unless otherwise stated in the Order, Prater shall pay the Price of the Goods and the Services within 60 days after the end of the month of receipt by it of a proper invoice or, if later, after acceptance of the Goods or Services in question.

10.2 Where payable Value Added Tax shall be shown separately on all invoices.

10.3 Subject to any express contrary intention set out in the Order the Price shall be fixed and no extra charges will be accepted by Prater.

10.4 Subject to any express contrary intention set out in the Order:

10.4.1 The Seller shall render invoices for the Price (or relevant part thereof) of the Goods and / or Services within 7 days after the delivery of the whole or each instalment (where permitted) and in any event no later than the fifth day of the month following the month in which the Goods and / or the Services were delivered. All invoices must quote the order reference and shall be clearly dated with a date no earlier than the date of delivery of the relevant Goods or Services. Any invoice that does not arrive by the fifth day of the following month will be treated as if it had been received during the month in which the invoice is received and no discounts will be forfeited; and

10.4.2 The Seller shall render consolidated monthly invoices not later than the tenth day of the month following which any delivery has been made and / or Services provided. If this is not done and payment is delayed as a result Prater shall not forfeit its discount.

10.5 Time shall not be of the essence in relation to any of Prater's obligations pursuant to the Contract.

10.6 Without prejudice to any other rights or remedies Prater reserves the right to set off any amount owing at the time from the Seller to Prater against any liability of the Seller to Prater.

11. Rejection

11.1 Without prejudice to any other rights or remedies available to it Prater reserves the right to cancel or delay delivery of an Order in whole or in part forthwith and without liability if any of the Goods or Services supplied, or any part of such Goods or Services, are defective or not strictly in accordance with the provisions set out in the Order or herein or if delivery or performance is delayed.

11.2 In the event that Prater rejects any Goods or Services pursuant to clause 9.1 above the Seller shall promptly reimburse any costs incurred by Prater to return the rejected Goods to the Seller.

12. Termination

12.1 Prater shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller no less than 30 days' written notice, in which event Prater' sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which it has exercised its right of cancellation, less the Seller's net saving of cost (including resale) arising from cancellation.

12.2 If either party to the Contract shall commit any breach of the Contract and not remedy the breach within 30 days of notice from the other party to do so (if capable of remedy) the other party may terminate the Contract immediately by giving notice to the party in breach.

12.3 Prater shall have the right at any time to terminate the Contract forthwith by giving notice in writing to the Seller if:

12.3.1 Any distress, execution or other process is levied upon any assets of the Seller; or

12.3.2 the Seller enters into any compromise or arrangement with its creditors, enters into liquidation, has a receiver or administrator appointed, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of reconstruction of a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Sellers undertaking or assets; or

12.3.3 the Seller ceases or threatens to cease to carry on its business; or

12.3.4 the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

12.3.5 in Prater's opinion the Seller is incompetent or commits any act of gross misconduct or is guilty of any conduct which in Prater' opinion is likely to bring Prater into disrepute. Non-exhaustive illustrative examples of conduct falling within this Clause would include the Sellers failure to deliver the Goods in a timely manner or in accordance with the specification in the Order or any failure of the Seller to procure its personnel compliance with clause 6.7 above.

13. Consequences of Termination

13.1 On termination of the Contract the Seller shall, not later than 7 days after Prater' request but at Prater' cost:

13.1.1 deliver to Prater (or as Prater shall direct) all quantities of the Goods in its possession which comply with the Order; and

13.1.2 return any documents provided to the Seller by Prater.

13.2 With effect from the termination of the Contract the Seller shall not make any use for any purpose whatsoever of any intellectual property which is the property of Prater.

13.3 Termination of the Contract or withdrawal of any Goods or Services from the Contract shall be without prejudice to the continuation in force of clauses 1,2,5,6,7,8,9,11,13,14,16,17, 18, and 19.

14. Remedies

14.1 Without prejudice to any other right or remedy which Prater may have, if any Goods are defective so as to breach any warranty contained herein, or if they are not supplied in accordance with the Contract or if the Seller fails to comply with any of the terms of the Contract Prater shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted:

14.1.1 to require the Seller to repair the Goods or to supply replacement Goods or Services at Prater option to either Prater or any of its customers in accordance with the Contract within 7 days; or

14.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller to either Prater or any of its customers together with a full refund of all associated costs reasonably incurred;

14.1.3 at Prater's sole option, and whether or not it has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid;

14.1.4 to refuse to accept any further deliveries of the Goods and/or performance of the Services but without any liability to the Seller;

14.1.5 to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract;

14.1.6 to claim on an indemnity basis, such damages as may have been sustained in consequence of the Sellers breaches of the Contract including (without limitation) all additional overheads that it has incurred or loss of profits that it has suffered.

15. Indemnity

15.1 The Seller shall indemnify Prater in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or reasonably incurred or paid by it as a result of or in connection with:

15.1.1 breach of any warranty given by the Seller in relation to the Goods or the Services:

15.1.2 any claim that the Goods or any designs, drawings or components thereof 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 Prater;

15.1.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

15.1.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and

15.1.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

15.2 The Seller hereby acknowledges that Prater' customers may be based overseas and that costs incurred by Prater as a result of any breach of warranty in accordance with clause 13.1 herein may include but not be limited to carriage and travel (and associated expenses) to such locations worldwide as may be reasonably necessary for Prater to rectify any defect associated with the Sellers breach of warranty.

15.3 Nothing in the Contract shall exclude either party's liability for death or personal injury caused by the negligence of its or its employees or agents.

16. Insurance

16.1 The Seller shall have in force and shall require any subcontractor to have in force:

16.1.1 Employers liability insurance in accordance with any legal requirements for the time being in force;

16.1.2 Public liability insurance; and

16.1.3 Any other forms of insurance to such sum and range of cover as Prater specifies in the Order covering at least all matters which are the subject of indemnities or compensation obligations under the Conditions in the sum of not less than one million pounds (£1,000,000) for any one incident and unlimited in total.

16.2 The Seller shall at the request of Prater produce evidence on demand of the existence of the above policies together with satisfactory evidence of payment of premiums.

17. Assignment

17.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written agreement of Prater.

17.2 Prater shall be entitled to assign the benefits of the Contract to any member or associated venture of the group of companies of which it forms part.

18. Confidentiality and Data Protection

18.1 Except as provided in clause 16.2, the Seller shall during the duration of the Contract and after its termination (for whatever reason) keep secret and confidential and shall procure that its employees, agents, and subcontractors keep secret and confidential all business and trade secrets and any other information of a confidential nature relating to the processes, affairs, methods, intellectual property, and data of Prater which it may have received or obtained in the performance of or otherwise as a direct or indirect result of the Contract and the Seller shall not use the same for its own or other's commercial benefit without the prior written consent of Prater.

18.2 The obligations of confidentiality under clause 16.1 shall not apply to the extent that the Seller can prove (to the satisfaction of Prater), that the confidential information:

18.2.1 at the date of the Contract is or becomes public knowledge through no fault of the Seller; or

18.2.2 is known to the Seller prior to the appointment made under the Contract.

19. Force Majeure

19.1 In this Agreement, "Force Majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accidents, break down of plant or machinery, fire, flood, or storms.

19.2 If either party is prevented or delayed in the performance of any of its obligations under the Contract by force majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall subject to service of such notice have no liability in respect of the performance of such of these obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

19.3 If the performance by either party of any of its obligations under the Contract is prevented or delayed by force majeure for a continuous period in excess of 5 working days, the party shall in enter into discussions with the other party with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances.

19.4 If the performance by either party of any of its obligations under the Contract is prevented or delayed by force majeure for 60 days or more consecutively then the other party shall in its discretion have the right to cancel the Order forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to exist.

20. Disputes

20.1 If any dispute arises out of the Contract the parties will attempt to settle it by discussion. In the event that any dispute cannot be settled by discussion the matter shall be referred to each party's Managing Director (or equivalent) to resolve jointly. If the Managing Directors (or equivalent) of the parties are unable to resolve the dispute within 28 days of the matter being referred to them then either party shall be entitled to commence proceedings in the Courts of England.

21. Governing Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the law of England and the parties hereby consent to the exclusive jurisdiction of the English courts.