

THE DEAN TRUST  
TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES (ENGLISH LAW VERSION)

1. GENERAL

1.1 These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Supplier whether in negotiation or at any stage in the dealings between the Purchaser and Supplier with reference to the goods or services to which the contract relates. Without prejudice to the generality of the forgoing, the Purchaser will not be bound by any standard or printed terms furnished by the Supplier in any of its documents, unless the Supplier specifically states in writing, separately from such terms that it intends such terms to apply, and the Purchaser acknowledges such notifications in writing.

1.2 Any quotation for Goods and / or Services provided by the Supplier constitutes an offer by the Supplier to provide the Goods and / or Services specified in it on these Conditions. The Contract will be formed by the Supplier signing and returning the Order issued by the Purchaser or by the Supplier starting work on the Goods and / or Services at which point the Contract will be established. The Supplier's standard terms and conditions (if any) attached to, enclosed with or referred to in any quotation, specification or other document shall not govern this contract.

2. DEFINITIONS

In these terms and conditions (Conditions):

'the Purchaser' means any Dean Trust Establishment named on the Order,

'the Supplier' means the supplier named on the Order

'the Contract' means the Order and these Conditions and any other document specified or attached to the Order with the Purchaser's agreement

'the Goods' mean any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with the Order.

'the Services' means the work to be carried out by the Supplier under this Contract as referred to in the Order together with any other work which the Purchaser agrees that the Supplier shall carry out for the Purchaser in accordance with these conditions

'The Order' shall mean the order document issued by the Purchaser to the Supplier either by post, fax or electronic means.

3. QUALITY OF THE GOODS AND SERVICES

3.1 If the Supplier is to provide Goods to the Purchaser:

3.1.1 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Order and in any variations thereto;

3.1.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force;

3.1.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for the particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgment of the Supplier in the supply of the Goods and the execution of the Order.

3.2 The Supplier warrants to the Purchaser that:

3.2.1 It will carry out and complete the Services in a proper and workmanlike manner with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

3.2.2 The Services will be carried out in accordance with all descriptions and specifications provided by the Purchaser to the Supplier; and

3.2.3 The Services will be carried out in accordance with all applicable legislation in force from time-to-time and the Supplier will inform the Purchaser as soon as it becomes aware of any changes in that legislation.

3.3 The provisions of this condition 3 shall survive any performance, acceptance or payment pursuant to this Contract and shall extend to any substituted or remedial Goods and/or Services provided by the Supplier.

3.4 The Purchaser's rights under this Contract are in addition to the statutory terms implied in favour of the Purchaser by Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and any other statute (as amended, re-enacted or extended from time to-time).

4. SUPPLIER RESPONSIBILITIES

4.1 The Supplier shall provide the Goods and/or Services in accordance with the specification set out in and/or attached to the Order and shall allocate sufficient resources and provide all tools and materials necessary to carry out the same.

4.2 Time of supply of the Goods and/or Services shall be as set out in the Order and shall be of the essence.

4.3 The Supplier shall:

4.3.1 Co-operate with the Purchaser in all matters relating to providing the Goods and/or Services;

4.3.2 Notify the Purchaser as soon as it becomes aware of any health and safety hazards or issues which arise in relation to providing the Goods and/or Services;

4.3.3 Obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to providing the Goods and/or Services;

4.3.4 Take all reasonable precautions to prevent any nuisance or inconvenience to the owners, tenants or occupiers of adjoining properties and to the public generally when present at the Purchaser's premises; and

4.3.5 Provide the Goods and/or Services in accordance with all applicable statutes, orders, regulations or bye-laws.

4.4 The Supplier acknowledges and agrees that the Purchaser is entering into this Contract on the basis of the specification set out in and/or attached to the Order which is accurate and complete in all material respects, and is not misleading.

5. THE PRICE

5.1 The price of the Goods shall be as stated on the Order and no increase will be accepted by the Purchaser unless agreed by it in writing before the execution of the Order. The Price shall be inclusive of the cost of carriage, Value Added Tax and expenses, unless otherwise indicated.

6. PAYMENT

6.1 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under this order. Payment shall be due 30 days after receipt of the Goods or the correct invoice for the Goods whichever is the later. The Supplier's invoice must be addressed to Accounts Payable at The Dean Trust and **must quote the full Purchase Order number**.

The Purchaser shall not be held responsible for delays in payment caused by the Supplier's failure to comply with invoicing instructions.

## 7. DELIVERY

7.1 The Goods shall be delivered to the place and at the time named on the Order or to such other place or at such other time notified by the Purchaser. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of, or in connection with, any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.

7.2 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractor shall at all times comply with the reasonable requirements of the Purchaser's Head of Health and Safety.

7.3 The Supplier shall at its own risk off-load and, if relevant, stack the Goods as directed by the Purchaser.

7.4 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at its option), without prejudice to any other rights or remedies it may have, to;

7.4.1 release itself from any obligation to accept and pay for the Goods; and/or

7.4.2 to cancel all or part of the order therefore; and

7.4.3 to recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining Goods in substitution from another supplier; and

7.4.4 to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to deliver the Goods on the due date

7.5 The Supplier shall not be entitled to make any additional charge to the Purchaser in the event of the Supplier's failure to deliver the Goods at the place and time specified in the Order

## 8. PROPERTY & RISK

The Goods shall remain at the risk of the Supplier until delivery is complete (including off-loading and stacking). If Purchaser specifies a time for delivery and the Supplier delivers the Goods outside that specified time then the Goods shall remain at the risk of the Supplier until the Purchaser confirms receipt. The property in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 16 hereof) pass to the Purchaser on delivery (unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made and the Goods have been appropriated to the Contract).

## 9. DAMAGE IN TRANSIT

The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

a) in the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged.

b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

## 10. INSPECTION, REJECTION & GUARANTEE

10.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspection or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspection shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods

10.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:

a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirement specified herein: or

b) to obtain a refund from the Supplier in respect of the Goods concerned.

10.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the purchaser.

10.4 Any Goods rejected or returned by the Purchaser as described in paragraphs 16.1 shall be returned to the Supplier at the Supplier's risk and expense.

## 11. LABELLING & PACKAGING

The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of the condition.

## 12. PATENTS & INFORMATION

12.1 It shall be a condition of the Order that, except to the extent that the Goods are made up in accordance with the designs furnished by the Purchaser, none of the Goods will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Supplier shall indemnify the Purchasers and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

12.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser pursuant to the Order shall remain vested solely in the Purchaser and the Supplier shall not (except to the extent necessary for the implementation of the order) without prior written consent of the Purchaser use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether relevant or not to the Order) which the Supplier may obtain pursuant to this Order and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or to the Order without the Purchaser's prior written agreement.

### 13. HEALTH & SAFETY

13.1 The Supplier represents and warrants to the Purchaser that:

13.1.1 the Supplier has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risks to health and safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.

13.1.2 The Supplier has ensured that all Services will be carried out in accordance with all applicable legislation that is in force and will ensure that all necessary consents are obtained before carrying out the Services

13.2 The Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of the Contract .

### 14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 16 hereof) the Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

14.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

### 15. TERMINATION

15.1 Without prejudice to any rights or remedies of the Purchaser under the order the Purchaser shall have the rights forthwith to terminate the Order at any time: by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) liquidator or administrator if an order is made or a resolution is passed for the winding up of the Supplier, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Supplier; or an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier, or if any other person takes possession of or sells the Supplier's assets; or the Supplier makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or the Supplier ceases, or threatens to cease, to trade.

15.1.1 By written notice to the Supplier if the Supplier commits a material breach of any of the terms and conditions of the Contract;

15.2 Termination of this Contract, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

### 16. REMEDIES

16.1 Without prejudice to any other right or remedy which the Purchaser may have, if the Services are not carried out or any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Contract the Purchaser shall be entitled to exercise 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 by the Purchaser:

16.1.1 To rescind the Contract;

16.1.2 To reject the Goods and/or the Services (in whole or in part) and to return any Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned or for the Services so rejected shall be paid forthwith by the Supplier;

16.1.3 At the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and/or Services or to supply replacement Services and/or Goods and carry out any other necessary work to ensure that the terms of this Contract are fulfilled;

16.1.4 To refuse to accept any further supply of the Services or delivery of the Goods but without any liability to the Purchaser;

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

16.1.6 To claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of this Contract.

16.2 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Purchaser or with any department, agency or authority of the Crown.

### 17. ASSIGNMENT & SUB-CONTRACTING

17.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of this Contract or any part thereof.

17.2 The Supplier shall not without the written consent of the Purchaser sub-contract this Contract or any part thereof.

17.3 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under this Contract.

### 18. NOTICES

Any notices given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

### 19. HEADINGS

The headings to the Conditions shall not affect their interpretation.

### 20. GOVERNING LAW

This Contract and these Conditions shall be governed by and constructed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

### 21. GENERAL

21.1 No variation of the Contract shall be valid unless made in writing and signed by or on behalf of each of the parties.

21.2 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.

21.3 Failure or delay by the Purchaser in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

21.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not intend any person other than a party to the Contract to be able to enforce any term of the Contract (save where may be expressly stated otherwise in the Contract

## 22. Confidentiality

The supplier hereby undertakes that it will not at any time divulge any information relating to the company's affairs or business or method of carrying on the business to any third party (except a professional adviser or auditor) except insofar as such disclosure is necessary in order to give effect to the provisions of this agreement or required by law insofar as any such information as aforesaid shall (otherwise than by breach of this Agreement) be in the public domain at the time of such disclosure.

## 23. Indemnity

The supplier shall undertake to maintain adequate insurance company (a copy of which will be promptly provided to the company on demand), including but not limited to product liability insurance and to indemnify and hold the company harmless from any and all claims, liabilities, damages and expenses (including consequential loss and damage) resulting at any time from the supply of the goods and/or the services hereunder and/or the company's exploitation, marketing, development or other use of the goods and/or services :

- a) in respect of any alleged or actual infringement whether under English law or otherwise of any patent, utility model, registered design, copyright, trade mark, design right, moral right or other proprietary or third party rights vested in any other person, or
- b) sustained by the company or for which the company may be liable as a result of the failure of the supplier to perform its obligations to the company hereunder, or
- c) in respect of death or injury, howsoever caused, to any employee of the company, its agents or sub-contractors or any other person on the company's premises and/or in respect of any loss or damage to any property, real or personal of the company or any third party whether sustained by the company may be responsible.
- d) in respect of any act or omission by the supplier, his employees, agents or sub-contractors whether arising inside or outside the scope of these duties,
- e) in respect of any claim brought or made against the company under the Consumer Protection Act 1987,
- f) in respect of any claim for taxation whatsoever including without limitation any liability arising under or by virtue of Section 203 Income and Corporation Taxes Act 1988 (PAYE)
- g) in respect of any representation or undertaking implied or made by the supplier in the Purchase Order Contract

## 24. Force majeure

24.1 The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control.

24.2 Without prejudice to the generality of condition 24.1 the following shall be included as causes beyond the Buyer's reasonable control:

24.2.1 Governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

24.2.2 Act of God, fire, explosion, flood, epidemic or accident;

24.2.3 Import or export regulations or embargoes;

24.2.4 Labour disputes not including the work-force of the Seller;

24.2.5 Inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or

24.2.6 A power failure or breakdown of machinery.