

TERMS & CONDITIONS OF PURCHASE

1. Definitions:

1.1 The definitions and rules of interpretation in this clause 1 apply to the Order.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for business generally in London.

“Counterfeit Supplies” means

(1) Supplies which have been identified, marked and/or altered by a source other than the Supplies’ legal authorised source and which have been misrepresented to be an authorised item of the legally authorised source and/or

(2) previously used Supplies provided as new.

“EAR” means US Department of Commerce Export Administration Regulations.

“Good Industry Practice” means the exercise of that degree of competence and/or practices and standards which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the same or similar type of business as the Supplier under similar circumstances, including without limitation, having similar financial resources.

“Independent Distributors” means those persons or businesses which are not part of the OCM or OEM’s authorised distribution chain

“ITAR” means US Department of State International Traffic in Arms Regulations.

“OCM” means the organisation that is the originating source for the production of legitimate components.

“OEM” means the organisation that is the originating source for the production of legitimate equipment.

“Purchaser” means “**Whippendell Marine Ltd.**”

“Supplier” means the Company or Person to whom this order is addressed.

“Supplies” mean any goods, materials, work or services which are to be provided by the Supplier to the Purchaser pursuant to the Order.

1.2 Clause headings are for convenience only and shall not affect the interpretation of the Order.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute, statutory provision, or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. Contract Formation:

2.1 The order constitutes an offer by the Purchaser to purchase the Supplies provided that, if the order is not accepted in accordance with the provisions of clause 2.2 within ten (10) Business Days of the date of the Order, the Purchaser’s offer will lapse without the Purchaser incurring any liability to the Supplier.

2.2 The Supplier shall accept the order by sending a written confirmation to the Purchaser. Alternatively, if the Supplier fails to do this, the Supplier shall be deemed to have accepted the order as soon as it commences work.

2.3 On the Supplier's acceptance of the order in accordance with clause 2.2, the Contract shall be formed.

2.4 It is expressly agreed that any other terms and conditions of business contained in any acknowledgements, confirmations, standard forms or other documents issued by either Party or in the quotation, letter of offer, technical proposal or other similar documents issued by the Supplier to the Purchaser in respect of the Supplies or implied by trade custom, practice or course of dealing shall not apply.

3. Authority:

The Purchaser shall not be liable for any order, order amendment or instructions to proceed with orders unless and until authorised or confirmed on the Purchaser's printed Order or Amendment form.

4. Prices:

Unless specifically agreed otherwise all prices shall be firm and not subject to any form of surcharge or variation.

5. Cancellation:

Any time or period for delivery despatch or completion shall be of the essence. The Purchaser shall also be entitled to cancel the Order or any part thereof and/or claim for reimbursement for all losses and expenses suffered in the event:

- (a) the Supplier fails to deliver goods or provide services in accordance with the terms of the order.
- (b) the Supplier fails to make progress with the order so as to jeopardise the purpose of the order.

6. Quality:

As this purchase order may be in support of a Government contract, the Supplier's Quality System shall meet the requirements of AQAP 2110, 2120 or 2130 as applicable.

7. Sub Contracting:

None of the work covered by the order shall be sub-contracted without the prior permission of the Purchaser except as is customary in the trade. The Supplier shall remain responsible for the performance of the order.

8. New Material:

8.1. Unless specifically agreed otherwise all materials to be supplied under the orders are to be new and no materials disposed of as surplus by Her Majesty's Government are to be included.

8.2. The Supplier shall make itself familiar with and comply with the requirements of DEF STAN 05 -135 Issue 1 (Avoidance of Counterfeit Materiel) and ensure that Counterfeit Supplies are not delivered to the Purchaser. In fulfilling its obligations under the Order, the Supplier shall only purchase products to be delivered or incorporated as Supplies to the Purchaser directly from the OCM or OEM. Supplies shall not be acquired from an Independent Distributor without written consent from the Purchaser.

8.3 The Supplier shall as soon as practicable notify the Purchaser if the Supplier becomes aware or suspects that it has acquired Counterfeit Supplies. When requested by the Purchaser, the Supplier shall provide documentation that authenticates traceability of the affected Supplies to the OCM or OEM.

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8.4 In the event that Supplies delivered under the Order constitute or include Counterfeit Supplies, the Supplier shall, at its expense promptly replace such Counterfeit Supplies with genuine Supplies conforming to the requirements of the Order.

Notwithstanding any other provision in the Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Supplies, including without limitation the Purchaser's costs of removing Counterfeit Supplies, of reinserting replacement Supplies and of any testing necessitated by the reinstallation of Supplies after Counterfeit Supplies have been exchanged.

9. Inspection:

The Purchaser's inspector or representative and any inspector or representative of the Purchaser's customer or his agent or of any government department concerned shall be entitled on the Purchaser's authority to witness the inspection or testing of the goods or work which are the subject matter of the order at any reasonable time at the Supplier's work or at the works of the Suppliers sub-contractors.

If required by the Purchaser, the Supplier will give the Purchaser adequate notice to the Suppliers works test which the Purchaser shall be entitled to attend. Reasonable facilities shall be provided at the Supplier's expense for the inspector or representative. The Supplier will provide the Purchaser with such certificates as the Purchaser may require. Such inspection does not relieve the Supplier of any liability, nor does it imply acceptance of the goods or work which are not the subject matter of the order.

10. Delivery, Packing & Marking:

10.1 All goods supplied against the order must be adequately protected against damage and deterioration in transit and delivered, carriage paid or as otherwise notified in writing to the Supplier and must bear the Purchaser's order number on the package thereof.

The goods shall be at the Supplier's risk until delivered to the Purchasers at the point specified in the order unless the Purchaser otherwise agrees in writing. Unless otherwise provided in the order all containers and packing materials supplied by the Supplier shall be considered non-returnable and their costs shall be included in the price.

Where the Purchaser receives goods unexamined the Purchaser's right to subsequently inspect the goods and reject them if they do not comply with the specification or claim for shortages shall not be prejudiced.

When goods are rejected, they will be returned at the Supplier's risk and expense.

10.2 The Supplier shall deliver the work in the manner and at the time(s) specified by Purchaser. If the Supplier fails to deliver in accordance with such manner and time(s) then Purchaser shall be entitled to recover from Supplier by way of liquidated damages and not as a penalty (either directly or by deduction from any monies due or which become due to Supplier) a sum equivalent to 1% of the price for each week, or part of a week, of delay up to a maximum of 10% of the price (or such other percentage and /or period as may be specified in the Order).

11. Passing of Property:

Property in the subject matter of the order shall pass to the Purchaser no later than the time of delivery provided that any passing of title shall not prejudice either the Purchaser's right to reject for nonconformity with specification or any other rights that the Purchaser may have under the order provided that where advance or progress payments are made title but not risk shall pass to the Purchaser as soon as items are allocated to the order. All the items so allocated shall be adequately marked and recorded as being the property of the Purchaser.

12. Insurance :

12.1 The Supplier shall, as a minimum, maintain the following primary insurance policies at the specified amount (unless the Purchaser has specified some other sum) with reputable insurers authorised to conduct business in the jurisdictions in which the Agreement is performed against all risks usually insured against in accordance with Good Industry Practice, including without limitation, protection for claims for third party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Purchaser as a result of the provision to it of the Supplies:

12.1.1 a policy of Public Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, Whippendell Marine Ltd., Purchaser's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;

12.1.2 a policy of Product Liability Insurance for an amount not less than £10 million per event or series of events in respect of loss of or damage to property of the Purchaser, Whippendell Marine Ltd., Purchaser's customer or end user, or death, disease, illness or injury to persons resulting from provision of the Supplies;

12.1.3 any other insurance which the Supplier may be statutorily required to maintain.

12.2 The Supplier shall procure that such insurance is arranged on a continuing basis and shall make the Purchaser aware of any conditions, limitations, exclusions or restrictions within such insurance policies.

13. Payment:

Inattention of the following details may mean delay in payment, but no prompt payment discount shall be forfeited by the Purchaser on account of the Supplier's failure:

- (a) to send on the day of despatch for each consignment such advice/s of despatch and invoice/s as may be indicated in the order, or
- (b) to mark the Purchaser's order number on the consignment package, packing notes, invoices, monthly statements and all other correspondence or
- (c) to provide any certificate or other documentation required under this order.

All payments made will be without prejudice to the Purchaser's rights should the goods, materials or services prove unsatisfactory or not in accordance with the Purchaser's order or instructions.

14. Suspension:

In the event of any alteration of the Purchaser's business due to circumstances beyond the Purchaser's control such as but not limited to any industrial dispute, fire explosion or accident which would prevent or hinder the use of goods or work which is the subject of the order the Purchaser shall have the right to suspend the order until such circumstances have ceased.

15. Tools and Materials:

Where tools and/or test equipment and/or materials are supplied by the Purchaser the Supplier shall accept full responsibility for their proper storage, safe custody and method of use and shall accept the risk of loss and damage howsoever arising, Any such tools, test equipment and materials shall be used by the Supplier only for performing the work placed by the Purchaser and shall be returned at the Suppliers expense at the completion of the work unless otherwise agreed by the Purchaser in writing. Surplus materials and/or scrap shall be disposed of in accordance with the Purchaser's instructions.

16. Confidentiality and Publicity:

16.1 The Supplier shall treat all information provided by the Purchaser as confidential and use such information only for the purpose of performing the Purchaser's orders. Where drawings or other data are issued the Supplier shall exercise proper custody and control and return/dispose of in accordance with the Purchaser's instructions.

16.2 The Supplier shall not, and shall not permit any person to, without the Purchaser's prior written consent, publicise in any media or public announcement information regarding the existence or terms of the Contract or the Supplies provided or use "Whippendell Marine" or derivatives of the company name as part of any publicly available material.

17. Defective Material/Workmanship:

17.1 The Supplier will keep the Purchaser indemnified in respect of all and/or expense which results during proper use directly or indirectly from defective materials goods, workmanship or design supplied by the Supplier and the Supplier will repair at the Purchaser's request or replace the defective items free of charge. The Supplier will also keep the Purchaser indemnified against any damage to the Purchaser's property (including any materials, tools or patterns sent to the Supplier for any purpose) and against any claims for loss or injury or any person or death to any person or to the property by reason of the Supplier's negligence or any act or omission on the part of the Supplier's employees, sub-contractors or agents arising out of the performance of the order.

17.2 If any defects which Supplier is obliged to remedy under this Clause, are not remedied within a reasonable time or circumstances render it impracticable for Supplier to do the same. Purchaser may do so himself or authorise others to do the same, and Supplier shall reimburse Purchaser for all costs arising there from. Any such action taken by Purchaser shall not in any way invalidate the warranty given by Supplier or relieve Supplier from it's obligations and liabilities under the Order.

18. Health and Safety at Work Act 1974:

In accordance with the requirements of the Health and Safety at Work Act 1974 and any re-enactment thereof, any safety precautions required for the handling of the material covered by the order are to be clearly indicated on each consignment.

19. Government and other Special Conditions:

Where government or other conditions are incorporated by reference in the order such special conditions shall apply.

20. Export Control:

Where any deliverables are subject to export or import controls, including US ITAR and EAR control and regulations, UK Government controls or nay other controls, then the Additional Terms and Conditions of Purchase (Export Control) (WM/36/1) shall apply.

21. Insolvency:

The Purchaser shall be entitled at any time by notice in writing to terminate this contract without compensation to the Supplier in respect of the terminated portion in the event that:

- (a) The Supplier becomes insolvent, or the Supplier makes any composition or arrangements with its creditors.
- (b) Any petition is presented for the Suppliers winding up,
- (c) The Supplier passes any resolution for the Suppliers winding up.

22. Waiver:

Any concession or indulgence made by the Purchaser shall not be considered as a waiver of the Purchaser's rights under the order unless specifically authorised in writing on the Purchaser's printed order or amendment form.

23. Security:

Where a security classification appears on the face of the order, the Supplier shall at all times comply with the relevant security procedures. Particular security aspects will be covered in an aspects letter issued by the Purchaser's security controller which shall form part of the order.

24. Indemnity:

The Supplier shall indemnify the Purchaser against all claims, costs, expenses, loss or damage whether direct or consequential which the Purchaser may suffer howsoever arising from the Supplier's breach of any of its obligations under the contract.

25. Suppliers Ethics :

25.1 Whippendell Marine Ltd. and its customers expect and encourage all Suppliers to embrace ethical values and legal compliance practices (including a method for reporting possible violations).

25.2 The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating to anti-bribery and anti-corruption, including the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977.

25.3 The Supplier undertakes that it will abide by and comply with all applicable laws and regulations relating modern slavery, including the UK Modern Slavery Act 2015.

25.4 Whippendell Marine Ltd. operates an environmental policy and expects and encourages all its Suppliers to do the same and work to reduce their environmental impact.

26. Force Majeure Event :

Neither Party shall be deemed in breach of the Contract or liable to the other for delay in performing its obligations, or failure to perform any such obligations, under the Contract, if the delay or failure results from a Force Majeure Event provided that the affected Party:

26.1 promptly notifies the other Party, in writing, and promptly provides reasonable evidence, of: (a) the occurrence of such Force Majeure Event; (b) the expected duration of such Force Majeure Event; and (c) the effect of such Force Majeure Event on the affected Party's ability to perform its obligations under the Contract;

26.2 uses all reasonable endeavours to eliminate or minimise the delay in performing or failure to perform its obligations under the Contract and continues to fulfil its obligations to the extent that they are not affected by the Force Majeure Event;

26.3 recommences its full performance as soon as is reasonably possible; and

26.4 gives prompt notice of the cessation of any Force Majeure Event previously notified to the other Party.

27. Contracts (Rights Of Third Parties) Act 1999 :

Except for any Indemnified Party, a third party which is not a Party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

28. Law:

The construction validity and performance of the order shall be governed by the Law of England and subject to the jurisdiction of the English courts.