

# Brunel Healthcare Manufacturing Conditions of Purchase

## 1. Application of These Conditions

1.1 Brunel Healthcare Manufacturing Limited (known for the purposes of these Conditions as the "Company") only enters into contracts on the basis of these Conditions, which can only be altered or qualified by a document signed by a Director of the Company. In the event of a conflict between any of these Conditions and any specific term or condition (whether of main contract or otherwise) referred to on the face of the order or orders placed by the Company (the "Order"), the latter shall prevail.

1.2 The delivery of goods which are the subject of the Order (the "Goods") by the Supplier pursuant to the Order shall constitute acceptance of these Conditions where acceptance has not previously been communicated to the Company.

## 2. Delivery / Advice Notes

2.1 Delivery of the Goods shall be made at the address stated on the Order or an address as notified by the Company to the Supplier. The Supplier shall deliver the Goods on the date requested by the Company, and shall comply in all respects with the Company's programme for delivery of Goods. If the Supplier does not deliver the Goods by the specified delivery date then Company shall be entitled to reject the Goods or any of them, and to terminate the contract.

2.2 All Goods supplied against the Order shall (unless otherwise directed by the Company) be delivered by the Supplier to the Company's works carriage paid and bearing the Company's order number on each package. Delivery shall be completed when the Goods have been unloaded by the Supplier at the point of delivery specified in the Order, a delivery advice note has been received by the Company and the delivery has been accepted by a duly authorised representative of the Company.

2.3 Unless otherwise stated in the Order the Supplier is responsible for obtaining all the export and import licences for the Goods and shall be responsible for any delays due to such licences not being available when required.

## 3. Time

3.1 Where time is specified, such provision shall be of the essence of the contract.

3.2 Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle the Company at its option to treat the contract as repudiated in whole or in part. The Company shall be entitled to exercise such option at any time (notwithstanding that it has

acquiesced in any delay) unless a written extension of time has been given to the Supplier by a Director of the Company and the time of any extension has not elapsed.

3.3 Failure by the Company to exercise its option under Condition 3.2 in respect of any part of an Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Order.

3.4 Unless an extension of time has been agreed by the Company in accordance with Condition 3.2, the Supplier's failure to effect delivery on the date or dates specified shall entitle the Company to purchase substitute Goods and to hold the Supplier accountable for all loss or additional costs (or both) incurred as a result.

#### **4. Price and Payment**

4.1 Provided that the Supplier fulfils its obligations under these Conditions, the Company shall pay to the Supplier the agreed price for the Goods as specified in the Order. The price is exclusive of VAT, which shall be paid at the prevailing rate. The purchase price is fully comprehensive and shall include all costs incurred by the Supplier in performing its obligations under the contract, including but not limited to, delivery, insurance costs and any applicable duties and taxes, and is not subject to escalation.

4.2 Invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods which are the subject of the Order, and payment shall be due 60 days from date of invoice providing that the Company receives the invoice at the correct invoicing address.

4.3 The Company specifically reserves the right to deduct from any monies due or to be become due to the Supplier any monies due to the Company from the Supplier. The Company shall not be liable for any orders or amendments to orders other than those issued or confirmed in writing on the Company's official order form, duly signed on behalf of the Company.

4.4 The Company shall not be responsible for the payment of any charges for Goods supplied in excess of the Goods required by the Order or any variation of it unless authorised in writing by a further priced Order.

4.5 No payment of or on account of the contract price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.

#### **5. Risk and Title**

5.1 Unless otherwise stated on the Order, risk in the Goods purchased shall pass to the Company upon completion of delivery as specified in Condition 2.2. Title to the Goods or any part of the Goods shall pass upon the earlier of delivery or the time of any payment being made for them. For the avoidance of doubt, the Supplier shall be responsible for transport

and unloading costs and insurance of Goods to their full value against all risk of damage or loss prior to completion of delivery.

5.2 The Supplier will be liable for all damage which it or its carrier causes to the Company's property in the course of delivery. If a carrier is specified in connection with the Order such carrier shall be deemed to be an agent of the Supplier and not of the Company.

## **6. Free-issue Materials**

6.1 Where the Company issues materials to the Supplier for use in connection with the Order such materials shall be and remain the property of the Company. The Supplier shall maintain such materials in good order and condition and at its risk, subject in the case of tooling, patterns and the like to fair wear and tear, and shall use them only in connection with the Order. The Supplier shall at any time forthwith upon the Company's request deliver up to the Company all materials issued by the Company.

## **7. Inspection and Testing**

Any inspector or representative authorised by the Company shall be entitled to inspect the Goods either complete or in the process of manufacture or, as the case may be, any Services being performed at any reasonable time either at the Supplier's works or at the works of any sub-contractor and to require all defects or deficiencies to be made good and alterations made in the event of any failure in the opinion of the Company to comply with the terms of the Order, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval of all or any part of the Goods.

## **8. Quality and Guarantee**

8.1 Goods shall be supplied strictly in accordance with the quantities, drawings, specifications, standards and stipulations contained in or annexed to the Order and, unless otherwise agreed in writing, shall conform to all relevant UK and EC standards, specifications and conditions and all work performed by the Supplier shall be in accordance with best practice and pass such inspection as may be required by the Company or any government department concerned.

8.2 The Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods prior to the Order.

8.3 The Company shall be entitled to require the Supplier to perform the obligations contained in Condition 8.4 or, at its option, reject the Goods and treat the contract as repudiated at any time prior to the expiration of the following periods:-

8.3.1 Where the defect is apparent on a visual inspection, three months after delivery to the Company; or

8.3.2 In any other case three months after the Company has discovered the defect in question.

8.4 Without prejudice to the Company's right to treat the contract as repudiated, where the Company notifies the Supplier of any defective or damaged Goods (whether due to defective design, materials or workmanship or otherwise), the Supplier shall be responsible for making good with all possible speed the defective or damaged Goods including full replacement where necessary together with all costs of delivery to site and installation and all other costs and expenses incurred by the Company including but not limited to costs in relation to the premises at which the Goods are situated or to other plant and machinery in order to enable or facilitate such making good by the Supplier.

8.5 The Supplier agrees to assign to the Company upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part thereof.

## **9. Health & Safety**

9.1 The Supplier warrants that it will comply with all statutory provisions, rules and regulations applicable to the Goods, and that the nature, quality and substance of all Goods supplied conform with all relevant EU and UK standards.

## **10. Indemnity & Insurance**

The Supplier agrees to indemnify the Company against (a) all losses, costs, damages, expenses and claims caused to and made against the Company which would not have been caused or made had the Supplier fulfilled its express or implied obligations under this contract, and (b) all claims made against the Company arising out of the acts and omissions of the Supplier, its employees, agents or its sub-contractors. The Supplier is required to arrange insurance in its own name against the risk assumed under this clause to an appropriate value per incident.

## **11. Sub-contractors**

The Supplier shall not without the written consent of the Company sub-contract or assign all or any part of the Order. Any authority given by the Company for the Supplier to sub-contract the Order or any part of it shall not impose any duty on the Company to enquire as to the competency of any authorised sub-contractor but the Supplier shall ensure that any authorised sub-contractor is competent and that the work is properly done.

## **12. Confidentiality**

All information provided to the Supplier by the Company relating to the contract or incidental to it shall be regarded as confidential and shall not be disclosed to any third party without the prior consent of the Company save that this Condition shall not apply to any

information required to be disclosed by any statutory duty or obligation imposed on the Supplier or by a court of competent jurisdiction, or which is already in the public domain other than as a result of a breach of this Condition by the Supplier.

### **13. Termination**

13.1 Without prejudice to any other rights or remedies to which it may be entitled, the Company may terminate the Order forthwith and without liability in the event that:-

13.1.1 the Supplier shall become bankrupt or, under Section 123 of the Insolvency Act 1986, be deemed to be unable to pay its debts or shall compound with its creditors or if a resolution shall be passed or proceedings commenced for the administration or liquidation of the Supplier (other than for a voluntary solvent winding up for the purpose of reconstruction or amalgamation) or if a receiver or manager shall be appointed of all or any part of its assets or undertaking; or

13.1.2 The Supplier shall commit any breach of its obligations under the contract and fail to rectify such breach within seven days of receipt of written notice from the Company requiring it to be remedied.

### **14. Value Added Tax**

14.1 All Suppliers who are registered for value added tax are required to issue a proper tax invoice in accordance with the relevant legislation before the Company shall be required to make payment for Goods supplied in accordance with the Order.

### **15. Cancellation**

15.1 Without prejudice to any other specific provision of this contract or any other right available to it, the Company shall have the right to cancel the contract in whole or in part at any time by giving written notice to the Supplier whereupon all work under the Order (or the cancelled part) shall be discontinued and the Company shall pay to the Supplier such proportion of the Order price as may be fair and reasonable having regard to the value of work done, of the Goods previously delivered under the Order (including an element of profit to be calculated on a pro rata basis by reference to the net profit margin on the contract as a whole which the Supplier can evidence to the satisfaction of the Company it would have obtained had the contract proceeded to completion) and on such payment no further sum or sums shall be due by way of damages, loss of profits or otherwise from the Company to the Supplier by reason of such cancellation.

### **16. Intellectual Property**

16.1 All designs, inventions, patents, know how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the contract shall be the sole property of the Company and the Supplier shall procure at no charge to the

Company the execution of any and all papers necessary to perfect ownership by the Company.

16.2 The Supplier shall ensure that the Goods do not infringe the intellectual property rights of any third party and shall indemnify the Company in respect of any infringement claim made against the Company by a third party, save where the Goods are manufactured (without alteration) to specifications or designs supplied by the Company, and against all losses, costs, damages, expenses and claims which the Company may incur or have to bear or for which the Company may become liable as a result of such claims for infringement.

## **17. Force Majeure**

If either the Supplier is delayed or hindered in the delivery of the Goods by reason of fire, flood, storm, act of God, war, riot or malicious damage beyond its reasonable control then delivery of the Goods shall be suspended and if such delivery cannot be effected within a reasonable time after the due date the delivery may be cancelled by either party by letter or telefax to the other without liability on either side. A delivery which is not cancelled will be made or accepted as soon as the circumstances causing the delay or hindrance cease but when more than one delivery is to be made against the Order the period during which deliveries are to be made shall not be extended.

## **18. General**

18.1 Any amendments to the Order shall be made by agreement evidenced in writing. The Supplier shall advise the Company immediately if such amendments either prevent the specified delivery date(s) being met or have any other significant implication regarding the Supplier's obligations to the Company.

18.2 If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

18.3 These Conditions and the terms of any Order made by the Company constitute the entire agreement and understanding between the Company and the Supplier relating to the subject matter of this contract and supersede any previous agreement, representations, negotiations or understanding relating to such matters. Each party acknowledges that it shall have no cause of action against the other arising out of the same except in respect of any fraudulent misrepresentation made by either party.

18.4 A person who is not a party to this Agreement (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of this contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

18.5 The parties agree that any disputes arising or in any way connected with the subject matter of this contract (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and shall be subject to the jurisdiction of the English courts only, except that the Company may seek injunctive relief outside such jurisdiction.