

CLYDEPORT OPERATIONS LIMITED
CONDITIONS OF PURCHASE



1. INTERPRETATION

In these Conditions:-

'Clydeport' means Clydeport Operations Limited (Registered in Scotland under number 134759)

'Conditions' means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between Clydeport and the Supplier.

'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 on the Order.

'Goods' means the goods (including any instalment of the goods or any part of them) described in the Order.

'Order' means Clydeport's purchase order to which these Conditions are annexed.

'Price' means the price of the Goods and/or the charge for the Services.

'Supplier' 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.

'Writing' includes telex, cable, facsimile transmission and comparable means of communication.

2. BASIS OF PURCHASE

2.1 The Order constitutes an offer by Clydeport to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to Clydeport or subject to which the Order is accepted or purported to be accepted by the Supplier.

2.3 Without prejudice to 2.2 above, no variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of Clydeport and the Supplier.

3. SPECIFICATIONS

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by Clydeport to the Supplier or agreed in Writing by Clydeport.

3.2 The Supplier 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.

3.3 The Supplier shall not unreasonably refuse any request by Clydeport to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and the Supplier shall provide Clydeport with all facilities reasonably required for inspection and testing.

3.4 If as a result of inspection or testing Clydeport is not satisfied that the Goods will comply in all respect with the Contract, and Clydeport so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance.

3.5 The Goods shall be marked by the Supplier in accordance with Clydeport's instructions and any applicable regulations or requirements of the carrier, and shall be 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 Clydeport 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 Clydeport in Writing.

4.3 Clydeport shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

5. TERMS OF PAYMENT

5.1 The Supplier shall be entitled to invoice Clydeport on or at any time after delivery of the Goods or performance of the Services, as the case may be. Each invoice shall be addressed to Clydeport's Purchasing Section, 16 Robertson Street, Glasgow G2 8DS and shall quote the number of the Order.

5.2 Unless otherwise stated in the order, Clydeport shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by Clydeport of a proper invoice or, if later, after acceptance of the goods or Services in question by Clydeport.

5.3 Clydeport shall be entitled to set off against the price any sums owed to Clydeport by the Supplier.

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 Clydeport's usual business hours.

6.2 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.3 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.4 Clydeport shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until Clydeport 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.

6.5 The Supplier shall supply Clydeport in good time with any instructions or other information required to enable Clydeport to accept delivery of the Goods and performance of the Services.

6.6 Clydeport shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by Clydeport.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to Clydeport upon delivery to Clydeport in accordance with the Contract.

7.2 The property in the Goods shall pass to Clydeport upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to Clydeport once payment has been made and the Goods have been appropriated to the Contract.

8. WARRANTIES AND LIABILITY

8.1 The Supplier warrants to Clydeport that the Goods:-

8.1.1 will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier 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 Supplier warrants to Clydeport that the Services will be performed by appropriately qualified and trained personnel, with particular regard to the requirements incumbent upon them under the Health & Safety at Work Act 1974 (as amended), with due care and diligence and to such high standard of quality as it is reasonable for Clydeport to expect in all the circumstances.

8.3 Without prejudice to any other remedy, if the Goods or Services are not supplied or performed in accordance with the Contract, then Clydeport shall be entitled:-

8.3.1 to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or

8.3.2 at Clydeport's sole option, and whether or not Clydeport has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services. to treat the Contract as repudiated by the Supplier's breach and require the repayment of any part of the Price which has been paid.

8.4 The Supplier shall indemnify Clydeport in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Clydeport as a result of or in connection with:

8.4.1 breach of any warranty given by the Supplier 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 Clydeport;

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 Supplier 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 Supplier's or its employees, agents or sub-contractors in connection with the performance of the Services.

8.5 Neither the Supplier nor Clydeport 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 was beyond that party's reasonable control.

9. TERMINATION

9.1 Clydeport shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Service by giving notice to the Supplier at any time prior to delivery or performance, in which event Clydeport's sole liability shall be to pay to the Supplier the Price for the Goods or Services in respect of which Clydeport has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation.

9.2 Clydeport shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:-

9.2.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) 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 or creditor takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

9.2.3 the Supplier ceases, or threatens to cease, to carry on business; or

9.2.4 Clydeport reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

10. GENERAL

10.1 Clydeport is a member of the group of companies whose holding company is Clydeport plc and accordingly Clydeport 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 Clydeport.

10.2 The Order is personal to the Supplier and the Supplier 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 No waiver by Clydeport of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.5 The Contract shall be governed by the laws of Scotland.