

SUPPLIER TERMS AND CONDITIONS

1. Definitions

- 1.1. **Client** shall mean the Consultant's client.
- 1.2. **Consultant** shall mean Henrietta Holroyd Limited.
- 1.3. **Purchase Order** shall mean the Consultant's purchase order and any specification, drawing, programme etc., any site rules, health and safety requirements, third party agreements and these Supplier Terms and Conditions and any changes to these documents notified to the Supplier.
- 1.4. **Purchase Order Works** shall mean the works to be performed and/ or any goods to be supplied by the Supplier in accordance with the Purchase Order.
- 1.5. **Site** shall mean the location where the Purchase Order Works are performed.
- 1.6. **Supplier** shall mean the supplier whose details are shown on the Purchase Order.

2. Obligations

- 2.1. The Supplier will carry out the Purchase Order Works:
 - 2.1.1. in a proper, efficient and workmanlike manner, in accordance with the Purchase Order and all instructions issued pursuant thereto;
 - 2.1.2. and warrant that they will comply with all relevant legislation relating to the manufacture, labelling, packaging, storage, handling and delivery including the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended), the General Product Safety Regulations 2005 (as amended), the Construction (Design and Management) Regulations 2015 (CDM Regulations), relevant bylaws and British Standards and Codes of Practice;
 - 2.1.3. so as to ensure that when completed the Purchase Order Works will comply with any performance specification or requirement identified in or referred to in the Purchase Order;
 - 2.1.4. so as to ensure that all materials supplied will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and be fit for any purpose held out by the Supplier or made known to the Supplier by the Consultant expressly or by implication and in this regard the Consultant relies on the Supplier's skill and judgment;
 - 2.1.5. and warrants that where the Purchase Order Works include or relate to the supply of manufactured products, the Purchase Order Works will comply with clause 2.1.2 and be free from defects in design, material and workmanship and remain so for 12 months after delivery;
 - 2.1.6. so that where the Supplier shall have designed any part of the Purchase Order Works or shall have selected materials for incorporation in the Purchase Order Works, the design and/or selection shall have been undertaken with reasonable skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade; and
 - 2.1.7. so as to ensure it provides suitable skilled labour to carry out and/or deliver the Purchase Order Works and clear waste and rubbish from the Site;
 - 2.1.8. so as to ensure it supplies (at no extra cost to Consultant) all personal protective equipment (PPE), consumables, plant, equipment, tools, access equipment and all floor/ wall/ surface/ carpet protection within the working area and adjacent to the working area (including any access route) and any other items required to safely and effectively carry out the Purchase Order Works;
 - 2.1.9. to the reasonable satisfaction of the Consultant and the Client.

3. Purchase Order

- 3.1. These Terms and Conditions apply to the Purchase Order to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. This Purchase Order constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings, written or oral.
- 3.2. Any tender, quotation, estimate or the like issued by the Supplier will not be treated as an offer capable of acceptance. A contract between the Consultant and Supplier will only be formed when the Consultant has placed its written Purchase Order based upon these Terms and Conditions. These Terms and Conditions apply to the Purchase Order to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4. The Purchase Order Works

- 4.1. The Supplier shall commence the Purchase Order Works on the Commencement Date (or such other date as the Consultant may specify) and shall execute and complete the Purchase Order Works in the sequence specified, in accordance with such instructions as may be issued by the Consultant and complete the Purchase Order Works by the Completion Date. The Consultant may from time to time vary or suspend such dates or periods and such variations and/or suspensions shall not vitiate the Purchase Order or entitle the Supplier to any claim for loss or expense or any other payment arising there from, unless agreed.
- 4.2. If in the opinion of the Consultant the Supplier is likely to fail to complete the Purchase Order Works by the Completion Date the Consultant may accelerate the progress of the Purchase Order Works by employing its own labour. Any expense incurred by the Consultant in so doing shall be recoverable from the Supplier as a debt.
- 4.3. The Supplier shall, if so requested by the Consultant and within 7 days of such request, supply to the Consultant a programme showing how it intends to carry out the Purchase Order Works. Such programme shall not be in any way binding on the Consultant. The Consultant's approval of or comment on any information submitted to it shall not relieve the Supplier of its obligations under the Purchase Order.
- 4.4. With regard to materials and items forming part of the Purchase Order Works the Supplier will supply the necessary warranties, manuals and information for their use.
- 4.5. If the Purchase Order Works or relevant part/s of the Purchase Order Works are not completed by the date required by the Consultant then allowing for any extension of time granted by the Consultant the Supplier shall pay or allow the Consultant to deduct liquidated damages at the agreed rate of 20% of the Purchase Order price per day (or part thereof) for the period between the completion date and the actual date of completion of the Purchase Order Works or relevant part. The Consultant may deduct such liquidated damages from monies otherwise due to the Supplier or recover them as a debt.

5. Clean Site

- 5.1. At regular times during performance of the Purchase Order Works and on the request of the Consultant and in any event upon completion of the Purchase Order Works, all rubbish and/or surplus material and plant of the Supplier or of any employee or agent must be removed from the Site or stored as directed. If such removal or storage is not undertaken satisfactorily, the Consultant may undertake it and withhold the cost from sums otherwise due to the Supplier.

6. Personal injury and damage to property

- 6.1. The Supplier shall indemnify the Consultant against costs claims demands losses or expenses arising out of:
 - 6.1.1. failure of the Supplier to observe and perform the Purchase Order works or any negligence or breach of duty, statutory or otherwise, by the Supplier; and/or
 - 6.1.2. injury or death of any person or injury to property real or personal arising out of or in the course of or by reason of the execution of the Purchase Order Works save to the extent that such is caused by any negligence or default of the Consultant; and/or
 - 6.1.3. any actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with performance of the Purchase Order Works.

7. Insurance

- 7.1. The Supplier shall, within the UK insurance market and subject to commercially reasonable rates and terms, take out and maintain employer's liability insurance of not less than £2 million, public and product liability insurance of not less than £2 million and professional indemnity insurance of not less than £1 million in relation to all such risks and/or potential claims arising out of or in relation to the Purchase Order for such amounts as detailed in the Purchase Order and produce on request evidence of such insurance in the form of a broker's letter or similar. In the event that the Supplier shall fail to put or maintain such insurances in place the Consultant may decide to insure on behalf of the Supplier and deduct the cost from any monies otherwise due to the Supplier or recover the cost as a debt.

8. Title in goods and materials

- 8.1. The risk in goods and materials to be incorporated in the Purchase Order Works, and in plant, tools and equipment for use in connection with the Purchase Order Works shall remain with the Supplier until practical completion of the Client's works. The Supplier shall at its

- own cost maintain insurance of the goods and materials until practical completion of the Client's works.
- 8.2. Notwithstanding the above, all goods, manuals and temporary works shall become the property of the Consultant as and when the goods, materials and temporary works or any part thereof are incorporated as part of the Client's works whether or not payment therefor has at that time been made by the Consultant.
- 9. Variations to the Purchase Order Works**
- 9.1. The Consultant shall send written notice to the Supplier of any variation to the Purchase Order and the Supplier shall within five (5) days send written notice of its proposal to address the variation along with details regarding any change to the programme for the Purchase Order Works and/or any change to the Purchase Order price.
- 9.2. The Supplier's written notice under clause 9.1 shall not entitle the Supplier to change the programme for the Purchase Order Works nor to any change to the Purchase Order price unless approved in writing by the Consultant in accordance with clause 14.
- 10. Payment**
- 10.1. The Purchase Order price shall be calculated, charged and paid in accordance with the Purchase Order.
- 10.2. Where the Purchase Order Works involve construction operations as defined in the section 105(1) of the Housing Grants, Construction and Regeneration Act 1996 the parties shall comply with clauses 10.3 to 10.15 and clause 12.1.
- Payment for construction operations**
- 10.3. Unless otherwise agreed the Supplier shall submit to the Consultant monthly applications for payment for Purchase Order Works properly carried out. Each application for payment shall be made on or before the last day of the month immediately following the month in which the Purchase Order Works were properly carried out (e.g. for Purchase Order Works carried out in January, the application for payment for those works must be made on or before the last day of February in the same year).
- 10.4. Each application for payment shall relate to all Purchase Order Works properly performed by the Supplier for the month immediately preceding the date of the application for payment. The Consultant shall have no liability for works completed earlier than the month immediately preceding the date of the application for payment.
- 10.5. Applications must state the Site name, the project reference number, the date, the full name and address of the Supplier and an accurate description and fully detailed justification of the sums claimed. The Supplier shall provide such other information as is reasonably required by the Consultant in support of the application for payment. The **'Payment Due Date'** will be the first day of the month immediately following the date the application for payment was received by the Consultant. Each application for payment shall specify the sum that the Supplier considers will be due on the Payment Due Date and the basis on which that sum is calculated.
- 10.6. In accordance with the Purchase Order, payments will be inclusive of all goods and services to be supplied as part of the Purchase Order Works for the relevant period. Any other cost or expense of the Supplier will only be paid where agreed in advance. All rates and prices payable under the Purchase Order are fixed. The Supplier will not be entitled to additional payment in respect of increased costs unless agreed in advance. The price to be paid to the Supplier for the completed work shall be the sum or the rate specified in the Purchase Order. No variations shall be paid for unless authorised in writing by the Consultant. A written instruction will not in itself constitute agreement for extra payment.
- 10.7. The **'Final Date for Payment'** of an amount shall be the last Business Day of the month for each relevant Payment Due Date and **'Business Day'** shall mean any day which is not a Saturday or Sunday or Christmas Day or Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.
- 10.8. No later than 5 days after a Payment Due Date, the Consultant shall notify the Supplier of the sum the Consultant considers to have been due at the Payment Due Date in respect of the amount of the relevant application and the basis upon which that amount has been calculated.
- 10.9. Subject to clause 10.14 and unless the Consultant has served a notice under clause 10.10 then it shall pay the Supplier the notified sum referred to in the notice under clause 10.8 (or if no such notice has been given then the sum referred to in the Supplier's application complying with clause 10.2) (together referred to as the **'Notified Sum'**) on or before the Final Date for Payment of the relevant application.
- 10.10. Not less than 3 days before the Final Date for Payment (the **'Prescribed Period'**), the Consultant may give the Supplier notice that it intends to pay less than the Notified Sum and any such pay less notice shall specify the sum the Consultant considers to be due on the date the notice is served and the basis upon which that sum is calculated.
- 10.11. It shall be a condition precedent to any obligation on the Consultant to make payment that all documents specified in the Purchase Order have been provided in satisfactory form by the Supplier and that the Supplier has signed and returned the Purchase Order.
- 10.12. In addition to the Consultant's rights of set-off at common law and in equity if in the Consultant's opinion the Supplier shall have caused or will cause the Consultant loss by reason or any breach or this Purchase Order or by any tort, giving rise to a right for the Consultant to claim against the Supplier, or to an entitlement to payment in favour of the Consultant by the Supplier under this Purchase Order, then without prejudice to and pending the final determination of such loss or payment, the Supplier shall forthwith pay or allow to the Consultant such sum as the Consultant shall bona fide estimate as the amount of such loss or payment, such estimate to be binding on the Supplier until such final determination.
- 10.13. VAT where due will be paid in addition subject to receipt of a valid invoice.
- 10.14. The Consultant may, at its absolute discretion, agree to make advance payments to the Supplier. The Consultant is entitled to set-off such advance payments against any application for payment received by the Consultant until such advance payments have been accounted in full.
- 10.15. Notwithstanding any other provision, if the Supplier shall become insolvent (within the meaning set out in clauses 18.3.2 to 18.3.8 inclusive) after the Prescribed Period in clause 10.10, the Consultant shall not be required to pay the Notified Sum on or before the Final Date for Payment.
- Payment for supply**
- 10.16. Where the Purchase Order works do not involve construction operations as defined in clause 10.2 the Supplier shall comply with clauses 10.13 to 10.17.
- 10.17. At such time as the Consultant places a Purchase Order with the Supplier in accordance with clause 3.2 the parties shall agree and set out in the Purchase Order what proportion (if any) of the Purchase Order price:
- 10.17.1. shall be paid to the Supplier as a deposit;
- 10.17.2. shall be paid to the Supplier within seven days of completion of the Purchase Order Works; and
- 10.17.3. shall be retained by the Consultant in accordance with clause 12.1.
- 11. Dayworks**
- 11.1. No Purchase Order Works will be valued as day work unless the Consultant exercises its discretion to do so on the basis that it would not be possible to value such work in any other way. Where the Supplier considers work should be valued as day work it must give notice to the Consultant prior to the execution of such works and obtain the Consultant's written approval. All day work sheets shall be submitted to the Consultant at the end of the week during which the relevant work is executed. Signature of any day work sheet by the Consultant's representative shall not entitle the Supplier to payment thereof unless validly due under the Purchase Order.
- 12. Retention**
- 12.1. A retention of 5% (or such other amount agreed under the Purchase Order) may be deducted from interim payments made to the Supplier. Half of the total accumulated retention amount shall be released to the Supplier upon practical completion of the Client's works. The balance shall be released to the Supplier on expiry of 12 months from practical completion of the Client's works.
- 13. The Consultant's Instructions**
- 13.1. The Consultant shall have the power to give instructions for:
- 13.1.1. changes in the sequence and timing of the Purchase Order Works (including their suspension);
- 13.1.2. any omission from, addition to or variation in the type, quality or nature of the Purchase Order Works; and
- 13.1.3. the exclusion from the Site of any person employed or engaged by the Supplier.
- 13.2. The Supplier shall not act on instructions from any other party save for in the event of an emergency.

14. Payment for Variations

- 14.1. Payment for variations will only be allowed in respect of additions to the Purchase Order Works, not for changes in the sequence or timing. It is a condition precedent to the Supplier's right to payment for any variation that:
 - 14.1.1. within 7 days of receipt of any instruction for a variation (and in any event before incurring any extra costs or commencing the varied Purchase Order Works) the Supplier informs the Consultant in writing of its opinion that additional payment is justified; and
 - 14.1.2. the Consultant issues agreement in writing to the Supplier to proceed with the variation with confirmation as to the amount of payment due.
- 14.2. Valuation of variations will be in accordance with the rates specified in the Purchase Order or such other rates as may be agreed in writing between the parties, or, failing agreement, at reasonable rates as ascertained by the Consultant.

15. Information

- 15.1. If information is required from the Supplier, including but not limited to complying with its obligations under the CDM Regulations and providing information for the health and safety file, it must be provided in good time so as not to cause any disruption or delay to the Consultant in the carrying out of the Client's works. The Supplier will be charged with any costs incurred by the Consultant arising from the Supplier's failure to comply with this obligation.

16. Access and Delivery

- 16.1. The Supplier shall allow the Consultant and its representatives access to off-site workshops, storage facilities and the like where items connected with the Purchase Order Works are being worked on or stored at all reasonable times.
- 16.2. The Supplier shall provide for delivery to Site of all goods and materials required or included in the Purchase Order Works at all reasonable times and in accordance with the Purchase Order and any programme.
- 16.3. The time and date for delivery to Site of all goods and materials required or included in the Purchase Order Works shall be agreed in writing with the Consultant and the Consultant shall arrange for reasonable access to the Site to enable the Supplier to perform the Purchase Order Works and effect delivery of any goods and/or materials.
- 16.4. If the goods and materials required or included in the Purchase Order Works are not delivered at the agreed time and date, or do not comply with the undertakings set out in clause 2.1 then, without limiting any of its other rights or remedies, and whether or not it has accepted the goods and materials, the Consultant may exercise one or more of the following remedies:
 - 16.4.1. to terminate the Purchase Order;
 - 16.4.2. to reject the goods and materials (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 16.4.3. to require the Supplier to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods;
 - 16.4.4. to refuse to accept subsequent delivery of the goods which the Supplier attempts to make;
 - 16.4.5. to recover from the Supplier any costs incurred by the Consultant in obtaining substitute goods from a third party; and
 - 16.4.6. to claim damages for any other costs, loss or expenses incurred by the Consultant which are in any way attributable to the Supplier's failure to carry out its obligations under the Purchase Order.
- 16.5. The conditions in clause 16.4 shall apply to any repaired or replacement goods or materials supplied by the Supplier.
- 16.6. The Consultant's rights and remedies under these terms and conditions are in addition to its rights and remedies implied by statute and common law.

17. Maintenance

- 17.1. The Supplier will:
 - 17.1.1. maintain the Purchase Order Works to the satisfaction of the Consultant both during the progress of them and until practical completion of the Client's works; and
 - 17.1.2. make good at its own expense and at a time to be decided by the Consultant, any defect, imperfection, shrinkage or damage to the Purchase Order Works at any time up to practical completion of the Client's works, and thereafter insofar as the Consultant is itself

obliged to make good such defect, imperfection, shrinkage or damage to the Client's works, the Consultant may at its sole discretion carry out maintenance and making good works to the Purchase Order Works, rather than leaving such to the Supplier, and set off the cost of so doing against sums otherwise due to the Supplier or recover the same as a debt.

18. Termination

- 18.1. The Consultant may terminate part or all of the Purchase Order Works at any time.
- 18.2. The Supplier shall then be entitled to be paid for the Purchase Order Works performed up to the date of termination provided that all documents specified in the Purchase Order have been released to the Consultant and the Supplier has certified in writing that such payment will be in full and final settlement of all claims the Supplier may have under or in connection with the Purchase Order (or in respect of that part of the Purchase Order Works, as the case may be).
- 18.3. Without limiting its other rights or remedies, the Consultant may terminate the Supplier's employment under the Purchase Order with immediate effect by giving written notice to the Supplier if:
 - 18.3.1. the Supplier commits a material or persistent breach of the Purchase Order and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
 - 18.3.2. the Supplier refuses or persistently neglects to remove repair or rectify defective materials or workmanship forming part of the Purchase Order Works or suspends the carrying out of the Purchase Order Works or any part thereof without reasonable cause or fails to proceed diligently with the Purchase Order Works;
 - 18.3.3. the Supplier (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 18.3.4. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts;
 - 18.3.5. a petition is filed for or in connection with the winding up of the Supplier (being a company);
 - 18.3.6. the Supplier (being an individual) is the subject of a bankruptcy petition order;
 - 18.3.7. an application is made to court, or an order is made, for the appointment of an administrator of the Supplier (being a company);
 - 18.3.8. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.
- 18.4. Upon such termination the Consultant may expel the Supplier from the Purchase Order Works and may take and have use of the equipment materials and property of the Supplier which are on the Site or being used in connection with the Purchase Order Works including materials or fabricated work at the Supplier's place of business which have been bought or fabricated for the purpose of the Purchase Order and may use the same to complete the Purchase Order Works without responsibility to the Supplier to fair wear and tear to any such equipment and property.
- 18.5. Upon any such termination the Supplier shall not be entitled to receive any further payments until the Purchase Order Works are completed whereupon the Supplier shall be paid the value of all materials taken and used by the Consultant pursuant to the above less the cost of remedying any damage suffered or direct or indirect or consequential loss or expense incurred or which may be incurred by the Consultant by reason of such determination and to the extent that any further payment due to the Supplier is insufficient for the purpose any balance shall be due to the Consultant from the Supplier as a debt.
- 18.6. If the employment of the Consultant by the Client is determined, the Supplier's employment under the Purchase Order shall thereupon also terminate and the provisions of clauses 18.4 and 18.5 shall apply.

19. Assignment and sub-letting

- 19.1. The Supplier shall not assign the benefit of the Purchase Order or sub-contract the Purchase Order Works or any part thereof without the Consultant's written permission. Such permitted assignment or sub-contracting shall not release or be deemed to release the Supplier from the terms and conditions of this Purchase Order.

20. Advertising, confidentiality and intellectual property

- 20.1. No advertisement relating to the Purchase Order Works or to the

Supplier shall be permitted on the Site without the Consultant's prior written permission. No photographs may be taken of the Purchase Order Works or the Site or information given to third parties without the Consultant's prior approval in writing.

- 20.2. The Supplier undertakes to keep confidential all documents relating to the Purchase Order and not to disclose these to any person without the written consent of the Consultant save where such disclosure is necessary in the proper course of the Consultant's obligations to carry out the Purchase Order Works or required by law.
- 20.3. The Consultant shall retain ownership of all patents, copyright and related rights, trade marks, business names and domain names, goodwill, confidential information and all other intellectual property rights which subsist or will subsist now or in the future in any part of the world ("IPRs") in any materials, data, documents or products developed by the Consultant in any form.
- 20.4. The Supplier shall not take photographs, video or sound recordings or record or transmit in any media any of the Consultant's IPRs without the prior written consent of the Consultant.

21. Insurance and liability

- 21.1. If the Supplier claims against the Consultant in respect of an insured risk in respect of which the Consultant has a policy of insurance in force, the extent of the Consultant's liability will be limited to the amount received by the Consultant from its insurers and the Consultant will have no obligation to pay any sums unless and until it has recovered from the insurers.
- 21.2. In any action or proceedings no director, officer, agent, sub-contractor or employee of the Consultant shall be personally liable to the Supplier for any liability whatsoever.
- 21.3. The Consultant's total liability to the Supplier in respect of all losses arising under, or in connection with, the Purchase Order shall not exceed the Purchase Order price.

22. Resolution of disputes

- 22.1. The Purchase Order and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 22.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Purchase Order or its subject matter or formation.
- 22.3. Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 22.4. Notwithstanding any other provision of the Purchase Order either party may refer a dispute arising under the Purchase Order to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause. The adjudicator shall be appointed by: The Royal Institute of Chartered Surveyors.

23. Collateral Warranties

- 23.1. The Supplier shall, within 21 days of receipt of a written request, provide a collateral warranty on terms provided by the Consultant in favour of any party with an interest in the Purchase Order Works.

24. Third party rights

- 24.1. The parties hereby confirm that notwithstanding any other provision of this Purchase Order, the Purchase Order shall not and shall not purport to confer on any third party any right to enforce any term of the Purchase Order for the purposes of the Contracts (Rights of Third Parties) Act 1999.