

# MASS TERMS AND CONDITIONS OF PURCHASE

## 1 DEFINITIONS AND INTERPRETATIONS

In these terms and conditions and in all documents relating to this Order, the following definitions shall apply:

- "Business Days" means any day excluding Saturdays, Sundays and public and statutory holidays within the jurisdiction of either party;
- "Conditions" means the Terms and Conditions set out in this document as amended from time to time;
- "Counterfeit Goods" means Supplies that are a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics are misrepresented;
- "Data" means all designs, drawings, specifications, proprietary information, trade secrets and other intellectual property owned or controlled by MASS;
- "Laws and Regulations" means all applicable laws, statutes, regulations and codes;
- "MASS" means Mass Consultants Limited whose registered office is at Enterprise House, Great North Road, Little Paxton, St Neots, Cambridgeshire, PE19 6BN, United Kingdom;
- "Order" means the Purchase Order placed by MASS and any amendment thereto, duly signed on behalf of MASS;
- "Specification" means the technical requirement and/or description of the Supplies and/or the Supplier's proprietary specification defined in the Order;
- "Supplier" means the person, firm or company on whom the Order is placed;
- "Supplies" means all articles, materials, work or services – the subject of the Order.

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

The headings of the Conditions are for convenience only and shall not affect their interpretation.

## 2 APPLICATION

These Conditions are an integral part of the Order and shall apply except to the extent that they may be inconsistent with any special Conditions appearing on the face of or otherwise incorporated in the Order, which shall have precedence over these Conditions. Such special Conditions and these Conditions shall constitute the entire agreement between the parties and shall supersede all previous communications or representations between parties inclusive of any standard selling conditions issued by the Supplier and shall not be varied except with the written agreement of MASS.

## 3 ORDERS

MASS will not accept responsibility for any Supplies unless supplied in accordance with the Order, the reference number of which shall be quoted on all documents and correspondence including Advice Notes, Invoices and required Certificates. The Supplier must notify MASS of Order acceptance within twenty one (21) Business Days of the date it bears or such other period as MASS may agree in writing. Failure to do so will give MASS the right to cancel the Order without incurring liability.

## 4 CONFORMITY WITH ORDER AND DELIVERY

- The Supplies shall conform to the quantity, quality and Specification.
- Delivery shall be strictly in accordance with the Order and at the Supplier's risk.
- All Supplies must be properly, securely and appropriately packed and the packaging marked with the MASS Order number. MASS will return packing cases or containers to the Supplier, if so requested, at the Supplier's expense.
- The Supplier shall not be liable for delay in delivery due to causes which the Supplier can show are beyond its reasonable control and without the Supplier's fault of negligence provided that the Supplier notifies MASS of any delay or anticipated delay as soon as it is known and resumes performance as soon as possible thereafter. However, if such delay exceeds twenty eight (28) Business Days MASS shall be entitled to cancel the Order without liability except in respect of Supplies already delivered to MASS prior to such cancellation. MASS may wholly or partly suspend acceptance of deliveries during or after complete or partial stoppage of work at MASS's premises by reason of factors outside MASS's control including but not restricted to Acts of God, fire, floods, strikes and lockouts.
- If any Supplies upon delivery or acceptance or upon unpacking or within twenty four (24) months thereafter (or such other longer period as may be agreed) do not conform to the Specification or the required standards of design, material, workmanship or quality or which are not of new manufacture or which are not in accordance with the samples approved by MASS (hereinafter called a "Defect") then MASS shall be entitled at its discretion and without prejudice to any other remedy to exercise one of more of the following rights:
  - Reject the Supplies in whole or in part and require the Supplier to credit MASS with the cost thereof;
  - Require the Supplier promptly to replace or repair the Supplies free of all cost and at the Supplier's risk;
  - Require the Supplier to defray all reasonable expenses and additional costs of MASS, connected with such defect.
- The Supplier warrants that under no circumstances shall it supply Counterfeit Goods to MASS, and that only new, unused and authentic Supplies will be delivered to MASS. If Counterfeit Goods are found to have been supplied to MASS by the Supplier, this will be considered a serious breach and MASS will have the right to terminate the Order as per clause 10.1.

## 5 INSPECTION AND REJECTION

- The Supplies shall be subject to the Quality Assurance Conditions specified on the face of the order.
- MASS representatives and the representatives of any other organisation on the authority of MASS shall be allowed to visit the Supplier's premises and those of its permitted sub-contractors and shall be afforded all necessary facilities at any reasonable time to audit the progress or quality of the work on the Supplies.

## 6 ADVICE AND RELEASE CERTIFICATES

The Supplier shall:

- on the day of despatch of each consignment send Advice Note(s) and such Certificate(s) of Conformity or Civil Approved Certificate(s) as may be indicated by the terms of the order. One copy of the Certificate of Conformity or Civil Approved Certificate or such other document as may be required by Clause 5(1) of these Conditions shall accompany each consignment and a further copy shall be sent by post to the receiving department;
- if a stockist – provide copies of the original manufacturer's Certificate of Conformity or Civil Approved Certificate together with test figures, heat treatment particulars, etc. where applicable.

## 7 RISK AND TITLE

In accordance with Clause 4 risk in any Supplies will pass to MASS upon delivery, title will pass to MASS upon acceptance.

## 8 PRICE

- Where prices have been agreed they shall be firm (not subject to variation) exclusive of VAT but inclusive of all other taxes, imposts, fees and duties, no alteration may be made without the consent of MASS in writing. Where prices are still to be agreed at the time the Order is placed, the Supplier shall submit quotations and confirming amendments to the Order shall be issued by MASS before invoices are rendered.
- No charge shall be made for packing, insurance or delivery unless otherwise agreed and any such charge shall be separately detailed in the invoice.

3. Payments shall be made against a properly prepared invoice, which shall clearly reference the Purchase Order Number, within thirty (30) calendar days from receipt of a valid invoice. An invoice shall be deemed to be valid at the beginning of the calendar month following the calendar month of receipt of the invoice.

## 9 INVOICES

- Invoices should be submitted after the despatch and acceptance of Supplies or in accordance with agreed payment profile. Invoices shall quote order, service/item, part and drawing numbers, description, quantities, and weights, where applicable.
- All invoices shall state the price for the Supplies exclusive of Value Added Tax and show the amount of VAT (if any) separately.

## 10 TERMINATION

### 10.1 FOR DEFAULT

In the event of a breach of any of these Conditions MASS may give the Supplier notice of such breach. If such breach is capable of remedy, the Supplier shall rectify the breach within twenty eight (28) Business Days, or if the breach is not capable of remedy, then MASS may give notice terminating the Order without incurring liability. The Supplier shall indemnify MASS from and against any cost resulting from the termination of the Order.

### 10.2 FOR INSOLVENCY

If the Supplier becomes insolvent or has a receiver or administrator appointed to its business or is compulsorily or voluntarily wound up or if MASS believes in good faith that any of such events may occur then MASS shall have the right without prejudice to any other remedy to suspend the performance of or terminate the Order without incurring liability except in respect of Supplies previously delivered.

### 10.3 FOR CONVENIENCE

- MASS may terminate the Order at any time in whole or part by delivery to the Supplier of a notice of termination. In the event of such notice being given the Supplier shall stop work forthwith and comply with any directions with regard to the Supplies, which may be given by MASS. The Supplier shall submit an account to MASS within three (3) months from the effective date of termination in the form prescribed by MASS. MASS undertakes to pay a fair and reasonable price for all work done and unique materials purchased up to the time of termination. Such payments made taken together with any sums paid or due to or becoming due to the Supplier under the Order shall not exceed the total price of the Supplies under the Order.
- Any termination of the Order shall not prejudice any rights or remedies which may have accrued to either party and both parties shall use all reasonable endeavours to mitigate their losses on such termination.

## 11 PATENTS

- The Supplier warrants that there are no infringements whatsoever known by the Supplier in respect of the Supplies, to be existing or pending at the date of the Order and hereby agrees to fully indemnify MASS against any liability, damages or expenses whatsoever which may be incurred by or on behalf of MASS in the use of the Supplies as a result of the infringement of the Supplier of any patent, registered design, trademark or copyright belonging to third parties.
- Any Intellectual property/design rights derived in respect of anything designed, developed or produced on behalf of MASS for this order that did not exist prior to commencement for the Supplies or for which the design is furnished by MASS shall belong to MASS and MASS shall be entitled to all intellectual property rights in connection therewith.

## 12 LEGAL LIABILITY INSURANCE

- Other than clauses 4.5.c and 12.2 where liability shall be unlimited, to the fullest extent permitted by law, the supplier shall effect a Legal Liability insurance of not less than £1,000,000 per event in respect to loss or damage to property by it, its employees or sub-contractors resulting from or during the execution of this order. Should such insurance policy cover a liability in excess of £1,000,000 then MASS shall receive the benefit of the full extent of cover available.
- The supplier agrees to indemnify and hold harmless MASS, to the extent it cannot be limited or excluded by law, from and against all claims made in respect of death or personal injury caused by negligence, fraud or misrepresentation by the supplier, its employees or sub-contractors or breach of obligation under the Official Secrets Act (1911 to 1989).

## 13 SUPPLIER'S DOCUMENTATION

The Supplier will promptly provide MASS with all present and future instructions relating to the use and disposal of Supplies and in particular draw attention to any dangers or hazards or restrictions associated with the Supplies.

## 14 ASSIGNMENT AND TRANSFER BY THE SUPPLIER

No work on the Order may be sub-contracted by the Supplier nor shall the Order be assigned or otherwise transferred by the Supplier without the written consent of MASS. All sub-contracts shall be the responsibility of the Supplier.

## 15 WARRANTY

- Unless manufactured pursuant to a detailed design furnished by MASS, the Supplier assumes design responsibility and warrants the Supplies free from design defect.
- Without prejudice to Clause 15(1) any and all warranties and service guarantees attaching to the Supplies shall not only be for the benefit of and enforceable by MASS, but also for the benefit of and enforceable by MASS customers and/or users of the Supplies. MASS inspection, approval and acceptance, use of or payments for all or any part of the Supplies shall in no way affect its warranty rights whether or not a breach of warranty had become evident at the time.
- Supplier agrees to warrant all products and services supplied for a period of 24 months from notification of acceptance by MASS.

## 16 INDEMNITY

The Supplier agrees to indemnify MASS against any and all claim costs, damages, liabilities and expenses in respect of personal injury, death or loss of or damage to property and pecuniary loss caused from the acts or omissions of the Supplier, its Sub-Contractors, agents or suppliers in the performance of the Order.

## 17 CHANGES

MASS may unilaterally by notice in writing amend the Order and the Supplier shall comply therewith without delay. Within fourteen (14) calendar days after receipt of notification of any change as aforesaid the Supplier shall submit to MASS a statement in such detail as MASS may reasonably require of the effect of such change and as soon as practicable MASS and the Supplier shall agree upon any necessary and reasonable adjustment to the order and incorporate such agreement into the Order by Order Amendment.

## 18 CONTINUITY OF SUPPLY

The Supplier undertakes to accept further orders in respect of MASS future requirements for similar Supplies at prices and delivery lead time no less favourable to MASS than those agreed for this Order having regard to the economic circumstances at the time and in the event that the Supplier is unwilling or unable to accept such orders it shall deliver to MASS without charge all necessary drawings, manufacturing information and tooling to enable MASS to make the Supplies or have them made elsewhere and shall use its best endeavours to obtain for MASS on economic terms the grant of any necessary licence(s).

## 19 FREE ISSUE

- All Data, tools, patterns, materials and other equipment loaned by MASS to the Supplier for use in connection with the Order or manufactured by the Supplier at the expense of MASS in connection with the Order shall be and will remain at all times the property of MASS and be surrendered to MASS upon demand in good and serviceable condition (fair wear and tear accepted) and are to be used by the Supplier solely for the purpose of completing the Order. Such Supplies shall be at the risk of the Supplier and insured by the Supplier at the Supplier's own expense. MASS does not warrant the adequacy of any tooling furnished by it.

2. MASS shall not accept liability for any parts or materials received by the Supplier from MASS in a damaged state under or in connection with the Order unless such damage is notified in writing to MASS within five (5) Business Days of the receipt by the Supplier of such parts or materials.

3. All scrap arising from material free issued by MASS shall remain the property of MASS and must be disposed of by the Supplier in accordance with the instructions of MASS and all proceeds of sales of such scrap must be credited by the Supplier to MASS. Such instruction shall not however replace any statutory duty otherwise imposed on the Supplier.

## 20 CONFIDENTIALITY

The Order and the subject matter thereof shall be treated as confidential between the Supplier and MASS. The Supplier shall not, during the performance of the Order, and for a period of two (2) years, following completion of the Order, disclose any information received, used or developed by the Supplier to any third party, or any other person, or persons, who do not need to know such information for the purposes of performing the Order, nor shall the Supplier make public the existence of the Order, make use of the MASS name or any information contained in the Order or related documents, unless required by law, or by express written consent of MASS.

## 21 NOTICES

- All notices and communications shall be in writing.
- Any notice or other communication sent to the Supplier shall be sufficient if sent to an address of the Supplier last known to MASS.
- Notices or other communications sent by the Supplier shall be sent to the address given for MASS on the face of the Order for the attention of the Manager indicated on the face of the Order.

## 22 WAIVER

Any failure, delay, relaxation or concession by MASS in the exercise of its rights to insist upon the performance of any of the obligations or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of the future exercise of any such right and the obligations of the Supplier shall continue in full force and effect.

## 23 COMPLIANCE WITH LAWS AND REGULATIONS

- The Supplier, its employees, sub-contractors and agents shall comply with all laws, statutes, ordinances, rules and regulations applicable in the manufacture, sale and provision of the Supplies in accordance with the requirements of the Order.
- The Supplier, its employees, sub-contractors and agents shall familiarise themselves with and comply with MASS procedures relating to discipline, fire, health and safety and security when on MASS premises.
- The Supplier shall provide its employees with and shall ensure that its employees and sub-contractors use any protective clothing and safety equipment required.
- The Supplier warrants and undertakes that it, its employees, sub-contracts and agents shall comply with applicable law, regulations and codes relating to the following acts, acknowledging that any breach will be deemed a breach in accordance with clause 10.1:
  - Anti-bribery and corruption, including but not limited to the Bribery Act 2010;
  - Anti-slavery, including but not limited to the Modern Slavery Act 2015.

## 24 RE-EXPORT OF SUPPLIES

- The Supplies to be delivered to MASS in accordance with the requirements of this Order may be subsequently exported or re-exported as part of, or in support of, MASS designed and manufactured equipment. The Supplier is required as a specific term of this Order to confirm that no restriction exists in respect of EU customs and/or UK export regulations and/or ITAR or EAR or any other U.S. Department of Commerce Export Administration Regulations or other relevant U.S. Government Regulations or any other foreign Government regulations preventing such export, re-export or transfer by MASS or confirm in writing that no such regulations apply. Unless specifically advised otherwise at the time of acceptance of the Order, MASS shall assume that no such restriction exists in respect of the export or re-export of any Supplies of U.S. or EU origin other than those covered by UK statutory requirements.
- If any of the Supplies which are the subject of the Order are controlled by ITAR or EAR the Supplier will:
  - notify MASS forthwith;
  - provide the following information to MASS: US supplier details, description of material, part/reference number, US munitions list category/EAR Export Control Classification Number, license/technical assistance agreement or other authorised agreement reference number and copies of such agreements or relevant details including parties authorised to receive material and provisos and a listing of authorised end users, parties and/or consignees; and
  - clearly mark individual items and associated documentation as being subject to ITAR/EAR.

## 25 SEVERANCE

In the event that any terms, condition or provision of the Order shall be nullified or made void by statute, regulation or order or by the decision or order of any Court having jurisdiction, the remaining terms, conditions and provisions of the Order shall remain in full force and effect.

## 26 APPLICABLE LAW

These Conditions shall be governed, construed, and shall take effect in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the English courts, unless it is otherwise agreed between the parties that any unresolved disputes between them shall be finally settled under the Rules of Arbitration of the International Chambers of Commerce. The seat of arbitration shall be London, England.

## 27 GOVERNMENT CONDITIONS

- Where it is indicated on the Order that the Supplies are required for a Government contract the Order shall (unless otherwise stated) be subject to Defence Conditions (DEFCONS), Cyber Essentials certification and to such other Governmental conditions as are specified on the face of the Order and all Conditions, or relevant parts thereof, contained in the Contract (the contents of which the Supplier shall be deemed aware) (hereinafter called Government Conditions). These conditions shall be flowed down to sub-contractors through the Suppliers contractual terms and conditions. It is understood that in interpreting the Government Conditions MASS assumes the rights and obligations of the "Authority" and the Supplier assumes the rights and obligations of the "Contractor" except where indicated to the contrary by MASS who shall advise on such matters upon written request.
- If any of the General Conditions contained at Conditions 1 - 26 inclusive hereof is inconsistent with a corresponding Government Condition applicable to the Order, the Government Condition shall prevail to the extent of such inconsistency only but nothing otherwise shall limit the rights which MASS reserves under these Conditions.

## 28 REACH

- The Supplier shall conform to the European REACH regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals 1907/2006) and supply MASS with details of substances supplied as products or parts of products (articles and preparations) as required under this regulation.
- As a Supplier of products and/or equipment to MASS, the Supplier or its Supplier(s) if they are not the direct manufacturer of the substance / preparation / article, must register or pre-register all substances sold directly to MASS. The regulation mandates a comprehensive registration of all substances. Therefore, the Supplier must flow this requirement down to its own supply chain.