

MANX UTILITIES GENERAL CONDITIONS OF ORDER FOR THE SUPPLY OF SERVICES

1. DEFINITIONS

In the context of these conditions, the following words shall have the following meanings:

"Purchaser" shall mean the business placing the Order as identified on the Order.

"Supplier" shall mean the person, firm, company or organisation to whom the Order is addressed or their successor in business.

"Services" shall mean the services provided by the Supplier as specified by the Purchaser in the Order and/or Specification or as otherwise agreed in writing or any amendment thereof.

"Specification" means the specification of the Services expressly referred to in the Order or otherwise agreed in writing.

"Order" means the purchase order issued by the Purchaser for the supply of the Services.

2. ACCEPTANCE

Acceptance of the Order by the Supplier shall signify acceptance of the terms and conditions therein together with any supplementary or special conditions. These shall prevail over any terms or conditions of the Supplier whether contained in a quotation, catalogue, price list, order acknowledgement or any other document except so far as provided in any amendments or modifications which have been agreed in writing by the Purchaser.

3. DELIVERY

The Supplier shall provide the Services with the high degree of professional skill, sound practices and good judgement normally exercised by recognised professional businesses providing services of a similar nature.

A delivery note/completion certificate must be signed by the Purchaser or their recognised agent upon satisfactory completion of the Services. A copy of the note/certificate is to be retained by the Purchaser and a copy is to be retained by the Supplier as proof of delivery.

No responsibility can be accepted for goods delivered or Services rendered which are not the subject of the Order, nor will any alteration or extension be accepted unless this forms the subject of an official amendment to the Order or agreed elsewhere in writing.

The date of delivery of the Services shall be that specified in the Order unless agreed otherwise between Purchaser and Supplier in writing. The Supplier shall provide such programmes of manufacture, delivery and erection as the Purchaser may reasonably require, and the Supplier shall give notice to the Purchaser immediately if such programmes are, or are likely to be, delayed.

If it becomes apparent that the Services will not be delivered by the delivery date or any date fixed in accordance with the provision of this clause for reasons beyond the control of the Supplier, the Supplier shall notify the Purchaser in writing, who upon receipt of such notice shall make such extension of the delivery date as may in the Purchaser's opinion be reasonable. Reasons within the control of the Supplier include any default of the Supplier or of others employed or engaged by or under him or in connection with the supply of the Services.

If the Supplier fails to deliver the goods by the delivery date or by any date fixed under clause 3 the Supplier shall pay or allow to the Purchaser liquidated damages at the following rate. 1% of the Order value per week for the first two weeks and 2% of the Order Value per week thereafter up to a maximum amount of 15% of the Order Value and thereafter damages in accordance with this contract. The Purchaser may deduct such damages from any monies due to the Supplier under this contract or he may recover this from the Supplier as a debt.

4. SUSPENSION

The Purchaser may by written notice require the Supplier to suspend performance of the Order. When suspension is ordered due to any act or omission of the Supplier, then the Supplier shall be entitled to no additional remuneration in respect of such suspension. When suspension is ordered for reasons other than the aforesaid, the Supplier shall be entitled to reimbursement of reasonable substantiated additional costs incurred as a result thereof. When appropriate, the Supplier shall be granted a reasonable extension of the delivery date to take account thereof.

5. CANCELLATION

Without prejudice to its other rights the Purchaser reserves the right to cancel the Order for any reason and at any time upon giving the Supplier notice in writing. Save in the event of breach by the Supplier a reasonable price will be paid by the Purchaser for all work in progress at the date of cancellation which is subsequently accepted by the Purchaser. The Purchaser shall not be liable for any other direct or indirect cost or loss to the Supplier including consequential loss.

6. INSPECTION AND TESTING

The Supplier shall permit the Purchaser and its authorised representatives to inspect and test the Services provided at all reasonable times during and after completion.

The Supplier shall give the Purchaser adequate notice of all tests being carried out and permit the Buyer and its authorised representatives access to witness such tests.

The Supplier shall furnish the Purchaser with such test certificates as the Purchaser may require.

The Supplier shall incorporate conditions as above in all contracts made with sub-contractors. No lack of complaint or approval given on or after such inspection or test, or the making of any payment shall be deemed to constitute a waiver of any rights or remedies of the Purchaser, or an acceptance of the Goods, or to relieve the Supplier from his obligation under the Order.

7. QUALITY

Without prejudice to the Purchaser's statutory rights or rights under these terms and conditions the Services shall:

- (i) conform to the quality, standards, description, Specification and/or references stated in the Order and to the satisfaction of the Purchaser;
- (ii) be free from defects in materials, workmanship and design;
- (iii) be suitable and fit for use for the purpose described or intended in the Order

The Services are provided subject to and with the benefit of all conditions and warranties implied at law or in equity or by statute save as expressly varied herein.

The Supplier warrants that the Services supplied under this Order shall perform such that the Purchaser shall not experience any abnormality in the performance or results.

If any Services supplied to the Purchaser shall not be in accordance with the particulars stated in the Order or the Specification, quality, standards as aforesaid, or shall be in any way defective, the Purchaser in addition and without prejudice to any other remedy available to it may at its option either:

- (i) rectify, repair, replace, re-perform the Services at the cost and expense of the Supplier; or
- (ii) instruct the Supplier to correct the defect at the expense of the Supplier by the way of rectification, repair or replacement free of charge to the Purchaser.

8. GUARANTEE

The Supplier shall replace or rectify free of charge any Services which are, or become, defective within a period of 24 months from delivery as a result of faulty design, erroneous instructions, inadequate or faulty materials or workmanship. Such replacements or repair shall themselves be subject to the above obligation for a period 12 months after replacement or rectification. The Supplier shall further be liable in damages for all the Purchaser's costs and expenses associated with Supplier's failure under this clause.

9. TITLE

The property and risk in the Services shall pass to the Purchaser on acceptance by the Purchaser of the Services or (in the case of delivery by instalments) on the acceptance by the Purchaser of each instalment.

10. PATENT RIGHTS

The Supplier warrants that the provision of the Service will not infringe any Manx, British or foreign patent, trade mark or trade name or registered design and the Supplier shall indemnify the Purchaser from all actions, costs, claims, demands, expenses and liabilities, whatsoever resulting from any actual or alleged infringement, and at the Supplier's own expense shall defend or assist in the defence of any proceedings that may be brought in that connection

11. PURCHASER'S & CUSTOMER'S PROPERTY

Any specifications, plans, drawings, patterns or design supplied by the Purchaser to the Supplier in connection with the Order shall remain the property of the Purchaser, and any information derived therefrom or otherwise communicated to the Supplier in connection with the Order shall be regarded by the Supplier as secret and confidential and shall not, without consent in writing from the Purchaser, be advertised, published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Order.

Where materials or goods are supplied by the Purchaser for the purposes of the Order they shall remain the property of the Purchaser. The Supplier is responsible for their safe custody and the return of any surplus materials. The Supplier is to make good any loss caused through negligence or faulty workmanship of the Supplier.

Where materials or goods are supplied by a customer of the Purchaser for the purposes of the Order they shall remain the property of the customer. The Supplier is responsible for their safe custody and the return of any surplus materials. The Supplier is to make good any loss caused through negligence or faulty workmanship of the Supplier.

12. RESPONSIBILITY FOR INFORMATION

The Supplier shall be responsible for any errors or omissions in any drawings, calculations or other particulars supplied by him, whether such information has been approved by the Purchaser or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by the Purchaser.

13. ASSIGNMENTS

The Supplier shall not without the consent in writing of the Purchaser assign or sub-contract the whole or any part of the Order.

14. STATUTORY REQUIREMENTS

The Supplier warrants that the design, construction and quality of the Services and the use thereof shall comply with all relevant requirements of any law, statute, rule or order which may be in force at the time the Services are supplied.

15. INDEMNITY

The Supplier shall indemnify the Purchaser against the following:

- (i) loss or damage or injury (including death) whatsoever and whenever arising, caused to the Purchaser or their customer for which the Purchaser may be liable to third parties, due to the negligence, or act or omission of the Supplier or its servants or agents or defective workmanship or quality of the Goods and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (ii) all claims in respect of death or injury, howsoever caused to or by any of the employees, servants, agents or sub-contractors of the Supplier while on the Purchaser's nominated delivery address in performance of the Order.

The Supplier shall maintain adequate insurance against the liabilities in this Condition.

16. PRICES AND PAYMENTS

For the avoidance of doubt all common law rights of set off and/or abatement of the Purchaser are reserved.

Prices quoted are to be firm unless otherwise agreed in writing by the Purchaser. Payment unless stated otherwise in the Order will be made 30 days following the receipt of valid invoices bearing the Purchaser's order number provided the goods have been delivered in accordance with the Order prior to receipt of the said invoice.

All prices are payable in sterling unless agreed otherwise.

17. BANKRUPTCY

If the Supplier becomes bankrupt or goes into liquidation or makes any composition with its creditors or if a receiver or administrator of any of its assets is appointed or if the Purchaser bona-fide believes that any of the foregoing will occur then the Purchaser shall be at liberty either:

- (i) To cancel the Order summarily by notice in writing without compensation to the Supplier; or
- (ii) To give any such receiver or liquidator or other person the option of carrying out the Order.

The exercise of any of the rights granted to the Purchaser under this condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Purchaser.

18. LAW

The Order shall be construed and shall take effect in accordance with the laws of the Isle of Man and shall be subject to the Jurisdiction of the Manx courts.

19. FORCE MAJEURE

(i) Force Majeure" means:-

war, hostilities (whether war can be declared or not), invasion, act of foreign enemies;
ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

rebellion, revolution, insurrection, military or usurped power or civil war;

riot, civil commotion or disorder;

any circumstances beyond the reasonable control of either of the parties.

(ii) Notice of Force Majeure

If either party is prevented or delayed from or in performing any of his obligations under the Contract by Force Majeure, then he may notify the other party of the circumstances constituting the Force Majeure and of the obligations, performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligations for so long as the circumstances of prevention or delay may continue

(iii) Termination as a result of Force Majeure

Notwithstanding that the Contractor may have been granted under Clause 3 (Extension of Delivery Date) an extension of the Delivery Date, if by virtue of the Clause "Notice of Force Majeure" either party shall be excused the performance of any obligation for a continuous period of 120 days, then either party may at any time thereafter, and provided that such performance or punctual performance is still excused, by notice to the other terminate the Order.

20. INDUCEMENTS

The Supplier shall not give, provide or offer and loan, fee, reward or gift or any emolument or advantage whatsoever to any member or servant of the Purchaser and, in the event of any breach of this condition, the Purchaser shall without prejudice to any other rights they may possess be at liberty to terminate the order and to recover from the Supplier any loss or damage consequent upon such cancellation.

WHERE ANY SPECIAL CONDITIONS OF PURCHASE APPLICABLE TO THE ORDER ARE THOUGHT TO BE IN CONFLICT WITH THESE GENERAL TERMS AND CONDITIONS, THE SPECIAL CONDITIONS SHALL PREVAIL.