

PLANTWORK SYSTEMS LTD – TERMS AND CONDITIONS – PURCHASE ORDERS

1. DEFINITIONS

“**Buyer**” means the Plantwork Systems LTD and where the context permits, reference to the Buyer in these Terms and Conditions shall include reference to an employee of the Buyer.

“**Goods**” means the goods described in the Purchase Order.

“**Order Number**” means the unique number that appears on the Purchase Order.

“**Parties**” means the Buyer and the Supplier.

“**Price**” means the price for the goods given in the Purchase Order.

“**Purchase Order**” means an order for the purchase of goods served by the Buyer on the Supplier which includes a description of the goods, the price and any terms applying to the purchase of the goods which are additional to these Terms and Conditions.

“**Supplier**” means the person, firm or company whose name appears as the addressee in the Purchase Order.

“**Terms and Conditions**” means these terms and conditions for the supply of goods.

2. GENERAL

2.1 These Terms and Conditions together with the relevant Purchase Order, any specifications and plans provided by the Buyer and any specific guarantee arrangements applying to the Goods constitute the contract between the Parties for the supply of the Goods (“the Contract”).

2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of Purchase Order, the term of the Purchase Order shall prevail.

2.3 The Contract constitutes the entire agreement between the parties relating to the supply of the Goods and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

3. THE SERVICES

3.1 The Supplier shall supply the Goods in accordance with the Purchase Order.

3.2 The Goods shall:

- a) be to the reasonable satisfaction of the Buyer;
- b) be fit and sufficient for all purposes for which such Goods are generally used and for any specific purpose made known to the Supplier by the Buyer;
- c) be of the same quality and description as any sample provided;
- d) comply with any requirements or specifications given on the Purchase Order.

4. DELIVERY

4.1 The Supplier shall deliver the Goods to the address for delivery given in the Purchase Order.

4.2 Where the Supplier requires access to the Buyer’s premises in order to deliver the Goods:

- a) the Supplier shall agree delivery times with the Buyer in advance (unless the Buyer agrees otherwise);
- b) the Supplier shall comply with any rules or security requirements applied by the Buyer in relation to access to its premises.

4.3 Except where otherwise agreed by the Buyer, delivery of the Goods shall include unloading the Goods at such place and in such manner as the Buyer shall reasonably direct.

4.4 The Supplier shall deliver the Goods on or (where the Buyer agrees) before the date or dates given in the Purchase Order. Unless the Purchase Order provides otherwise, the time of delivery is of the essence in this Contract and any failure to deliver the Goods by the date (or at the time) given in the Purchase Order shall entitle the Buyer to give the Supplier notice terminating the Contract with immediate effect.

5. PROPERTY AND RISK

5.1 Without prejudice to the Buyer’s other rights and remedies under this Contract, property and risk in the Goods shall pass to the Buyer on acceptance of delivery.

6. DAMAGE TO GOODS IN TRANSIT

6.1 Any consignment of Goods dispatched by the Supplier for delivery to the Buyer shall be accompanied by a delivery note prepared by the Supplier marked with the order number from the Purchase Order. Where applicable, the delivery note shall also specify the means of transport, the place and date of delivery, the number of packages, the content of the packages, the weight and volume of the packages and whether or not the packaging must be returned to the Supplier.

6.2 Where some or all of the Goods have been damaged in transit (or have failed to arrive at the Buyer after dispatch by the Supplier) the Supplier shall either refund, repair or replace the Goods in question (at the choice of the Buyer) provided always that:

- a) in the case of damage in transit the Buyer has informed the Supplier of the damage within 28 days of receiving the Goods;
- b) in the case of damage in transit the Buyer shall either repair or replace the Goods within 28 days of notified the damage.
- c) in the case of non-delivery and where the Supplier has notified the Buyer of the intended date of delivery, the Buyer has informed the Supplier within 28 days of the notified delivery date that the Goods have not been received.

7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Supplier shall permit the Buyer to inspect the Goods and shall provide all reasonable assistance to the Buyer in undertaking an inspection.

7.2 The Buyer shall not be taken to have waived any of its rights under this Contract (and in particular its right to reject the Goods) if it does not carry out an inspection or if it approves the Goods following an inspection.

7.3 The Buyer may, by written notice to the Supplier, reject any of the Goods which fail to meet the requirements of this Contract provided always that the Buyer gives such notice within a reasonable time of receiving the Goods.

7.4 If the Buyer rejects any of the Goods pursuant to this clause, it shall be entitled:

- a) to have the Goods concerned either repaired by the Supplier or (at the choice of the Buyer) replaced by the Supplier with Goods which comply with this Contract; or
- b) to obtain a refund of any payment it has made to the Supplier.

7.5 Subject to any alternative guarantee arrangements made between the Buyer and the Supplier, the guarantee period applicable to the Goods shall be 12 months from the Buyer putting the Goods into service or 18 months from delivery (whichever is shorter).

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7.6 If, within the guarantee period or within 30 days thereafter, the Buyer gives the Supplier written notice of any defect which arose within the guarantee period under proper and normal use of the Goods, the Supplier shall remedy such defect as quickly as possible (whether by repair or replacement, as the Buyer shall choose) without cost to the Buyer.

7.7 Any Goods rejected or returned to the Supplier shall be returned at the Supplier's expense.

8. LABELLING AND PACKAGING

8.1 The Goods shall be appropriately packaged and clearly labelled. The labelling and packaging shall comply with any reasonable requirements of the Buyer of which the Supplier is aware and with any statutory requirements. In particular, if the packages contains any material which is hazardous, noxious or dangerous this shall be clearly indicated.

8.2 All packaging shall be considered non-returnable and shall be destroyed unless the Supplier indicates in the advice note accompanying the consignment of Goods that the packaging will be charged for unless it is returned. The Buyer shall only accept liability for packaging that does not arrive at the Supplier's premises following dispatch by the Buyer if the Supplier informs the Buyer of its non-arrival within 10 days of receiving notification from the Buyer that the packaging has been despatched.

9. INSTALLATION

9.1 Where the Purchase Order requires the Supplier to install the Goods at the Buyer's premises:

- a) the Supplier shall make no delivery of plant, materials or equipment and shall not commence any installation work without the prior consent of the Buyer;
- b) the Supplier shall carry out the installation work diligently and with reasonable skill and care;
- c) the Supplier shall comply with the Buyer's requirements relating to access to and use of its premises and shall co-ordinate its work with any other employee or contractor who is carrying out work for the Buyer;
- d) the Supplier shall keep the Buyer's premises clean and tidy at all times and shall remove all plant and unused materials when the installation work is complete.

9.2 The Buyer shall have the power at any time during any installation works to give notice to the Supplier requiring:

- a). the removal from its premises of any materials which are hazardous or noxious or not in accordance with the Contract;
- b). the substitution of proper and suitable materials; and/or
- c). the removal and re-execution of any installation work or any Goods which are not in accordance with the Contract.

10. PAYMENT

10.1 In consideration of the supply and delivery of the Goods by the Supplier the Buyer shall pay the Supplier the Price.

10.2 The Supplier shall submit an invoice for the Goods to the Buyer's address for invoices given in the Purchase Order. The invoice shall contain the Order Number given in the Purchase Order, a full description of the Goods supplied and the Price.

10.3 Save where the Goods have not been delivered or are not in accordance with the Contract, the Buyer shall pay the Supplier's invoice within 30 days of receiving it.

10.4 In addition to the Price, the Buyer shall (where applicable) pay the Supplier a sum equivalent to any Value Added Tax chargeable on the Goods supplied.

11. RECOVERY OF SUMS DUE

11.1 If any sum is recoverable from or payable by the Supplier under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under the Contract or under any other agreement with the Buyer.

12. INTELLECTUAL PROPERTY

12.1 Save where the Goods are made up in accordance with a design supplied by the Buyer, the Supplier warrants that none of the Goods shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.

12.2 The Supplier shall indemnify the Buyer against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Buyer may incur as a result of or in connection with any breach of clause 12.1.

13. HEALTH AND SAFETY

13.1 The Supplier warrants and represents that:

- a) it has satisfied itself that all necessary examinations have been made prior to delivery of the Goods to ensure that the Goods are designed and constructed so that they can be used without risk to health and safety and
- b) that it has made available to the Buyer adequate information about any conditions necessary to ensure the Goods can be used safely and without risk to health.

13.2 The Supplier shall indemnify the Buyer against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and client basis) which the Buyer may incur as a result of or in connection with any breach of clause 14.1.

13.3 The Supplier shall notify the Buyer of any health and safety hazards that may arise in connection with the performance of this Contract.

13.4 The Buyer shall notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

14. CONFIDENTIALITY AND OFFICIAL SECRETS

14.1 The Supplier undertakes to comply and to procure that its employees comply with the provisions of the Official Secrets Acts 1911 to 1989.

14.2 The Supplier undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information that is already in the public domain or the possession of the Supplier other than by reason of breach of this clause.

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15. ENVIRONMENTAL MATTERS

15.1 The Supplier confirms that:

- a) the process used in the manufacture of the Goods relied on minimal use of ozone depleting substances, toxic chemicals and other pollutants including lead, methyl chloroform and formaldehyde;
- b) that minimal dependence has been made on non-renewable natural resources such as non-sustainably produced hardwoods;
- c) in the manufacture of the Goods and in the choice of any packaging for the Goods, it has given preference to Goods that have maximum recyclability or, where cost effective recycling is impracticable, maximum biodegradability.

16. INDEMNITY AND INSURANCE

16.1 Without prejudice to any rights or remedies of the Buyer the Supplier shall indemnify the Buyer against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Buyer may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or any negligence or breach of this Contract by the Supplier.

16.2 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract. At the request of the Buyer the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

17. CHANGE CONTROL

17.1 There shall be no change to the amount of or description of the Goods or the Price unless the Buyer has issued a new purchase order in substitution for the Purchase Order. These Terms and Conditions shall apply to any new purchase order and the new purchase order shall become "the Purchase Order" for the purpose of this Contract from the moment it is received by the Supplier.

17.2 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Buyer and the Supplier.

18. ASSIGNMENT OR SUB-CONTRACTING

18.1 The Supplier shall not assign this Contract without the written consent of the Buyer.

18.2 No sub-contracting of this Contract shall in any way relieve the Supplier of its obligations under the Contract.

18.3 Where the Supplier enters a sub-contract with a supplier or contractor for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Supplier to pay the supplier or contractor within 30 days of receipt of a valid invoice.

19. RIGHTS OF THIRD PARTIES

19.1 This Contract shall not create any rights which are enforceable by anyone other than the Parties.

20. TERMINATION

20.1 Without prejudice to any other rights or remedies of the Buyer under this Order the Buyer shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) its liquidator or administrator, if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

21. NOTICES

21.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Buyer must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.

21.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

22. DISPUTES AND MEDIATION

22.1 Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.

22.2 If the Parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator").

22.3 If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.

22.4 The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.

22.5 If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

23. GOVERNING LAW

23.1 Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.