

NG BAILEY LTD/SUBSIDIARY & ASSOCIATED COMPANIES

TERMS AND CONDITIONS OF PURCHASE

23rd October 2009

1. DEFINITIONS

Throughout these Conditions the terms:

'Buyer' - means N G Bailey Limited or any subsidiary of NG Bailey Limited which issues a Contract.

'Conditions' - means the terms and conditions herein and any additional conditions specifically incorporated into the Contract in writing by the Buyer.

'Contract' - means the Order and the other Contract Documents.

'Contract Documents' - means the documents listed in Condition 2.4.

'Delivery Date' - means the date or dates for physical delivery of any Goods and/or completion of any Services.

'Goods' - means any goods which are or form part of the subject matter of the Contract including without limitation all components and materials, items, articles or things as ordered by the Buyer.

'Intellectual Property Rights' - all intellectual property rights (including without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know how and confidential information) and all applications for protection of any of the same.

'Order' - means the written purchase order or written agreement issued by the Buyer which incorporates these Conditions.

'Supplier' - means the person, firm or company with whom the Contract is placed.

'Services' - means any services to be provided by the Supplier as set out in the Contract.

'Specification' - means the specification or performance requirements of the Goods or Services as set out in the Contract.

1.2 Headings do not affect the interpretation of these Conditions.

2. CONTRACT TERMS

2.1 The acceptance of the Contract by the Supplier shall be subject to the Conditions. Any amendments or variation of the Contract or these Conditions shall only be by the issue of a further Order by the Buyer.

2.2 The Contract constitutes the entire agreement between the Buyer and the Supplier with regard to the Goods and/or Services to the exclusion of all other terms and conditions which the Supplier may seek to apply under any quotation, acknowledgement or acceptance of order or otherwise and supersedes all prior negotiations, representations or agreements whether written or oral unless and to the extent that they are expressly accepted in writing by the Buyer in the Contract Documents.

2.3 If any term or condition of the Contract is held to be unenforceable, invalid or illegal by any Court or tribunal it shall be deemed severable and shall not affect any other term or condition of the Contract which shall otherwise remain in full force and effect between the parties.

2.4 In the event of conflict or ambiguity between any of the Contract Documents, the order of precedence will be as follows:

- the Order (or variation of the Order in accordance with Condition 2.1);
- the Conditions (or variation of the Conditions in accordance with Condition 2.1);
- any other documents attached to the Order and specifically referred to therein;
- any documents expressly referred to in the Order but not attached;
- any quotation from the Supplier which is specifically referred to in the Order (excluding any Supplier terms and conditions).

3. NOTICES AND COMMUNICATIONS

3.1 Unless otherwise stated in the Contract Documents (and in addition to any requirements regarding the service of documents as a matter of law), any notice or communication required by the Contract to be given by either party to the other shall be in writing addressed to the Supplier at its registered address or principal place of business and to the Buyer at the Buyer's office from which the Contract was issued marked for the attention of the Procurement Manager. Such notice or communication shall be given by hand, first class post or recorded delivery. Notice given by hand shall be effective immediately. Notice by recorded or postal delivery shall be effective two working days after the date of posting.

3.2 The Supplier shall forthwith upon the request of the Buyer:

3.2.1 procure that the Supplier's holding company (as defined by section 1159 Companies Act 2006) shall guarantee to the Buyer the due performance by the Supplier of its obligations hereunder and indemnify the Buyer against all losses, claims and liabilities arising from a breach thereof, such guarantee and indemnity to be given as a deed in a form satisfactory to the Buyer; and

3.2.2 provide collateral warranties in favour of any third parties acquiring an interest in the Goods and/or Services. The terms of such collateral warranties shall be as set out or referred to in the Contract Documents.

4. GOODS

4.1 The Supplier warrants that the Goods shall conform as to quantity, quality and description of the Specification.

4.2 Without prejudice to the generality of Condition 4.1, it is a condition that:-

4.2.1 the Goods shall be of best quality and free from defects in design, material and workmanship;

4.2.2 the Goods shall comply with all laws and with the accepted British Standard, if any, and/or relevant Trade Standards/Regulations, including any appropriate foreign or International Trade Standards/Regulations/laws; and

4.2.3 where the Buyer makes known to the Supplier the purpose for which the Goods are to be used, either expressly or by implication, the Goods shall be fit for that purpose; and

4.2.4 the sale or use of the Goods shall not infringe any Intellectual Property Rights and the Supplier hereby indemnifies the Buyer against all actions, costs, claims, demands and expenses arising out of or resulting from any actual or alleged infringement and undertakes at the Supplier's own expense to defend or assist in the defence of any action which may be brought in respect of such infringement.

4.3 The Supplier shall not substitute or provide alternative Goods or change the quantities to be supplied to the Buyer without the Buyer's prior written consent in the form of a revised Order issued pursuant to Condition 2.1 above.

4.4 The Buyer may inspect or arrange for the inspection of all or any of the Goods in the course of production at the Supplier's premises, or the premises where the Goods are being produced, at any reasonable time.

4.5 Unless otherwise agreed in writing:

(i) All Goods shall be securely packed free of charge and in such a manner to reach the Buyer in good condition.

(ii) The Goods shall be fully and accurately described in all tickets, labels, invoices, packing and delivery notes, quoting the Buyer's Order number.

(iii) The Supplier shall submit with the Goods full instruction for use and clear warnings with respect to anything which may reasonably be done or omitted to be done in relation to the Goods and which could render them unsafe.

(iv) The Buyer shall not accept any charge in respect of packing materials and shall not be responsible for returning or for the cost of returning any such materials

4.6 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in design, specification, materials, workmanship, operating characteristics or otherwise develop in the Goods during the first 24 months from the later of either (1) the Delivery Date or (2) being put into service by the Buyer, the Supplier shall, without limitation to the Buyer's other legal rights and remedies, carry out all necessary alterations or repairs to, or replace the defective Goods free of charge. If the defect in the Goods cannot be corrected the Supplier shall remove and replace promptly free of charge the Goods or at the Buyer's option remove the Goods and refund the full price paid. The Supplier shall guarantee for a period of a further 24 months any replacement, altered or repaired part or parts of the Goods.

4.7 If the Goods do not comply with all the provisions of the Contract, the Buyer may without prejudice to its other rights and remedies, require the Supplier to collect the Goods at the Supplier's cost from wherever the Goods are situated, and the Buyer shall not be liable to pay the Supplier for the Goods and shall be entitled to recover all costs and expenses incurred in connection with the exercise of its rights hereunder.

4.8 Any Specification, plans, designs or other similar data supplied by the Buyer to the Supplier or specifically produced by the Supplier for the Buyer, together with the Intellectual Property Rights therein, shall be the exclusive property of the Buyer. The Supplier shall not disclose to any third party or use any Specification, plan, design or other similar data except, or as required, for the purpose of the Contract.

4.9 By providing any design or similar data the Supplier gives to the Buyer an irrevocable, worldwide, royalty free licence to copy and/or use any drawings, computer disks, software and information (and/or any future modification thereto) contained therein and the Buyer shall be entitled to assign or sub-licence this design or similar data to third parties.

4.10 In the case of any Goods which have been designed and manufactured by the Supplier in accordance with drawings and/or specifications or

- patterns supplied by the Buyer, the Supplier agrees not to sell goods created from the same designs to any person, firm or company except against an order of the Buyer or with the permission of the Buyer in writing. The Supplier further undertakes not to manufacture quantities in excess of the Order for the purpose of sale. Such drawings and/or specifications or patterns shall remain the property of the Buyer and shall be returned by the Supplier to the Buyer on demand and the Supplier shall not keep any copies.
- 4.11 It shall be the Supplier's responsibility to notify the Buyer if the Goods, or part thereof, are scheduled to become obsolete within 24 months of the Delivery Date. Notwithstanding any such obsolescence the Supplier warrants to provide, at a fair price to be agreed between the Supplier and the Buyer, spare parts for a period of 10 years or such length of period as may be prescribed by any proper Government or other authority after the Delivery Date.
- 4.12 The rights set out in this Condition 4 are in addition to all other rights which the Buyer may have, whether at common law, statute or otherwise.
5. **DELIVERY AND PERFORMANCE**
- 5.1 The Supplier shall deliver the Goods, carriage paid, to or perform the Services at the address stated in the Contract or any other address notified by the Buyer to the Supplier in writing.
- 5.2 Delivery of Goods is deemed to include off loading and placement by the Supplier to the reasonable instructions of the Buyer.
- 5.3 All Goods shall be accompanied by a delivery note, confirming the items being delivered, and stating the Buyer's Order number. Where Goods are left at the delivery address without obtaining the signature of an authorised representative of the Buyer on the delivery note, then delivery shall be deemed not to have taken place until accepted and confirmed by the Buyer. Signature of any documentation on delivery shall have no contractual effect, other than confirming the Delivery Date.
- 5.4 Deliveries shall be always of the total quantity ordered unless phased deliveries have been specified by the Buyer. Any Goods delivered in excess of the amount stated in the Contract may be accepted or rejected at the Buyer's option.
- 5.5 The Buyer shall be entitled, in accordance with the procedure in condition 2.1, to amend the Delivery Date to a later date or to change the address for delivery of the Goods or performance of the Services or the date the Services are to commence, without any liability for any costs whatsoever that may be incurred by the Supplier as a result of any such amendment.
- 5.6 The Supplier shall notify the Buyer as soon as it becomes apparent that the delivery of the Goods or performance of the Services may be delayed and that the Goods or Services may not be delivered or performed by the Delivery Date.
- 5.7 Time is of the essence for the delivery of the Goods and performance of the Services. No acts or omissions of the Buyer shall entitle the Supplier to any extension of time for performance of any obligation under the Contract unless it is the Buyer's acts or omissions which have been the material cause of the Supplier being unable to meet the Delivery Date. Any extension of time shall only be with the express written agreement of the Buyer, (not to be unreasonably withheld), and any such agreement shall not waive any of the Buyer's rights under the Contract. Any amendments to the Delivery Date shall be made solely in accordance with the procedure in condition 2.1. Time will remain "of the essence" for any changed Delivery Date.
- 5.8 The Buyer reserves the right to refuse delivery of the whole or any part of the Goods if they are supplied before the Delivery Date and any charges relating thereto shall be the responsibility of the Supplier.
6. **RISK AND TITLE**
- 6.1 Title to the Goods shall pass to the Buyer when the Goods are delivered to the Buyer in accordance with the Contract (or as varied pursuant to Conditions 5.1 or 5.5).
- 6.2 The Supplier shall have no right to claim or retake possession of Goods once delivered to, or paid for by the Buyer (whichever is the earlier).
- 6.3 Risk of damage to, or loss of, the Goods shall pass to the Buyer only when the Goods are delivered to the Buyer in accordance with the Contract.
7. **SERVICES**
- 7.1 The Supplier shall provide the Services in accordance with the Contract and all reasonable directions of the Buyer and shall allocate sufficient resources to enable it to comply with this obligation.
- 7.2 The Supplier warrants to the Buyer that the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised best practices and standards in the industry for similar services; the Services will conform with all descriptions and specifications provided to the Buyer by the Supplier, including the Specification; and the Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform the Buyer as soon as it becomes aware of any changes in that legislation.
- 7.3 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in the Services develops during the first 24 months from the date of performance, the Supplier shall, without limitation to the Buyer's other legal rights and remedies, carry out all necessary alterations or repairs free of charge. If the defective Services cannot be corrected the Supplier shall promptly refund the full price paid. The Supplier shall guarantee for a period of a further 24 months any repair work carried out.
- 7.4 The Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights which are the product of the Services. The Supplier shall, promptly at the Buyer's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Buyer in accordance with this Condition 7.4.
8. **PRICE**
- The price specified in the Contract shall be a fixed price. The price shall include where applicable all charges for packaging, loading, off loading, transport, insurance and delivery of Goods or provision of the Services to the delivery address and any duties or taxes other than value added tax.
9. **PAYMENT**
- 9.1 The Buyer shall subject to its rights under these Conditions pay the Supplier the amount due calculated in accordance with the Contract no later than the date 2 months after the end of the month in which delivery of the Goods to the Buyer or performance of the Services takes place, or the date 2 months after the end of the month in which a correct and valid invoice from the Supplier is received by the buyer, whichever date is the later ("the Payment Date").
- 9.2 The Supplier shall submit invoices, clearly showing the Order number, to the Buyer to its address at PO Box 9, Ilkley, West Yorkshire LS29 9YG. The Supplier shall also submit to the Buyer, at the address above, within the first 10 days of each month a statement identifying all the preceding month's invoices. Regardless of the manner of delivery, the Supplier shall only submit an invoice for the total quantity of Goods or Services specified in the Contract unless interim or part invoicing has been specifically agreed in the Contract.
- 9.3 The Buyer shall be entitled:
- 9.3.1 subject to Condition 9.3.2 to set off at any time against any monies due by the Buyer to the Supplier under the Contract any sums owed to the Buyer by the Supplier, whether under the Contract, any other contract or otherwise;
- 9.3.2 to set off any sums owed to the Buyer by the Supplier against any monies due from the Buyer to the Supplier in respect of any Services which fall within "construction operations" as defined in the Housing Grants, Construction and Regeneration Act 1996 (HGCR) provided that the Buyer has issued to the Supplier a notice at least one day prior to the Payment Date stating the amount or amounts to be withheld and the ground or grounds for doing so; and
- 9.3.3 in the event of an insolvency as defined in Sections 113(1) to 113(5) of HGCR to withhold payment of any amount which is due or may become due under the Contract (including for the avoidance of doubt pursuant to Condition 10.1) until such time as the Buyer has received payment in its bank account in respect thereof and then only to the extent of such receipt.
- 9.4 The currency of the Contract for payment purposes shall be pounds sterling unless otherwise agreed between the parties.
10. **CANCELLATION AND TERMINATION**
- 10.1 The Buyer reserves the right to cancel the Order by giving written notice to the Supplier. The Buyer recognises that cancellation may cause loss and expense to the Supplier and, therefore, provided that the Supplier can establish to the reasonable satisfaction of Buyer that they have suffered such loss and expense, the Buyer shall reimburse the Supplier subject to such reimbursement not exceeding 25% of the value of the particular Goods or Services cancelled. Such reimbursement shall constitute the Buyer's sole liability upon cancellation.
- 10.2 The Buyer shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:
- 10.2.1 the Supplier commits a material breach of the Contract (which shall include without limitation failing to comply with the Buyer's instructions and failing to maintain progress of Services as required by the Buyer); or
- 10.2.2 the Supplier 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; or
- 10.2.3 a receiver is appointed or an encumbrance takes possession of any of the property or assets of the Supplier; or
- 10.2.4 the Supplier ceases or threatens to cease to carry on business; or

- 10.2.5 the Buyer reasonably believes that any of the events mentioned above are about to occur in relation to the Supplier; or
- 10.2.6 the Supplier is in material breach of any other contract between the Buyer and Seller, including but not limited to refusing to make delivery.
- 10.3 Termination of the Contract, however arising, shall not affect the rights and liabilities of the Buyer and the Supplier accrued up to the date of termination.
- 11 COMPLIANCE**
- Where access to the Buyer's premises (or other location where the Buyer's operations are taking place) is necessary in connection with the delivery of the Goods or Services, the Supplier shall observe and comply with and shall ensure that its employees, agents and sub-contractors at all times observe and comply with any, Act of Parliament, or any instrument, rule or order made under any Act of Parliament, regulation or bye law of a local authority, codes of practice, notices or instructions in place in relation to health and safety or construction sites generally and any site rules in force from time to time.
- 12 LIABILITY AND INSURANCE**
- 12.1 The Supplier shall indemnify the Buyer in full against all direct and indirect liabilities, losses (including loss of profit), damages, costs, expenses (including legal expenses) and proceedings awarded or brought against or incurred or paid by the Buyer as a result of or in connection with:
- 12.1.1 a breach by the Supplier of any term or condition of the Contract or of any warranty given by the Supplier in relation to the Goods or Services; or
- 12.1.2 any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering, installing, testing, commissioning or setting-to-work of the Goods; or
- 12.1.3 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods or the Services; or
- 12.1.4 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.
- For the avoidance of doubt the provisions of this Condition 12 shall survive termination of the Contract, however arising.
- 12.2 The Supplier shall have in place product liability, public liability and professional indemnity insurance in respect of potential liabilities to the Buyer and to third parties arising out of the Contract or otherwise for an amount sufficient to cover its potential liabilities. The Supplier shall at the request of the Buyer produce evidence to the satisfaction of the Buyer that such insurances are in place.
- 13 NON WAIVER OF RIGHTS**
- No relaxation, forbearance, delay or indulgence by the Buyer in enforcing any of these Conditions, or the granting of time by the Buyer to the Supplier shall prejudice, affect or restrict the rights of the Buyer hereunder, nor shall any waiver by the Buyer of any breach by the Supplier operate as any waiver of any subsequent or continuing breach thereof.
- 14 NO PARTNERSHIP OR AGENCY**
- Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15 THIRD PARTY RIGHTS**
- Except for customers of the Buyer as referred to in Condition 3.2.2 the parties do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16 ASSIGNMENT**
- The Supplier shall not, without the prior written consent of the Buyer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17. CONFIDENTIALITY**
- Both parties agree to keep and shall ensure that their respective personnel, servants, agents and employees keep all or any information in connection with the Contract secret and confidential.
- 18 GOVERNING LAW AND JURISDICTION**
- This Contract shall be read and interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English courts.