

CONDITIONS OF SALE OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM

1. Interpretation

1.1. In these Conditions 'Authorised Officer' means the authorised officer appointed by the Buyer and named in the Order.

'Buyer' means the Mayor and Burgesses of the Council of London Borough of Hammersmith and Fulham.

'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

'Seller' means the provider of goods or services to the Buyer.

'Conditions' means these standard terms and conditions of sale and does not include any other special terms and conditions unless agreed in writing by the Authorised Officer.

'Delivery Address' means the address stated in the Order.

'Order' means the order for goods/services completed by the Buyer.

'Services' means the services to be supplied by the Seller to the Buyer.

1.2. Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time

2. Basis of the Sale

2.1. The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2. No variation to these Conditions shall be binding unless agreed in writing by the Authorised Officer.

3. Order

3.1. The quantity, quality and description of the Goods and the Services shall be as specified in the Order.

3.2. The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.3. Where the parties agree to apply special terms to an Order such special terms will take precedence over these Conditions.

4. Price of the Goods

4.1. The price of the Goods and the Services shall be as stated in the Order and, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to the receipt of a VAT invoice);

4.1.2 inclusive of all charges for packaging, shipping, carriage,

insurance and delivery of the Goods to the Delivery Address and any duties (other than value added tax), unless otherwise agreed.

4.2 Any variation in the price must be approved by the Buyer in writing and in advance of the delivery of the Goods and or Services.

5. Terms of Payment

5.1. The Buyer shall pay the price of the Goods or Services (less any discount to which the Buyer is entitled) within 30 days of the date of the Seller's proper and accurate invoice.

5.1.1 The Seller shall forward its invoice to the named person and to the address as set out in the relevant Order.

5.1.2 The Seller shall ensure that its invoice accurately details the Order number and description of the Goods/Services, Buyer's instructing officer's name, name of the Department and the Delivery Address to where the Goods or Services were delivered.

6. Delivery

6.1. The Goods shall be delivered to and the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, and in either case during the Buyer's usual business hours.

6.2. The delivery shall be accompanied by the Seller's delivery note, as approved by the Buyer.

6.3. The delivery of Goods must be evidenced by the Authorised Officer's signature on the delivery note. For the avoidance of doubt the aforementioned shall only be evidence of delivery and not as to quantity, satisfactory quality or otherwise.

6.4. The delivery of Services must be evidenced by a timesheet specifying such detail as advised by the Authorised Officer

6.5. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.6. The Buyer shall be entitled to reject any Goods delivered which are not in accordance with these Conditions and shall not be deemed to have accepted any Goods until the Buyer 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.

6.7. The Buyer shall not be liable to the Seller for or for the

return of any packaging or casing whatsoever.

6.8. Goods rejected pursuant to Clause 6.6 shall be collected by the Seller within 7 days of a written request from the Buyer. In the event that the rejected Goods are not so collected then the Buyer may return the rejected Goods to the Seller and seek indemnification of the costs thereof pursuant to Clause 9.

6.9. Whilst the Seller and or its employees or agents are at the Delivery Address they shall be bound to comply with the Buyer's safety and security rules.

7. Risk and Property

7.1. Subject to the right of rejection in Clause 6.6 (above) risk of damage to or loss of the Goods shall pass to the Buyer at the time the Goods are delivered in accordance with Clause 6 (above).

7.2. Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

8. Warranties and Liability

8.1. The Seller warrants to the Buyer that the Goods:

8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;

8.1.2 will be free from defects in design, material and workmanship;

8.1.3 will correspond with any relevant specification of sample; and

8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's written instructions, misuse or alteration or repair of the Goods without the Seller's approval;

8.3. Where any claim in respect of any of the Goods which is based on any defect in the quality or condition

of the Goods or their failure to meet any specification of the Order is notified to the Seller, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or to refund the Buyer the price of the Goods if so requested by the Buyer.

8.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.4.1 Act of God, explosion, flood, tempest, fire or accident;

8.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.4.4 import or export regulations or embargoes;

8.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.5. The Seller warrants that Services will be performed to the Buyer with due care skill and attention and in accordance with relevant industry standards.

9. Indemnity

9.1. The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses awarded against or incurred by the Buyer as a direct result of or in connection with the Goods and Services provided under these Conditions.

9.2. Whenever under these Conditions any sum of money shall be recoverable from or payable by the Seller to the Buyer the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under these Conditions or any other agreement between the Seller and the Buyer.

10. Termination

10.1. The Buyer shall be entitled to cancel, without incurring costs or liability, the Order in respect of all or part only of the Goods and/or Services by giving reasonable notice to the Seller at any time prior to delivery or performance.

11. General

11.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.

11.2. No waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4. The Contract shall be governed by the laws of England, and the parties agree to submit to the exclusive jurisdiction of the English courts.

ⁱ As amended 21 June 2006