

# CPV LTD – Conditions Of Purchase (For Goods & Services)

## 1. DEFINITIONS

1.1 In these conditions of purchase the following words will (unless the context otherwise requires) have the following meanings:

"Conditions" means the conditions set out below and overleaf.

"Contract" means any contract between CPV and the Supplier for the purchase of any Works.

"CPV's Property" mean all material, software, equipment, tools, dies, moulds, plans, designs, patterns, data, drawings, specifications and any other items supplied by CPV to the Supplier or manufactured or obtained by the Supplier wholly or partly at the expense of CPV together with all associated intellectual property rights.

"Goods" means the goods to be purchased by CPV from the Supplier pursuant to an Order (including but not limited to the whole or any part or parts of them, any raw materials, finished or semi-finished materials, machinery, parts, spares or commodities and any materials, articles or commodities supplied in connection with the Services).

"Order" means a purchase order relating to any Works issued by CPV to the Supplier on CPV's official order form.

"Services" means the services (including but not limited to the whole or any part or parts of them) to be performed by the Supplier for CPV pursuant to an Order.

"Supplier" means the company, firm, body, person or party to whom the Order is addressed.

"Works" means the Goods and/or the Services (as appropriate).

1.2 Any reference in these Conditions to any statute or statutory provision will (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

1.3 The headings in these Conditions are for reference only and will not affect the interpretation of these Conditions.

1.4 In these Conditions the words "unless otherwise agreed in writing" will mean unless otherwise agreed in writing and signed by a director or commercial manager of CPV.

## 2. APPLICATION OF TERMS

2.1 Subject to clause 2.4) these Conditions are the only conditions on which CPV is prepared to deal with the supplier and they will govern the Contract and all CPV's future purchases from the Supplier.

2.2 No terms or conditions endorsed upon, delivered with, referred to or stipulated or contained in any quotation or other similar document delivered or sent by the Supplier to CPV will form part of the Contract.

2.3 Any reference overleaf to the Supplier's quotation or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, referred to or stipulated or contained in such quotation or other similar document will have effect to the exclusion or amendment of these conditions.

2.4 Any variation or waiver of or addition to these Conditions will have no effect unless expressly agreed by both parties in writing, signed by a duly authorised representative of both parties

2.5 CPV will not be liable for any Order unless it is issued or confirmed on CPV's official order form, is signed by a director or commercial manager of CPV where the price for that Order exceeds £5,000 and the Supplier accepts these Conditions. The Supplier will be deemed to have accepted these Conditions if the Supplier supplies any Works to CPV or otherwise acts in accordance with the Order.

## 3. BLANKET ORDERS

Where CPV places and the Supplier accepts a blanket order, the Supplier binds itself to supply such of CPV's requirements of the Works as CPV may from time to time specify in writing schedules and CPV agrees (subject to the Contract) to pay for such Works. Until the receipt of a delivery schedule the Supplier is not authorised to commence the manufacture, production or performance of the Works

## 4. INSPECTION AND TESTING

4.1 At any time before delivery of the Works CPV (or CPV's customer or any other representative or nominee of CPV) may inspect or test the Works at any reasonable time and the Supplier will arrange for reasonable facilities at and access to all premises where such Works are located

4.2 If the results of such inspection or testing cause CPV (or CPV's Customer or any representative or nominee of CPV) to be of the reasonable opinion that the Works do not or will not conform with the Contract, the Order or to any specifications or patterns supplied or advised by CPV to the Supplier CPV will inform the supplier and the Supplier must immediately take such action as is necessary to ensure conformity

4.3 If the Supplier does not immediately take such acts as may be necessary to ensure conformity under clause 4.2 CPV may without prejudice to any other right or remedy that it may have cancel the relevant Order or any part or parts of it without any further liability to the Supplier.

4.4 The Supplier will give CPV adequate notice of any works tests, which the Supplier may conduct. CPV will be entitled to attend such works tests if it gives the Supplier reasonable notice.

4.5 The Supplier will promptly provide CPV with such test results or certificates as CPV or its customers may reasonably require from time to time.

4.6 Any inspection, testing, attendance or receipt of test results or certificates by CPV (or CPV's customer or any representative or nominee of CPV) will not relieve the Supplier of any obligation or liability under the Contract or any applicable law and will not imply any acceptance of the Works by CPV.

## 5. DELIVERY

5.1 The date for the delivery of the Works will be specified in the Order, or if no such date is specified then delivery of the Works will take place within 28 days of the date of issue of the Order. Unless otherwise agreed in writing CPV is not obliged to accept the delivery of any Works otherwise than on the due delivery date.

5.2 The Supplier will deliver the Works to the address or addresses specified in the Order or to such other place of delivery as is notified by CPV to the Supplier in writing. The Supplier will arrange for the carriage of the Works to the place of delivery and delivery to any carrier will not be delivery to CPV (for the avoidance of doubt any such carrier will be deemed to be an agent of the Supplier and not of CPV). Delivery will be completed when the Works have been unloaded at the place of delivery and signed for by a duly authorised representative of CPV.

5.3 Unless otherwise agreed in writing deliveries will only be made during CPV's normal business hours.

5.4 The Supplier will ensure that each delivery is accompanied by a delivery note which shows the Order number, date of Order, part number, drawing issue level, consignment quantity, number of packages, contents and (in the case of part delivery) the outstanding balance remaining to be delivered. The Supplier will ensure (at its own cost) that all Works are properly packed so that they are delivered in perfect condition.

5.5 The Supplier will also ensure that individual packages are packed to comply with reasonable safety standards and to enable handling by mechanical means. The packaging must bear the description and quantity of the contents and CPV's Order number. Any dangerous Works must be prominently marked as such.

5.6 If the Supplier does not comply with the provision of the clauses 5.4 or 5.5 CPV may reject the Works.

5.7 Unless otherwise agreed in writing time for the delivery of the Works will be of the essence of the Contract and the Supplier will promptly notify CPV of any anticipated delay in the delivery of the Works.

5.8 The Supplier will not make and CPV will not accept any charge whatsoever for packing, packaging or containers of any description.

5.9 CPV will not be liable to the Supplier for any loss or damage to any packaging materials and cases supplied with the Works.

5.10 CPV will not be liable to return to the Supplier any packaging materials and cases supplied with the Works but will if requested by the Supplier agree reasonable arrangements for the collection by the Supplier of such packaging materials and cases.

5.11 The Supplier will arrange for the prompt collection of any packaging materials and cases to be collected by it under Clause 5.10.

5.12 If (for any reason) CPV is unable to take delivery of the Works and/or performance of the Services on the due delivery date the Supplier will store or arrange for the storage of the Goods for a reasonable time (at CPV's reasonable expense) and/or for the re-performance of the Services and will safeguard the Works and take all reasonable steps to prevent their deterioration until actual delivery.

5.13 CPV will not be responsible for any Works provided in excess of the Order and any excess will be and will remain at the Supplier's risk.

5.14 CPV will not be responsible for any failure to give notice to any carrier of any loss, damage, delay, detention or non-delivery.

5.15 The Supplier agrees to supply to CPV (on request) any and all necessary declarations and documents relating to the Works.

## 6. RISK AND OWNERSHIP

6.1 The Goods will remain at the risk of the Supplier until delivery is completed in accordance with clause 5.2 (without prejudice to any right of rejection or other right which may accrue or have accrued to CPV).

6.2 Ownership in the Goods will pass to CPV on payment or when delivery is completed in accordance with clause 5.2 (whichever is the earlier) (without prejudice to any right of rejection or other right which may accrue or have accrued to CPV).

## 7. PRICE AND PAYMENT

7.1 The price of the Works will be stated in the Order and (unless otherwise agreed in writing) will be fixed for the duration of the Contract and will be exclusive of value added tax but inclusive of all other charges (including but not limited to charges for packaging, delivery, insurance and any special tests requested by CPV).

7.2 Supplier may invoice CPV for the Works at any time after the delivery of the Works. Invoices must show CPV's Order number no.

7.3 CPV will use reasonable endeavours to pay the price for the Works within 60 days of the end of the month in which CPV receives a valid invoice but time for payment will not be of the essence of the Contract.

7.4 All payment will be made by CPV without prejudice to CPV's rights should the Works prove unsatisfactory.

7.5 Any failure by the Supplier to comply with the instructions set out in the Contract may delay payment.

7.6 CPV reserves the right to set off any amount owing at any time from the Supplier to CPV against any amount payable by CPV to the Supplier under the Contract.

## 8. CHANGES IN SPECIFICATION

CPV may at any time make written changes to the Contract (including but not limited to changes in the designs, composition, drawings, specifications, method of shipment, quantities, packaging or time or place of delivery). If any such change results in any increase or decrease in the cost of, or the time required for, the performance of the Contract an equitable adjustment will be made to the adjustment by the Supplier must be approved by CPV in writing before the Supplier proceeds with such a change. For the avoidance of doubt nothing in this clause 8 will relieve the Supplier from the obligation of proceeding without delay in the performance of the Contract.

## 9. QUALITY

9.1 CPV is relying on the Supplier's skill and judgment in relation to the Works and the Supplier warrants to CPV that the Works and any and all labelling and packaging will:

a) conform in all respects to the quantity, quality, design, functionality, performance, criteria, description, specification, stipulation or standard stated or referred to in the Order and any literature (whether of a promotional character or otherwise) issued or representation made in connection with the Works.

b) be capable of any standard of performance specified in the Order.

c) be of the first-class materials and workmanship and be executed with reasonable skill and care by properly qualified and experienced persons.

d) be equal in all respects to any sample, pattern, drawings, demonstration or specification provided or given by either party (which has been accepted in writing by CPV).

e) be fit and sufficient for any purpose indicated (either expressly or by implication) in the Order or as may be made known by CPV to the Supplier prior to the Contract being entered into.

f) be so designed and manufactured as to be safe and without risk to health or property when properly used.

g) include all necessary information about the use of the Works and all instructions and warnings relating to the Works as may be necessary for the safe use of the Works and for CPV to comply with its statutory obligations.

h) be of satisfactory quality and be free from defects (whether latent or patent) in design (to the extent that the Supplier is responsible for design), materials or workmanship; and

i) comply with all relevant laws, regulations, orders, rules and codes of practice that may be in force in the United Kingdom and such other territories in which CPV has informed the Supplier that the Works will be supplied.

9.2 The Supplier will provide all necessary information in connection with the design, testing and use of the Works (whether or not such information is requested by CPV).

9.3 The Supplier consents to CPV transferring any guarantee or similar rights given by the Supplier to CPV in relation to the Works supplied to any third party to whom CPV sells, hires or otherwise disposes of such Works with the intent that such guarantee or similar rights may be enforced against the Supplier not only by CPV but also by any third party claiming through CPV.

9.4 CPV's rights under these Conditions are in addition to the statutory conditions implied in favour of a purchaser by the Sale of Goods Act 1979 (as amended).

## 10. INDEMNITY AND INSURANCE

10.1 The Supplier will keep CPV indemnified in full against any and all direct, indirect or economic loss (including but not limited to loss of profits), liability, damage, injury, claim, action, demand, expense or proceeding awarded against, suffered, incurred or paid by CPV as a result of or in connection with:

a) any misrepresentation by the Supplier

b) any breach by the Supplier of any term of the Contract

c) (except in respect of any specifications or instructions given by CPV) any infringement or alleged infringement of any third party intellectual property rights by the use, manufacture or supply of the Works.

d) any contract entered into by CPV the performance of which has been delayed or rendered impossible by the Supplier's breach of its obligations under the Contract.

e) (in the event of delays, defaults or non-deliveries arising other than as a result of CPV's negligence) any increase in the cost of labour or materials required to obtain the Works elsewhere and the cost of any other item which would not have been incurred but for such delay, default or non-delivery.

f) any delays in production.

g) any claim made against CPV by any customer or third party to the extent that such was caused by, relates to or arises from the Works; and/or

h) any loss of or damage to CPV's Property whilst it is in the possession, control or custody of the Supplier.

10.2 The Supplier will at all times during the continuance of the Order and thereafter carry adequate insurances in an amount not less than £5,000,000 (five million) to cover any liability for defective or dangerous Works and will make the policy and premium receipts available for inspection by CPV at any reasonable time.

## 11. CPV'S PROPERTY

11.1 CPV's Property will be held by the Supplier (at the Supplier's own risk and expense) in safe custody and maintained and kept in good condition by the Supplier until returned to CPV.

11.2 CPV's Property will at all times be and remain the exclusive property of CPV, will only be used in relation to the Contract, will not be disposed of other than in accordance with CPV's written instructions and will not be used for any purpose other than carrying out the relevant Order for CPV. Unless and until incorporated into any Works the Supplier will keep CPV's property separate and apart from all other property and clearly marked as the property of CPV.

11.3 CPV may request the return of CPV's Property at any time and in any event the Supplier will (at its own cost) promptly return CPV's Property to CPV once the Order has been fulfilled or cancelled.

11.4 CPV may take possession of CPV's Property at any time and (where necessary) without reasonable notice.

11.5 The Supplier grants to CPV irrevocable authority to enter the premises where CPV's Property is located to take possession of CPV's Property and (if necessary) to dismantle CPV's Property from anything to which it is attached.

11.6 The Supplier agrees to waive any and all lien that it might otherwise have (at the date of the Order or subsequently) on any of CPV's Property although this will not be construed as a waiver of any other right of recovery of any charges which may be due to the Supplier under the Contract.

## 12. CONFIDENTIALITY

12.1 The Supplier will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed to the Supplier by CPV or its agents and any other confidential information concerning CPV's business or its products which the Supplier may obtain as a result of the contract ("Confidential Information").

12.2 The Supplier will use the Confidential information solely for the purposes of complying with its obligations under the Contract.

12.3 The Supplier will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Supplier's obligations to CPV under the Contract and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Supplier.

12.4 The Supplier will not (except to the extent necessary to fulfil its obligations under the Contract) without the prior written consent of CPV advertise or publish the fact that the Supplier has contracted to supply the Works to CPV.

12.5 The Supplier will notify CPV of any breaches of this clause 12 and will co-operate with any reasonable steps which CPV may decide to take in relation to such breach.

## 13. INVENTIONS AND IMPROVEMENTS

When the Order includes manufacture to CPV's designs the Supplier agrees to inform CPV of any invention or improvement in design or method of manufacture arising out of the performance of the Order by or on behalf of the Supplier and any such invention or improvement and any related intellectual property rights will be the property of CPV. The Supplier will give CPV at CPV's expense all necessary assistance to enable CPV to obtain patent, registered design and similar rights throughout the world.

## 14. LICENCES

If the performance of the Order requires CPV to have any permit or licence from any government or other authority at home or overseas, the Order will be conditional on such permit or licence being available at the required time.

## 15. TERMINATION

15.1 CPV may at any time (in its absolute discretion) terminate the Contract in whole or in part by giving the Supplier written notice. On receipt of such notice the Supplier will discontinue all work (or as the case may be the relevant part) on the Contract. CPV will on terminating the Contract in accordance with the provision of this clause 15.1 pay to the Supplier a fair and reasonable sum for any work in progress which the Supplier will be unable to reuse for any other customer but CPV will not be liable to the Supplier for any economic loss and except as set out in this clause will have no further liability to the Supplier in relation to such termination.

15.2 CPV may terminate the Contract immediately if:

a) the Supplier fails to provide the Works on the due date;

b) the Works supplied do not conform in every respect with the Contract;

c) the Supplier is in breach of any term of the Contract which is capable of being remedied and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;

d) The Supplier is in breach of any term of the Contract which is not capable of being remedied;

e) there is a material change in the ownership or control of the Supplier; or

f) the supplier is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs

15.3 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies, which may have accrued to either party.

15.4 Any Conditions which implicitly have effect after termination will continue to be enforceable not withstanding termination.

## 16. ASSIGNMENT AND SUBCONTRACTING

16.1 The Supplier will not without the prior written consent of CPV assign or transfer the Contract or any part of it to any other person.

16.2 The Supplier will not without the written consent of CPV subcontract the Order or any part of it other than for materials, minor details or for the part of the Goods of which the makers are named in the Order or the specification. Any such consent by CPV will not relieve the Supplier of any of its obligations under the contract.

## 17. GENERAL

17.1 Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class post or facsimile transmission.

17.2 Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission or e-mail, at the time of transmission

17.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.4 Failure or delay by either party in reinforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.5 Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

17.6 (Except as provided in clause 9.3) a person who is not party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause 17.6 does not affect any right or remedy of any person, which exists or is available.

17.7 The Contract will be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.