



# PURCHASING TERMS & CONDITIONS OF PURCHASE GOODS & SERVICES D402

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## 1. INTERPRETATION AND CONTRACT FORMATION

1.1 In these Conditions: "Contract" means a contract between Buyer and Seller for the purchase of Products; "Goods" means all goods purchased under a Contract; "IPR" means all registered or unregistered rights to exploit IPR worldwide including patents, trademarks, registered designs, design rights and copyright, moral rights, rights in computer software, rights in databases, rights in information, trade secrets, inventions, know-how, trade names, domain names, goodwill, the right to bring an action for passing off and any rights of a similar nature or having equivalent effect; "Order" means any order issued by Buyer in relation to Products; "Products" means Goods and/or Services; "Seller" means a counterparty to a Contract other than the Buyer, and "Services" means all services purchased under a Contract.

1.2 All Contracts, however formed, incorporate these Conditions to the exclusion of all other terms or conditions (other than any which cannot be excluded by law). No other terms and conditions are binding on Buyer and Seller waives any right to rely thereon. Buyer's performance of a Contract is conditional upon Seller accepting these Conditions as written without amendment. Buyer's pre-contractual requests are non-binding.

1.3 The construction, performance, validity and all aspects of each Contract are governed by English law and the parties accept the jurisdiction of the English courts.

## 2. SPECIFICATION

2.1 The quantity, quality and description of the Products are as advised by Buyer to Seller in the Order. Buyer relies on the skill and judgement of Seller in the supply of Products in the discharge of its obligations under each Contract.

2.2 Goods must be marked in accordance with Buyer's instructions, applicable regulations and any requirements of the carrier. Goods must be packed and stored so as to reach their destination in an undamaged condition. Seller must comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of Goods.

2.3 Before shipment of Goods, Buyer may make changes to the Contract including changes in the drawings or specifications, method of shipment, quantities, time or place of delivery. If such changes materially increase the cost of, or time required for, performance of the Contract, an equitable adjustment may be made to the price or delivery schedule if approved by Buyer in writing.

2.4 Products must be supplied without fault or defect, be fit and sufficient for the purpose for which such Products are ordinarily used and for any particular purpose made known to Seller. Goods must be new, unused, of the best available design and of the best material and workmanship conforming to the description stated in the Contract.

2.5 Exact conformity of Products with the Contract is of the essence and Buyer is entitled to reject any Products that do not conform with the Contract. The power to reject shall extend to the whole or any part of a consignment. Upon rejection, Buyer may return rejected Goods at Seller's risk and expense or dispose of rejected Goods at the cost and expense of Seller. Rejected Goods shall not be replaced unless Buyer requires in writing. Seller shall reimburse Buyer for costs losses damages and expenses incurred by Buyer in relation to rejected Goods and/or additional expenditure incurred by Buyer obtaining other goods to replace the rejected Goods. Defective Services must be re-performed without delay and at no cost to Buyer.

2.6 Buyer may inspect and test Goods before or after delivery and Seller shall co-operate fully with such inspection and testing, after which, if Buyer is not satisfied that the Goods comply in all respects with the Contract Seller must take all steps necessary to ensure compliance. Any inspection or testing shall not diminish or vary Seller's obligations under the Contract.

## 3. DELIVERY

3.1 Goods shall be delivered on the date or within the period specified in the Order, or if no such date or period is specified within 21 days of the Order, time for delivery being of the essence of the Contract. Goods shall be delivered carriage paid to Buyer's place of business as named in the Order, or if some other place of delivery is agreed by the Buyer in writing by delivery of the Goods to that place during Buyer's normal office hours. Seller shall offload Goods at Seller's own risk as directed by Buyer.

3.2 In relation to the delivery and installation of Goods, Seller and its sub-contractors must at all times comply with the Buyer's reasonable requirements.

3.3 Each delivery must be accompanied by a delivery note showing the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. If Goods are not delivered on the due date then, without prejudice to any other rights which it may have, Buyer reserves the right to: cancel the Contract in whole or in part; decline any subsequent delivery of Goods which Seller attempts; recover from Seller any expenditure reasonably incurred by Buyer in obtaining goods in substitution for the Goods from another supplier, and claim damages for any additional costs, loss or expenses incurred by Buyer which are attributable to Seller's failure to deliver on time.

3.4 No Goods are accepted until Buyer has had sufficient time to inspect them following delivery. Acceptance of Goods is conditional upon any latent defect subsequently being discovered and Goods that have been

accepted may subsequently be rejected if any latent defect in the Goods becomes apparent.

3.5 The Seller shall supply with the Goods all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair of the Goods.

3.6 The Goods shall be properly packed clearly labelled and adequately protected against damage and deterioration in transit. Containers and packing are supplied free but will be returned, if required, at the Seller's risk and expense. Seller will repair or replace Goods damaged or lost in transit or during off-loading or stacking free of charge.

3.7 Where more than one item of Goods is included in any Order and Buyer agrees to accept delivery by instalments, the Contract shall be construed as a separate contract in respect of each instalment yet failure to deliver any instalment shall entitle Buyer at its option to treat the Contract as a whole as repudiated thereby.

3.8 No Goods supplied under the Contract earlier than the due date for delivery will be accepted or paid for unless the Buyer notifies in writing its acceptance of the same. If Goods are delivered to Buyer in excess of the quantities ordered Buyer shall not be bound to pay for the excess and any excess will be and will remain at Seller's risk and will be returnable at Seller's expense.

3.9 It is Seller's responsibility to acquaint itself with the purposes for which the Goods supplied are to be used. Goods supplied or installed under the Contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health and all Goods will be supplied with full instructions for their proper use maintenance and repair and with any necessary warning notices clearly displayed.

3.10 In respect of all Goods supplied, Seller will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Buyer, its customs, relevant British Standards, statutory and regulatory bodies. Seller agrees before delivery to furnish Buyer in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in Goods supplied and thereafter information concerning any changes in such properties or ingredients. Buyer will rely on the supply of such information from Seller in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation.

## 4. RISK, TITLE AND PAYMENT

4.1 Goods are sold with full title guarantee and title passes on the earlier of delivery or payment. Risk in Goods passes to Buyer not before delivery to the Buyer in accordance with the Contract.

4.2 The price payable for Products is stated in the Order and shall be: fixed for the duration of the Contract; and inclusive of all charges including packaging material, packing, shipping, loading, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts, levies or taxes other than value added tax. All variations in the price or extra charges are subject to the prior written consent of Buyer.

4.3 Seller shall not raise its invoice before delivery. Each invoice must quote the number of the Order. Seller must raise a separate invoice in respect of each consignment delivered under the Contract. Unless otherwise stated in the Order, Buyer will pay for Products before the last day of the month following the month of receipt by Buyer of a proper invoice. Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller or associated Company of the Seller to Buyer against any sum payable by Buyer to Seller or an associated company of Seller under a Contract (associated company has the meaning ascribed to it by section 416 Income and Corporation Taxes Act 1988.)

## 5. BUYER'S PROPERTY, WARRANTIES AND INDEMNITY

5.1 Materials, equipment and IPR in all drawings, specifications and data supplied by Buyer to Seller at all times remain the exclusive property of Buyer and shall be held by Seller in safe custody at its own risk and maintained and kept in good condition by Seller until returned to Buyer and shall not be disposed of other than in accordance with Buyer's written instructions, nor shall such items be used otherwise than as authorised by Buyer in writing.

5.2 All IPR in Products (whether created before or after the date of the Contract) shall vest in Buyer absolutely unless otherwise agreed in writing. Seller warrants that the sale or use of the Products by Buyer will not infringe any IPR of any third party and Seller shall indemnify and hold harmless Buyer against all loss damage liability actions proceedings costs claims or expenses which Buyer may suffer or incur. Should Buyer receive notice of any claim that the Products infringe any IPR of any third-party Buyer shall have the right to terminate the Contract at once but without prejudice to any other right of action Buyer may have.

5.3 Seller warrants to Buyer that the Goods:

5.3.1 are of satisfactory quality within the meaning of the Sale of Goods Act 1994, and fit for any purpose held out by Seller or made known to Seller in writing at the time the Order is placed;

5.3.2 are free from defects in design, material and workmanship;

5.3.3 correspond in every respect with any specifications, drawings, samples or descriptions provided by the Buyer; and

5.3.4 comply with all statutory requirements and regulations and voluntary codes of conduct relating to the Goods and their sale and supply.



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5.4 Seller warrants that the Services shall be performed with all due skill and care;

5.5 Seller shall indemnify and keep indemnified Buyer in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by Buyer as a result of or in connection with:

5.5.1 breach of any warranty given by the Seller in relation to the Goods;

5.5.2 any claim made against the Buyer in respect of any liability, loss, damage, cost or expense sustained by the Buyer's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods;

5.5.3 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods in accordance with the Contract;

5.5.4 any defect in packaging or containers of the Goods or any misleading or inaccurate information or data supplied at any time by the Seller its servants or agents; or

5.5.5 any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of Seller.

5.6 The Seller shall affect with a reputable insurance company a policy or policies covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Buyer produce the relevant policy or policies together with receipts or other evidence of payment of premiums.

## 6. TERMINATION

6.1 Buyer can cancel any Contract in whole or part by giving notice to Seller at any time prior to delivery of the Products in which case Buyer's total liability is to pay to Seller fair compensation for work-in-progress at the time of cancellation excluding loss of anticipated profits and consequential or economic loss. If Buyer cancels a Contract (without prejudice to any other rights which Buyer may have) sums payable by Buyer under the Contract shall cease to be payable and sums paid by Buyer under the Contract shall be repaid immediately.

6.2 Buyer can by giving written notice to Seller terminate the Contract at once if: Seller commits a breach of the Contract; if Seller is in breach of the Modern Slavery Act 2015, the Bribery Act 2010 and/or the Criminal Finance Act 2017; if any distress, execution or other legal process is levied upon any of the assets of Seller; if the Seller enters into any arrangement or composition with its creditors or commits any act of bankruptcy or if an order is made or a resolution is passed for its winding up, or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, Seller's undertaking or assets; if Seller ceases to carry on its business; if the financial position of Seller deteriorates such that in the opinion of Buyer the capability of the Seller to fulfil its obligations under the Contract are placed in jeopardy; or if any of the events mentioned above is about to occur or if Seller does not pay any money due to Buyer.

6.3 Termination of a Contract, however arising, is without prejudice to the rights and duties accrued prior to termination. Conditions which expressly or impliedly have effect after termination will continue notwithstanding termination.

6.4 Buyer may at any time and for any reason to terminate the Contract in whole or in part by giving notice in writing to Seller whereupon all work on the Contract shall be discontinued.

## 7. CONFIDENTIALITY

7.1 The Seller shall not use and/or disclose any confidential information which is acquired by it about the Buyer's business and/or given by the Buyer or on its behalf of the Seller and/or generated by the Seller from the Seller's confidential information except in the proper performance of this Agreement.

## 8. GENERAL

8.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not. No concession or delay by Buyer shall be construed as a waiver of any rights and remedies.

8.2 No Contract is affected by any promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this Agreement in reliance on any representation not expressly incorporated into the Contract provided that liability for fraud is not excluded.

8.3 Each Contract is personal to Seller and Seller cannot assign or transfer to any other person any of its rights or subcontract any of its obligations under any Contract. Buyer may assign the Contract at will.

8.4 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties. The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it.

8.5 Each Contract is governed by English law and the English courts have jurisdiction.

## 9. COMPLIANCE

9.1 The Supplier warrants that:

**Modern Slavery**

9.1.1 It is not aware of any offence committed by It under the Modern Slavery Act 2015 and/or contravention of any other applicable anti-slavery or human trafficking law;

9.1.2 It is not aware that any employee, agent, representative consultant, supplier (direct and indirect) or other person associated with It has committed any offence under the Modern Slavery Act 2015 and/or contravened any other applicable anti-slavery or human trafficking law;

9.1.3 It understands that the Customer operates a zero-tolerance policy to slavery and human trafficking and other corrupt practices and It supports such approach unconditionally;

9.1.4 It has adopted a policy on modern slavery that covers not only its own operations, but also contractors and sub-contractors and has governance procedures to ensure compliance;

9.1.5 It will not, and that It's will use all reasonable endeavours to procure that none of its employees or suppliers will commit any offence under the Modern Slavery Act 2015 and/or contravene any other applicable anti-slavery or human trafficking law (including contractual prohibitions);

9.1.6 It will promptly bring to the Customer's attention in writing any information that it may receive in relation to the commission of any offence under the Modern Slavery Act 2015 and/or contravention of any other applicable anti-slavery or human trafficking law which may have an impact on the services the Supplier provides to the Customer.

### **Bribery Act 2010**

9.2 It shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 and the Criminal Finance Act 2017;

9.3 It has a clear and strict policy of zero tolerance towards bribery and corrupt business practices which qualifies as adequate procedures to prevent bribery under UK law (The Bribery Act 2010). The Supplier agrees to comply with this zero-tolerance approach to bribery in all its business activities.

9.4 It is fully aware of the requirements of the Bribery Act and has appropriate processes and controls in place to prevent the commission of any offence under such Act by the Supplier or any person associated with the Supplier including the offering or acceptance of bribes;

9.5 it shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

9.6 it shall comply with all of the Customer's policies regarding Ethics, Anti-bribery and Anti-corruption Policies as notified to the Supplier from time to time.

9.7 Suppliers will have systems and procedures in place to ensure the highest standards of behaviour and ethics when dealing with any product/service relating to the company.

9.8 Suppliers will have systems in place to prevent the shipping of counterfeit/unapproved product to the company.

## 10. CORPORATE RESPONSIBILITY

**10.1 Counterfeit:** The Supplier shall plan, implement, and control processes, as appropriate to their organisation and the product, for the prevention of counterfeit or suspect counterfeit parts and materials use and their inclusion in products delivered to ACE. 'Counterfeit' Work means work that is or contains parts and materials misrepresented as having been designed and/or produced under an approved system or other acceptable methods. Also including approved work that reached it a design life limit or has been damaged beyond possible repair but is altered and misrepresented as acceptable.

**10.2** The Supplier shall ensure its suppliers, employees and their supply chain operate to prudent standards of quality and integrity in their relationship with their employees, suppliers and customers.

**10.3** The Supplier shall demonstrate compliance with the minimum standard of business behaviours, health safety and environmental practices, applicable laws and regulations and act in a way that is ethical and in line with good corporate responsibility practice.

**10.4** The Supplier undertakes that it will ensure that applicable anti-bribery and corruption laws are not breached

**10.5** The Supplier undertakes that it will ensure their employees and sub-contractors are aware of **PRODUCT OR SERVICE CONFORMITY**

**10.6** The Supplier undertakes that it will ensure their employees and sub-contractors are aware of their contribution to **PRODUCT SAFETY.**

**10.7** The Supplier undertakes that it will ensure their employees and sub-contractors are aware of the importance of **ETHICAL BEHAVIOUR**

## 11. BUSINESS CONTINUITY

**11.1** The Supplier shall implement a business continuity plan to identify, analyse, evaluate and/or mitigate risks related to business continuity. The assessment should consider the loss of such items as facilities, key plant, unique skills/processes, key subcontractors, computer data and IT systems and any other topics that would prevent the Supplier operating for a significant time.

## 12. RIGHTS OF ACCESS

**12.1** The Company retains the right of access to supplier facilities and all records and documents associated with the completion of a specific order.