

# **BARKERS ENGINEERING LIMITED**

## **TERMS AND CONDITIONS OF PURCHASE**

**Unless otherwise agreed and acknowledged in writing, these general conditions of purchase apply to all goods purchased by Barkers Engineering Limited**

### **Index to Clauses**

- 1 Interpretation
- 2 Basis of purchase
- 3 Specifications
- 4 Price of the goods and services
- 5 Terms of payment
- 6 Delivery
- 7 Risk and property
- 8 Warranties and liability
- 9 Termination
- 10 General

# TERMS OF PURCHASE

## **1 Interpretation**

### 1.1 In these Terms:

“BUYER” means the Buyer of the Goods or the services pursuant to the Contract of which these Terms form part;

“CONTRACT” means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services;

“DELIVERY ADDRESS” means the address stated on the Order;

“GOODS” means the goods (including any instalment of the goods or any part of them) described in the Order;

“ORDER” means the Buyer’s purchase order to which these Terms are annexed;

“PRICE” means the price of the Goods and/or the charge for the Services;

“SELLER” means the person so described in the Order;

“SERVICES” means the services (if any) described in the Order;

“SPECIFICATION” includes any plans, drawings, data or other information relating to the Goods or Services;

“TERMS” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“WRITING”, and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2 Any reference in these Terms 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.

1.3 Any reference to statutes, regulations, legal enactments or other legal requirements of any kind includes not only those derived from national law but any statute, regulation, decision or international convention having the force of law in respect of the Contract and the Goods, including but without limitation the decisions and law of the European Union.

1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

## **2 Basis of purchase**

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms, save that such offer may be withdrawn unconditionally

and at any time by the Buyer prior to the Seller formally accepting each offer in Writing upon the terms hereof.

- 2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.3 If, subsequent to the Contract, any contract for purchase is concluded with the Seller by any method whatsoever without express reference to these Terms, it shall be a term of such contract that these Terms apply to such contract.
- 2.4 Notwithstanding anything contained in the Seller's conditions of contract relating to any contract between themselves and the Buyer these Terms shall apply and take precedence over all other terms and conditions.
- 2.5 The Order will lapse unless unconditionally accepted by the Seller in Writing within seven days of its date.
- 2.6 No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.7 Acceptance of the Order by the Seller will constitute unconditional acceptance of these Terms without variation.

### **3 Specifications**

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer and no term or condition purporting to allow the Seller to make changes to the quantity, quality, description and specification of the Goods as laid down in the Order shall be accepted or agreed by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract and the Seller shall not be entitled to exercise any right of lien over any such intellectual property rights.
- 3.3 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.
- 3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

- 3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller whether in writing or not, the Seller shall take such steps as are necessary to ensure compliance. Failure by the Seller to ensure such compliance will give the Buyer the right to avoid the Contract and if the Buyer so chooses to avoid the Contract the Seller agrees that in addition to all and any other rights the Buyer has against it it will be responsible for the Buyer's reasonable costs and expenses in arranging the Contract with the Seller, such costs and expenses to be paid to the Buyer within 14 days of the Buyer informing the Seller of the same.
- 3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

#### **4 Price of the goods and services**

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing, whether or not the Buyer has been given notice of any possible increase such notice only being effective if the Buyer specifically accepts the increase by placing such acceptance in Writing and forwarding the same to the Seller and it shall be further agreed between the Buyer and Seller that silence on the part of the Buyer to notice of any increase shall not constitute acceptance of such increase..
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

#### **5 Terms of payment**

- 5.1 The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 90 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3 The Buyer may set off against the Price any sums owed to the Buyer by the Seller and shall be entitled to withhold payment of the Price if the Seller has not complied with the Order whether in full or part.

- 5.4 In the event of the Buyer not making payment of sums properly due pursuant to clause 5.2 above:
- 5.4.1 No interest shall be payable by the Seller other than interest at the statutory interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (“the Late Payment Act”); and
- 5.4.2 No compensation for late payment shall be payable other than compensation payable pursuant to the Late Payment Act section 5A.
- 5.5 In the case of sums paid to the Seller by cheque, banker’s draft or direct inter-bank transfer, payment shall be deemed to have been made on the despatch by the Buyer of such cheque, draft or transfer and the Seller agrees that the Buyer shall in no way remain liable to the Seller and shall not be liable to pay anything other than the Price if through no fault of the Buyer such cheque, draft or transfer has been delayed in reaching the Seller.

## **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, in either case during the Buyer’s usual business hours and the Seller agrees that it shall consider any reasonable request by the Buyer to postpone delivery to a date different to that set out in the Order.
- 6.2 Where the Goods are not delivered by the Seller but by a carrier engaged by the Seller to deliver the Goods to the Buyer the Seller agrees that delivery of the Goods will not have taken place until the Goods are deposited at the Delivery Address by the Seller’s carrier and the Seller further agrees that it shall be responsible for the carriage of the Goods whilst in transit whether or not the Goods are being transported by the Seller or a carrier engaged by the seller and that the Seller will not in any circumstances be entitled to exclude in any way Section 32(2) of the Sale of Goods Act 1979.
- 6.3 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date but the Seller shall not be entitled to specify a date or time which is outside the Buyer’s normal business hours or which would cause the Buyer inconvenience or the incurring of costs.
- 6.4 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.5 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.6 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.7 The Buyer may reject any Goods delivered which are not in accordance with the Contract, and the Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and accordingly the Buyer shall be entitled to reject the Goods if they are not in conformity with the Contract, however slight the breach may be,

- 6.8 The Buyer shall not be deemed to have accepted any Goods until either it has confirmed such acceptance to the Buyer or in any case 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.
- 6.9 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.10 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.11 If the Goods are not delivered or the Services are not performed on the due date such failure shall be considered to be a breach of the Contract and then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay 10 per cent of the Price for every week's delay, up to a maximum of 50 per cent.

## **7 Risk and Property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **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 or sample; and
- 8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- 8.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
- 8.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the

Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

- 8.4 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
  - 8.4.1 breach of any warranty given by the Seller in relation to the Goods or the Services;
  - 8.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 8.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
  - 8.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
  - 8.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 8.5 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
  - 8.5.1 Act of God, explosion, flood, tempest, fire or accident;
  - 8.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.5.4 import or export regulations or embargoes;
  - 8.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party);
  - 8.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 8.5.7 power failure or breakdown in machinery.

## **9 Termination**

- 9.1 The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.
- 9.2 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

- 9.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 9.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- 9.2.3 the Seller ceases, or threatens to cease, to carry on business; or
- 9.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

## **10 General**

- 10.1 The Buyer is a member of the group of companies whose holding company is Hill & Smith Holding plc, and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 10.2 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 10.3 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice and such notice shall only be validly delivered or served if sent by way of first class or special delivery post and shall not be validly served if, without limiting the generality, it is sent by way of facsimile, e-mail or telex.
- 10.4 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.5 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 10.6 Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 10.7 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.