

NORTHGATE VEHICLE HIRE CONDITIONS OF PURCHASE

1. INTERPRETATION

Certain words and expressions used in, and principles of interpretation applicable to, these terms are defined or set out in Clause 14 (Definitions), and if there is a conflict or inconsistency between any provision contained in these terms and any provision contained in a Contract, except where provided to the contrary in the latter, the Contract prevails to the extent of the conflict or inconsistency.

2. CONTRACTS

2.1 Terms of Purchase

A valid purchase order, together with these terms of purchase, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Order"), constitutes the entire and exclusive agreement between the Purchaser and the Supplier.

2.2 Contracting procedure

- 2.2.1 The Purchaser may initiate a Contract by completing and sending to the Supplier an Order, which constitutes an offer from the Purchaser to purchase either or both Goods and Services.
- 2.2.2 The Purchaser's submission of the Order is subject to the Supplier's agreement that any terms different from or in addition to the terms of the Order, however communicated and irrespective of the timing, shall not form part of the Contract, even where the Supplier purports to condition its acceptance of the Contract on the Purchaser's agreement to such different or additional terms.
- 2.2.3 The Supplier's acknowledgement of the Order or commencement of performance constitutes the Supplier's acceptance of the Contract on the terms set out in the Order.

3. CHARGES

3.1 Price

- 3.1.1 The Charges shall be as stated in the Order or as agreed by price schedule, contract or agreement in force at the time of the Order and, unless otherwise so stated, shall be inclusive of any applicable VAT and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery.
- 3.1.2 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 Purchaser's prior written consent.

3.2 Payment Unless otherwise agreed by the Purchaser, the Purchaser shall pay the Charges within 60 days after the end of the month of receipt of a proper invoice or, if later, after acceptance of the Goods or Services. Time of payment shall not be of the essence.

3.3 Disputes

- 3.3.1 Where the Purchaser disputes an invoice, the Purchaser is entitled to withhold the whole or part of the invoice to the extent of the amount in dispute, and shall pay the balance (if any) that is undisputed; the Purchaser shall promptly notify the Supplier of its reasons for withholding any amount under this Clause 3.3.1.
- 3.3.2 The Supplier is not discharged from performance of its obligations by reason only that some or all of the Charges are withheld under Clause 3.3.1.
- 3.3.3 Any amount agreed or determined by way of settlement shall be paid in accordance with Clause 3.2 (Payment).

3.4 Set-off

The Purchaser is entitled to set-off against payment of the Charges from time to time any liability of the Supplier incurred under or in connection with the Contract or any other agreement between the parties.

3.5 Supporting information

The Supplier shall provide the Purchaser with sufficient information to explain and support the amount of the Charges included in an invoice.

4. DELIVERY AND ACCEPTANCE

4.1 Delivery

- 4.1.1 The Goods shall be delivered to, and the Services shall be performed at, the address specified in the Contract and on the date or within the period specified in the Contract.
- 4.1.2 Delivery shall be deemed to be made on confirmation by the Purchaser that Goods and/or Services have been delivered in accordance with the terms of the Contract.
- 4.1.3 Time of delivery of the Goods and of performance of the Services is of the essence.
- 4.1.4 Delivery or performance by instalments is not permitted unless previously agreed in writing. If Goods are to be delivered or Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

4.2 Acceptance

- 4.2.1 The Purchaser shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted them until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect has become apparent.
- 4.2.2 The Purchaser shall be entitled to reject defective Goods even if the defect is minor.
- 4.2.3 The Purchaser shall not be deemed to have accepted the Goods merely by virtue of having sold the Goods to a third party upon or after delivery or having incorporated or converted them into other products or works.

5. PERFORMANCE

5.1 Specification

- 5.1.1 The quantity, quality and description of the Goods and the Services shall be as specified in the Contract and in any specification supplied.
- 5.1.2 Any specification produced or supplied together with the intellectual property rights in it shall be the exclusive property of the Purchaser.

5.2 Inspection

The Purchaser shall be entitled to inspect and test the Goods during manufacture, processing or storage prior to dispatch.

5.3 Additional information

The Supplier shall provide to the Purchaser such information about the Goods and any components, parts or raw materials used in manufacturing the Goods as the Purchaser considers necessary. This to include; safety and environmental specifications, COSHH data sheets, maintenance instructions, and specific training requirements.

6. RISK AND PROPERTY

6.1 Risk of damage to or loss of the Goods shall pass to the Purchaser on delivery in accordance with the Contract.

6.2 Property in the Goods shall pass to Purchaser on delivery, or if earlier, when payment for the Goods is made.

7. COMPLIANCE

The Supplier shall comply with English law and all other applicable local regulations and legal requirements concerning the manufacture, packaging, labelling, delivery, use, installation and maintenance of the Goods and performance of the Services, including but not limited to those concerning hazardous substances, in performing its obligation under the Contract.

8. WARRANTIES

8.1 The Supplier warrants that it is fully qualified, financed and organised to perform the Contract and that the Goods:-

- 8.1.1 will be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier and for all purposes for which the Goods are commonly supplied;
- 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, regulations and EU regulations relating to the manufacture and sale, use, installation and maintenance of the Goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed).

8.2 The Suppliers warrants that the Services:-

- 8.2.1 will be performed in accordance with Good Industry Practice; and
- 8.2.2 will comply with all Regulations relating to the performance of the Services.

9. CERTAIN RIGHTS AND REMEDIES ON DEFAULT

- 9.1 Each of the Purchaser's rights or remedies is without prejudice to any other right or remedy.
- 9.2 If Goods are not delivered or Services are not performed on the due date then the Purchaser shall be entitled to cancel the Contract (or any part) without liability and purchase substitute items or services elsewhere and recover from the Supplier any loss or additional costs incurred.
- 9.3 If any Goods or Services are not supplied or performed in accordance with the Contract, then the Purchaser shall be entitled:-
- 9.3.1 to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or 9.3.2 whether or not the Purchaser has previously required the Supplier to repair the Goods or to supply replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the price already paid.

10. INDEMNITY

The Supplier shall indemnify the Purchaser in full against all liabilities, losses (whether direct or indirect and including loss of business, loss of contracts, loss of goodwill, loss of profits and expenses (including legal expenses)) awarded against or incurred by the Purchaser as a result of or in connection with:-

- 10.1 breach of any provision of the Contract or any warranty relating to the Goods or the Services;
- 10.2 any claim that the Goods infringe the intellectual property rights of any person, except to the extent that the claim arises from compliance with the Purchaser's specification;
- 10.3 any claim made against the Purchaser in respect of any breach or alleged breach by Purchaser of any statutory provision, regulation or other rule of law arising from the Supplier's acts or omissions or those of your employees, agents or subcontractors;
- 10.4 any claim made against the Purchaser in respect of any breach or alleged breach by Purchaser of any statutory provision, regulation or other rule of law arising from the Supplier's acts or omissions or those of your employees, agents or subcontractors;
- 10.5 any claim made against the Purchaser in respect of any breach or alleged breach by Purchaser of any statutory provision, regulation or other rule of law arising from the Supplier's acts or omissions or those of your employees, agents or subcontractors;

11. INSTALLATION AND WORK ON SITE

- 11.1 The Supplier shall at all times whilst on the Purchaser's premises or site comply with and procure that the Supplier's employees, agents and subcontractors comply with:-
 - 11.1.1 all relevant statutory and other legal requirements relating to the provision of Services;
 - 11.1.2 all health and safety legislation; and
 - 11.1.3 with all security and safety regulations and rules from time to time in force on those premises or site and will be deemed to have full knowledge of such regulations, copies of which shall be supplied on request.
- 11.2 Where the Supplier is responsible for either or both of the installation of the Goods and Provision other Services, such Services shall be carried out to the satisfaction of the Purchaser's authorised representative, which should be recorded.

12. TERMINATION

- 12.1 The Purchaser shall be entitled to cancel the Contract in respect of all or part only of the Goods or the Services as applicable by giving notice at any time prior to delivery or performance without incurring any liability to you.
- 12.2 The Purchaser shall be entitled to terminate the Contract without liability by giving notice at any time if:-
 - 12.2.1 the Supplier is in material breach of any of its obligations and that breach cannot be remedied;
 - 12.2.2 the Supplier is in material breach of any of its obligations and that breach can be remedied but the Supplier fails to do so within 30 days starting on the day after receipt of notice from the Purchaser;
 - 12.2.3 the Supplier commits more than one breach of any of its obligations and the cumulative effect of such breaches is that the Purchaser believe that the Supplier will continue to deliver a substandard performance over the one month period immediately after the service of notice specified in condition 12.2.2; or 12.2.4 the Supplier is subject to an Insolvency Event.

13. GENERAL

- 13.1 Entire Agreement and amendments
 - 13.1.1 The Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior representations, agreements, negotiations or understandings between the parties, except that this Clause 13.1.1 does not affect the liability of either party for fraudulent misrepresentation.
 - 13.1.2 An amendment to this Agreement is ineffective unless it is in writing, expressly purports to amend this Agreement and is executed by both parties.
- 13.2 Confidentiality
 - All information supplied by the Purchaser at any time is and remains the property of the Purchaser and must be returned on request and must be kept by Supplier as confidential.
- 13.3 Rights of Third Parties
 - The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.
- 13.4 Insurance
 - The Supplier shall at all times maintain adequate insurance cover with a reputable insurer against its liability under the Contract and produce the policy and latest premium receipt to the Purchaser on demand and at nil cost.
- 13.5 Further assurance
 - Each party shall at the request and cost of the other execute all deeds and other documents, and do all things that the other may require (acting reasonably) in Contract to give effect to the terms of the Contract.
- 13.6 Waiver
 - Any failure or neglect by either party to enforce any of the provisions of this Agreement shall not be construed nor deemed to be a waiver of that party's rights and does not affect the validity of the whole or part of the Contract nor prejudice that party's rights; any waiver by either party of its rights under the Contract does not operate as a waiver in respect of any subsequent breach.
- 13.7 Invalidity
 - If any provision of the Contract is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of the Contract and the legality, validity and enforceability of the remainder of the Contract shall be unaffected.
- 13.8 Assignment and sub-contracting
 - The Supplier shall not without the prior written consent of the Purchaser assign, transfer, charge, dispose of, deal with or subcontract its rights or obligations under the Contract.
- 13.9 No partnership
 - Nothing in the Contract shall or shall be deemed to create a partnership between the parties.
- 13.10 Governing law
 - The Contract shall be subject to English law and to the exclusive jurisdiction of the English courts.

14. DEFINITIONS

Unless the context otherwise requires, the following definitions apply:

Charges - the charges payable by the Purchaser under the Contract;

Good Industry Practice - in relation to any undertaking in any circumstances, the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a highly skilled and experienced person in the same or similar circumstances;

Goods - the goods (if any) including any instalment, component, part of or raw materials used in such goods described in the Contract;

Insolvency Event - each and any of the following in relation to a party:

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets; (iii) the enforcement of any security over any assets of a party; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of a party;
- (b) the party is unable to pay its debts as they fall due or is insolvent; or
- (c) the party enters into a composition or arrangement with its creditors or any class of them;

Purchaser - the purchaser of the Goods or Services under the Contract and identified in the Contract;

Regulations - all legislation, and all rules or regulations of any kind, including orders, instructions or directions of a competent authority, and all related official guidance, whether enacted or enforced by any competent authority with whose decision or determination it is Good Industry Practice to comply;

Services - the services (if any) described in the Contract; and

Supplier - the supplier of the Goods or Services under the Contract and identified in the Contract;

15. REFERENCES

- 15.1 In this Agreement:
 - 15.1.1 references to:
 - (a) "Clauses" and the "Schedules" are to clauses of, and the schedules to, these terms of Purchase;
 - (b) a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, Contracts or regulations made under it except that, as between the parties, no modification, consolidation or re-enactment shall apply for the purposes of the Contract to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party;
 - (c) either party includes, where appropriate, persons deriving title under it;
 - (d) "includes" or "including" shall be construed without limitation to the generality of the preceding words;
 - (e) "indemnify" means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after tax basis;
 - (f) any document (including this Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with this Agreement; and
 - (g) "writing" includes any method of reproducing words in a legible and non-transitory form, excluding e-mail;
 - 15.1.2 the singular includes the plural and vice versa; and
 - 15.1.3 the headings are for convenience only and shall not affect the interpretation of the Contract.