

Portsmouth Water Ltd
Terms and Conditions of Purchase

1. Definitions

- 1.1 "Buyer" shall mean Portsmouth Water Ltd including all their successors and assigns
- 1.2 "Supplier" shall mean the Person, Firm or Company to whom the offer to contract has been given
- 1.3 "Contract" shall mean the agreement between Buyer and Supplier for the supply of goods, rights and services.
- 1.4 "Deliverables" shall mean goods, rights and services to be purchased
- 1.5 "Terms" shall mean these Terms and Conditions
- 1.6 "Contract Price" shall mean the price stated in the Buyer's Purchase Order
- 1.7 "Purchase Order" shall mean the offer to purchase made by the Buyer and will have a bespoke Purchase Order Number.

2. General

The Buyer, only purchases goods, rights and services ("Deliverables") on these terms and conditions ("the Terms"). If the Supplier, accepts the Purchase Order it will be on these Terms and no other standard terms. These Terms can only be changed, or other terms agreed, in written correspondence between the two parties. These Terms are important and must be studied carefully.

3. The Contract

- 3.1 The Contract, will comprise Buyer's express written order, these Terms, anything else expressly agreed under section 3.2, plus any content imposed by law, but nothing else.
- 3.2 If Supplier requires Buyer to accept a specific term or particular responsibility, not included in, or in variance of, these Terms, Supplier must obtain Buyer's express written agreement, referring expressly to these Terms.
Buyer enters into the contract with full reliance on these Terms, and Buyer acceptance of contractual performance by Supplier does not imply acceptance of any terms that are different to these Terms.
- 3.3 If any of the terms of the contract conflict with or contradict each other, those terms will over-ride each other in the following order of priority: (1) any express written agreement from Buyer (2) Buyer's Purchase Order; (3) these Terms.
- 3.4 Buyer will not be contractually bound until a formal purchase order has been placed and Supplier accepts with a formal order acknowledgement in writing or (if later) when Buyer accepts Performance by Supplier.

4. Price

The price of the Deliverables will be as stated in Buyer's Purchase Order or, where a framework pricing agreement is in place, the price will be as per this agreement unless otherwise stated, will be:

- 4.1.1 exclusive of any applicable VAT
- 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT;
- 4.1.3 payable in pounds, sterling, and
- 4.1.4 fixed for the duration of the Contract.

- 4.2 Buyer will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by Supplier in comparable circumstance.

5. Payment

- 5.1 Invoices for the Deliverables must quote the Buyer's Purchase Order No. No sum may be invoiced more than six months late.
- 5.2 Unless otherwise stated in the order, payment terms are net 30 (thirty) days.
- 5.3 Buyer will be entitled to set off against invoiced amount any monies owed to Buyer by Supplier.

6. Specifications

- 6.1 The description, specification, quantity, quality and performance of Deliverables will be as specified in the Purchase Order.
- 6.2 All Deliverables will comply with all applicable statutory regulations and other regulatory requirements concerning performance of the contract, to ensure that Buyer can, in compliance likewise, fully utilise the Deliverables for their intended purposes.
- 6.3 Buyer may carry out inspection of contract goods after delivery, but also during manufacture and storage subject to reasonable notice. If, as a result of the inspection, Buyer is not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the contract, Supplier will take such steps as are necessary to ensure compliance. If, after all reasonable opportunities are taken, Buyer is still not satisfied, the contract may be cancelled without penalty.
- 6.4 If Buyer finds fault with any goods or service during the agreed warranty or other reasonable period after performance and third party inspection or testing is required, Supplier is responsible for the full cost of such activity.
- 6.5 If, after contract has been agreed, changes in desired specification are required all true cost impacts including increased or reduced costs, will be identified and agreed in writing before such changes are implemented.
- 6.6 Due to Regulatory requirements of Buyer's business, Supplier will provide, if requested, information as to how Deliverables were performed. Supplier will keep adequate records, including full traceability where goods are deemed safety critical or conform to legal or regulatory requirements, for that purpose for at least two years after completion of Performance.
- 6.7 Supplier will comply with any reasonable requirements Buyer may have as regards the packaging, packing and labelling of any contract goods.
- 6.8 Buyer may reject any Deliverables which are not fully in accordance with the contract. Acceptance does not occur until Buyer has had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent.

7. Delivery and risk

- 7.1 Any goods will be delivered to, and any services performed at, the address and on the date stated in the Purchase Order. If no address is specified, then delivery will be at Buyer's main premises.
- 7.2 A packing note quoting the Purchase Order number must accompany each delivery or consignment of goods and must be displayed prominently
- 7.3 The date of delivery of any goods or rights, and the performance of any services, will be of the essence of this contract unless otherwise stated and agreed.
- 7.4 Where Deliverables are to be supplied in instalments, the contract is still to be treated as a single contract. If Supplier fails to deliver or perform any instalment Buyer may treat the whole contract as repudiated.
- 7.5 If Supplier is delayed in completing the contract by any omission by Buyer then Supplier will inform Buyer of resultant delay. Buyer will agree with Supplier a revised delivery/completion date.
- 7.6 Buyer will not be bound to return to Supplier any packaging or packing material, but if any relevant requirement for packaging recycling is applied, Supplier will take materials back free of charge on request
- 7.7 Risk of damage to or loss of any goods passes to Buyer on delivery, point of which occurs in accordance with current edition of Incoterms.
- 7.8 Property and ownership (title) of any goods will pass to Buyer upon delivery unless Buyer has paid in whole or in part for the goods in advance.
- 7.9 All information provided that is Buyer's copyright or intellectual property remains sole property of Buyer and Supplier will keep such articles confidential and secure at all times. Supplier must indemnify Buyer against any loss caused, and account for any profit made, through any breach of this clause

7 Delivery and risk (cont'd)

7.10 Any goods provided by Buyer to Supplier on a 'free issue' basis will remain Buyer's absolute property throughout, and will be held at Supplier's risk while the goods are in Supplier's possession.

7.11 Whilst on Buyer's premises or external sites for which Buyer is responsible, Supplier will ensure that best industry standards are adopted for the health and safety of all personnel and of any other individuals affected by Supplier's actions. - Supplier will comply with all reasonable requirements as to security, health and safety routines, times and areas of access, - and will be responsible to Buyer on a full indemnity basis for all damage and injury caused by Supplier's personnel, sub contractors etc

8. Warranties and liability

- 8.1 Supplier promises that:
 - 8.1.1 any goods will be free from defects in materials and workmanship; and
 - 8.1.2 all claims made by Supplier about any Deliverables, and all apparently serious claims in Supplier's advertising and promotional material, are correct and can be relied upon; and
 - 8.1.3 any services will be performed by appropriately qualified and trained personnel; and
 - 8.1.4 neither the sale of any Deliverable, nor its proper use by Buyer for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.
- 8.2 All warranties, conditions and other terms implied by statute or common law in Buyer favour will apply to any Deliverables purchased from Supplier.
- 8.3 It is Supplier's responsibility to find out from Buyer the purpose for which the Deliverables are intended. Supplier promises that they will be suitable for those intended purposes, save only for any unsuitability which Supplier has expressly notified to Buyer.
- 8.4 Supplier will indemnify Buyer against any cost, claim, expense or liability arising from any risk, including but not limited to injury (or death) to any person or loss of or damage to any property, arising out of the act, default or negligence for which Supplier is responsible under this contract.
- 8.5 If Supplier fails to comply with any obligation under the contract Buyer will be entitled, to reject any Deliverable and Supplier will not be entitled to receive payment for that Deliverable.
- 8.6 If any contract goods do not comply with all contract requirements Buyer can reject the goods and receive full credit. Supplier will repair or replace such goods within a reasonable period or Buyer's sole discretion, can reject the goods and demand the repayment of any sum already paid for them.
- 8.7 Buyer will not be liable to Supplier for any delay or failure to perform any of Buyer's obligations under this contract if the delay or failure was due to a cause beyond Buyer's reasonable control.
- 8.8 Supplier will insure themselves, and keep insured until Performance is complete, against all normal insurance risks relevant to Supplier's work for, or with Buyer, on terms and for amounts consistent with normal business prudence. Supplier will demonstrate to Buyer the terms and currency of any such insurance on request.

9 Force Majeure

- 9.1 Force Majeure is defined as war, civil unrest, major industrial dispute, earthquake flood, fire and events of similar nature beyond the control of the Supplier.
- 9.2 Should any circumstances or Force Majeure prevent or hinder the total or partial performance of the contract Supplier shall provide authenticated evidence and notify Buyer of beginning and end of such circumstances.

10. Rights

- 10.1 Any rights to use intellectual properties or similar, which Supplier is contracted to supply must be provided to Buyer in accordance with sections 11.2 or 11.3 as applicable.
- 10.2 Where the contract expressly identified particular rights as covered by it, where the right in question are not unique to Buyer's Deliverable or if those rights derive from a third party of whom the same would be. In those cases Buyer will not expect full ownership of those rights. Supplier will however validly licence those rights to Buyer, or procure them to be validly licensed to Buyer, as: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on Buyer.
- 10.3 Particular contract rights which are unique to Buyer's Deliverable, Supplier will transfer to, or procure to be transferred to Buyer, with full title guarantees the ownership of those rights to the full extent that Buyer reasonably needs them for intended purposes, and to the full extent of any wider rights available to Supplier. Supplier will execute any documents and make any declarations reasonably required by Buyer, now or in future, to transfer those rights. Supplier will not exploit those rights without Buyer's written consent, and Supplier will hold all such rights on trust for Buyer absolutely for the maximum permitted period of eighty years. Buyer will have Supplier's irrevocable power of attorney to execute any such documents and make any such declarations on Supplier's behalf if Supplier fails to do so promptly on request.
- 10.4 If Supplier carries out any development work at Buyer's request and wholly or primarily at Buyer's expense, Buyer will own all Intellectual property rights generated by that work, and section 10.3 will apply to those rights.

11. Termination

- 11.1 Buyer may terminate the contract in the event Supplier:
 - 11.1.1 Fails without good cause to make reasonable progress in performance
 - 11.1.2 Fails to perform to satisfactory standards
 - 11.1.3 Fails for perform its obligations under the contract
 - 11.1.4 Becomes bankrupt, insolvent or has receiving or administration order against it.
- 11.2 Supplier causes loss or damage for which the Buyer becomes liable arising out of breach of contract.
- 11.3 Any right of cancellation or suspension under this section is additional to any rights available to Buyer under the law of any relevant jurisdiction.

12. Enforcement

- 12.1 Supplier will keep strictly confidential all information which is learned about Buyer's customers, and use that information only for the performance, in good faith, of the contractual obligations to Buyer.
- 12.2 The contractual relationship is as independent contractors only, not as partners or as principal and agent. The contract is non-assignable by Supplier. It is assignable by Buyer only to a company in the same ultimate beneficial ownership. Supplier may sub-contract or delegate Performance in particular respects but not generally and not as regards Supplier's responsibility to, nor direct contact with Buyer, in any respect.
- 12.3 No waiver by Buyer of any breach of contract by Supplier will be considered as a waiver of any subsequent breach of the same or any other provision, or as a release of the provision which Supplier has breached. No delay by Buyer in enforcement, and no toleration shown by Buyer, is to imply any waiver or compromise of Buyer's rights.
- 12.4 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.
- 12.5 If at any time any question or dispute or difference whatsoever shall arise between Buyer and Supplier, upon, in relation to or in connection with the contract, either party will give the other notice in writing of the existence of such question, dispute, or difference and the same shall be referred to the arbitration of a person to be agreed upon by both parties.
- 12.6 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).
- 12.7 The contract will be governed by the law of England, and Supplier submits to the non-exclusive jurisdiction of the English courts.