

CRUDEN – PURCHASE ORDER (CONDITIONS OF ORDER)

1. Definitions

The following words have the following meanings:

- (a) "The Company" means the company named on the Purchase Order.
- (b) "The Supplier" means the person, firm or company that by this contract sells or agrees to sell the product(s)
- (c) "The Contract(s)" means the agreement made between the Company and the Supplier for the supply and purchase of the product(s) in accordance with the terms of the purchase order and these Conditions of the Purchase Order.
- (d) "The Purchase Order" means the particulars on the face of the Purchase order.
- (e) "The Product(s)" means the goods or equipment specified in the Purchase Order.

2. Formation of Contract.

These Conditions of Purchase Order together with the particulars of the Purchase Order will constitute the only terms of the Contract. All other terms and conditions are expressly excluded.

3. Price

The Price to be paid for the Product(s) shall be stated in the Particulars of the Purchase Order and / or to be calculated in accordance with the rates contained therein, and shall not be amended except in accordance with these Conditions of Purchase order. Where the Purchase order makes provision for variation of the Price, no increase in the Price will be effective unless and until the Supplier gives and receives in writing of the grounds which will result in an increase. Any increase shall only be valid when confirmed in writing by the Company. On receipt of the notice, the company may terminate the Contract by written notice to the Supplier within 28 days of receipt of the notice of the increase and the Contract shall be terminated without liability on either party but without prejudice to any antecedent breach of contract. Any notice from the Supplier shall be sent to the Company's head office for the attention of the Chief Buyer

4. Payment

- (a) Payment shall be due 60 days following the end of the month in which the Product(s) were delivered or other such period as agreed by the Company in writing. Inattention to the following details will result in delay in payment, but no prompt payment discount will be lost by the Company by reason of the Suppliers Inattention. These details are:
 - i. To send to the place of delivery and so as to be received before delivery for each consignment such advice of dispatch as shall be specified in the Purchase Order.
 - ii. To send invoices and monthly statements of account to the address requested within a reasonable time quoting invoice numbers applicable to each item thereon.
 - iii. To mark clearly the Company order number on the consignment package, packing notes, advice notes, invoices, monthly statements and all correspondence.
 - iv. To provide all necessary operating and maintenance manuals and where applicable product and collateral warranties.

5. Delivery

- (a) Delivery shall be made as required and in a manner specified by the Purchase Order and shall be accompanied by a delivery note. In respect of goods consigned by rail, an advice note shall be sent to the site office at the place of delivery so as to be received before delivery.
- (b) The Company shall provide at the point of unloading reasonable safe and proper access.
- (c) Any risk of future loss or damage to the Product(s) unless due in whole or in part to the act of neglect or error of the Supplier (when the risk shall not pass) and the property in the Product(s) shall pass to the Company upon completion of unloading and in accordance with the requirements (if any) of the Purchase Order and the due signing of the delivery note by an authorised representative of the Company but:
 - I. Product(s) delivered in a damage condition shall be replaced immediately without charge.
 - II. Property and any risk of loss or damage to Product(s) not in accordance with the Purchase Order shall not pass. The Company shall give notice within 10 working days of delivery of any discrepancy or damages and the property and risk will remain with the Supplier.
 - III. Where the Product(s) are packaged or wrapped then acceptance of the Product(s) will not be made until the Company has actually inspected them.
- (f) The Supplier shall provide proper off-loading instructions and the Company will at its discretion provide reasonable assistance in the unloading of Product(s).
- (g) Once the property in the Product(s) passes to the Company then the Supplier shall have no title or interest therein at law or in equity.

6. Programme

The time requirements are of the essence for the delivery of the Product(s) specified in the Purchase Order. If no times are specified, then the Supplier shall within 7 days of notification by the Company agree to the Company's reasonable programme for delivery. If agreement is not reached, the Company may terminate the Contract and shall pay the Supplier only a fair price for the Product(s) delivered and used by the Company. Should the Company require to amend the time requirements for delivery, the Supplier shall use its best endeavours to comply with such amendments.

7. Lien and set-off

The Supplier shall not have any lien or any right to retain the Product(s) for any sums due by the Company to the Supplier under the Contract or any other contract.

8. Testing

The Company may carry out tests and inspections at the Supplier's premises by appointment prior to the dispatch of the Product(s)

9. Sub-letting

The Supplier shall not sub-let the Purchase Order or any portion thereof without prior written consent of the Chief Buyer from the Company.

10. Suppliers Liability

- (a) The Supplier shall be liable to the Company for and will indemnify the Company against all liabilities, demands, losses, damages, costs, claims expenses and interest made against, suffered or incurred by the Company arising out of any breach or non-performance of the contract or any negligence of the Supplier.
- (b) The Supplier shall make good by replacement or otherwise all defects in the Product(s) and shall bear all expenses incurred by the Company as a consequence of such defects.
- (c) The Company reserve the right to terminate the Contract at any time and in this event provided that the termination is not by reason of the Suppliers default, the Supplier shall be entitled to be paid for the Product(s) actually supplied and/or work actually executed at the date of termination. The Supplier shall not be entitled to any damages or other compensation by reason of such determination.

11. Force majeure

In the event of the Supplier being unable to obtain delivery of raw materials from any available source or in case the Supplier is unable to make delivery or the Company is unable to accept delivery under the Contract owing to strike, lock out, fire, storm, tempest, flood, action by the Queen's enemies, riot, civil commotion, the Company may suspend the Contract giving notice in writing to the Supplier to that effect. The Supplier as a condition of this Contract shall within 5 days of such happening first occurring, give notice in writing to the Company with full particulars. If the circumstances leading to the suspension of the Contract continue for not less than one month from the date of suspension the Company may by written notice cancel the contract without penalty and without prejudice to any right of the Company.

12. Variations

- (a) The specification and the quantities within the Purchase Order may be subject to change at the insistence of the Company and at its sole discretion. The Supplier will give effect to any such variation as soon as it is received by him. Where the quantities within the Purchase Order are not materially amended, the rates contained in the Purchase Order shall continue to apply.

13. Supplier warranty

Notwithstanding anything contained in this contract the Supplier hereby warrants and undertakes that:

- (a) The Product(s) shall be fit for the purpose which they are supplied.
- (b) The product(s) supplied shall conform in all respect with any samples supplied and no such Product(s) shall vary from the sample unless expressly agreed in writing between the Company and the Supplier.
- (c) The Product(s) supplied shall be of good quality.
- (d) Upon delivery the Supplier shall pass to the Company title to the Product(s). All Product(s) shall comply with the latest editions of all the relevant British standards, European Standards, Codes of Practice and any other relevant standard applicable to the products.

14. Design

The Supplier shall be liable to the Company for the Design of the Product(s) to the extent that the Supplier has designed or will design the Product(s) including but without prejudice:

- (a) The design development of the Product(s).
- (b) The selection of goods and materials in relation to the Product(s)
- (c) The satisfaction of any performance specification or requirement expressed by or referred to by the Company or which may be inferred from a description of the Product(s) and the Supplier warrants to the Company that he has exercised and will continue to exercise in the design of the Product(s) all reasonable skill, care and diligence to be expected of a competent professional designer who is experienced in carrying out such work for projects of a similar scope complexity nature and size to the project for which the Product(s) are intended.

15. Supplier insurance

- (a) The Supplier shall have and maintain the following insurances:
 - i. Third party insurance (including Product Liability) with an indemnity of at least £1 million, or such agreed figure, in respect of any one claim or a number of claims arising out of one cause with the policy endorsed to indemnify the Company.
 - ii. Professional indemnity insurance in respect of any professional liability that may arise under the Contract that the Supplier may have, for design or otherwise, with a minimum cover of £2 million or such other agreed figure.
- (b) The Supplier shall insure the Product(s) in respect of physical loss or damage until delivery for their replacement value and such policy shall be endorsed to indemnify both the Company and the Supplier as principles.

16. Statutory requirements etc

In performing its obligations, the Supplier shall comply with all relevant Acts of Parliament, any instrument, Rule or Order made under any Act of Parliament, or any Regulation or Byelaw of any local authority or of any statutory body that has any jurisdiction with regards to the Contract. The Supplier shall also comply with all relevant recommendations of the Health & safety Executive.

17. Plant hire (when used as plant hire order)

- (a) The Product(s) are accepted on hire subject to complying in all respects with current and relevant statutory regulations. The Supplier will provide a fully competent operator with operated plant when requested.
- (b) Vehicles to be used on the public highway must be comprehensively insured, licensed and taxed to comply with relevant and current statutory regulations. The Supplier will indemnify the Company against any claim whatsoever arising from a breach thereof.
- (c) Plant is accepted on condition that it must comply with the CPA conditions of hire only.
- (d) A copy of the Exemption Certificate HSE Form Nr 2513 must be supplied with each excavator supplied.

18. Law and jurisdiction

The Contract is made under and shall be construed in accordance with English Law and the Supplier and the Company hereby agree to submit themselves to the jurisdiction of the Courts of England and Wales