

# WALSIN

## PURCHASE ORDER TERMS & CONDITIONS

---

### 1 DEFINITIONS

- 1.1 The Company shall mean Walsin Limited;
- 1.2 The Contract shall mean the contract between the Company and the Supplier for the supply of the Goods in accordance with these Conditions, comprising the Order, these Conditions and any other documents referred to in the Order as forming part of the Contract;
- 1.3 "Deliverables" shall mean any designs, drawings or other items or materials that are created by or on behalf of the Supplier for the Company in connection with the Order
- 1.5 "Goods" shall mean the goods and/or services as detailed in the Order;
- 1.6 "Order" shall mean the particular purchase order to which these terms and conditions are attached;
- 1.7 "Supplier" shall mean the party to whom this order is addressed;

### 2 INTERPRETATION & ENFORCEABILITY

- 2.1 The Order constitutes an offer by the Company to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.1 The Order shall be deemed to be accepted on the earlier of:
  - 2.1.1 the Supplier signing or issuing written acceptance of the Order; or
  - 2.2.2 any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence.
- 2.2 An order will be valid as an Order only if it is issued on the official form of the Company, which has been duly signed by an authorised signatory of the Company.
- 2.3 These terms and conditions shall supersede and apply to the exclusion of any conditions attached to the Supplier's quotation for the Goods or other terms issued by the Supplier, in respect of which the Order is placed.
- 2.4 If any clause or part of this Order is found by the Court to be illegal, invalid or unenforceable then that provision will, where required, be removed from this Order and will be rendered ineffective without, as far as is possible, modifying any other clause or part of this Order and this will not affect any other provisions of this Order which will remain in full force and effect.
- 2.5 Any failure by the Company to enforce any or all of these conditions shall not be construed as a waiver of any of the Company's right contained hereunder.

### 3 VARIATIONS

- 3.1 No variation, addition, or waiver to these terms and conditions, whether contained in any document issued by the Supplier or made orally by any person acting or purporting to act on behalf of the Company, shall have effect unless it is referred to in the Order as forming part of the Contract

3.2 No variation to the quality, quantity, description or value of the Goods or Deliverables, whether contained in any document issued by the Supplier or made orally by an person acting or purporting to act on behalf of the Company, shall have effect unless it is issued on a revised Order or the Company's pro-forma template, the form of which is attached to these terms and conditions;

#### **4 PACKING**

4.1 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. No additional charges will be accepted for packing, boxing, crating, or the use of pallets, unless expressly stated in the Order or separately authorised by the Company.

4.2 If the Supplier wishes to recover any packing items, after delivery, specific arrangements must be made and any costs arising from their collection shall be at the Supplier's expense.

#### **5 CARRIAGE COST**

5.1 Unless otherwise agreed in writing all the Goods are to be supplied carriage paid to the destination shown on this Order.

#### **6 DESCRIPTION & SPECIFICATION**

6.1 The Supplier warrants that the Goods shall:

6.1.1 be free from defects and materials;

6.1.2 be of satisfactory quality;

6.1.3 shall correspond to any description and /or specification for the Goods set out in the Order or provided in the Supplier's quotation document;

6.1.4 be fit for any purpose made known to the Supplier; and

6.1.5 shall correspond to previously approved supplies (if any) and/or samples submitted (if any).

6.2 The Goods shall be subject to the Company's inspection and acceptance within a reasonable time after delivery and if rejected shall be left at the Supplier's risk and returnable at the Supplier's expense and shall not count as having been delivered unless the Company elects to make the Goods fit for purpose in which case the Supplier shall be liable to the Company for the cost of so doing. If the Order calls for a design element by the Supplier, then the Supplier:

6.3.1 warrants that the design will be accurate, fit for purpose and free from defects; and

6.3 If the Order calls for the provision of services, the Supplier warrants that the services Shall be:

6.4.1 free from defects

6.4.2 provided with reasonable skill and care; and

6.4.3 provided within the time frames set out in the Order, or, if no timescales are specified in the Order, within such time as the Company may reasonably instruct.

6.4 The Supplier shall comply with the reasonable instructions of the Company in the performance of any services and, if the services require work on an employer's work

site, the Supplier shall comply with any health and safety or other requirements of the employer relating to work on that site. The Supplier shall use appropriately qualified personnel in the provision of any services.

6.5 Any drawings, description, weights or dimensions provided by the Supplier shall be accurate and the Supplier must accept liability for any error or omission with regard thereto.

6.6 The Supplier shall expressly guarantee that the Goods are designed and are suitable for the purpose for which they are intended.

## **7 INSPECTION OF MATERIALS OR WORK IN PROGRESS**

7.1 Duly accredited representatives of the Company shall be allowed from time to time upon reasonable notice, to inspect Goods ordered at any stage of manufacture.

7.2 If upon inspection the Company is not satisfied that the quality of Goods will be in compliance with the requirements of the Order, the Supplier shall at their own expense, take all necessary steps to remedy the situation to ensure compliance, including any measures reasonably proposed by the Company.

## **8 DELIVERY**

8.1 The Goods shall be delivered by the Supplier to the place(s) and in the manner specified in the Order or as subsequently agreed.

8.2 The Supplier shall ensure that the Goods are delivered to the correct destination and that they are received and signed for by an authorised signatory of the Company. The Company reserves the right to withhold payment if proof of delivery is not available.

8.3 All Goods delivered shall arrive with adequate protection to prevent damage occurring to the Goods whilst in storage before installation.

## **9 RISK AND TITLE**

9.1 Title of the Goods shall pass from the Supplier to the Company upon delivery of Goods in accordance with clause 8.

9.2 Risk in the Goods shall pass from the Supplier to the Company upon acceptance of the Goods in accordance with clause 6.2.

## **10 TIME**

10.1 The Supplier shall deliver the Goods on the date and at the time stated in the Order. Time shall be of the essence with regards to the Order

10.2 The Company reserves the right to cancel the whole or the balance of an Order if the Supplier fails to comply with a delivery date specified in the Order, but if the Supplier has given sufficient notice of an unforeseeable delay the Company may at its own discretion grant an extended delivery period as it considers fair and reasonable.

10.3 If the Company does not grant an extension to the delivery period and this Order is cancelled in accordance with 10.2 then subject to clause 12, the Company shall only pay for such Goods as have been delivered and accepted up to the time of cancellation.

## **11 PRICING & PAYMENT**

11.1 Unless otherwise agreed by both parties:

12.1.1 the prices or rates on this Order shall be fixed for the duration of the Order and no increase in price or rate shall be accepted;

12.1.2 all prices shall be exclusive of VAT unless otherwise agreed;

12.1.3 payment is to be made within 60 days from the month end which follows receipt by the Company of the Supplier's invoice issued in accordance with clause 11.2 and 11.3.

11.2 Invoices stating the order number, date and place of delivery must be sent to the Company's Head Office.

11.3 Invoices are to be issued for all Goods delivered to site in each four weekly valuation period.

## **12 CONTRA CHARGES**

12.1 Should the Supplier fail to deliver the Goods strictly in accordance with this Order, the Company reserves the right to levy any additional charges against the Supplier which the Company may incur as a result of the Supplier's failure to Perform.

12.2 The Company shall have the right to set off any such charge(s) against any payment, which may be due to the Supplier from the Company, whether or not such payment relates to this particular Order.

12.3 The Supplier hereby agrees as agent for any Associated Company of the Supplier, and in consideration of the Company entering into this Order with the Supplier, that the Company may (at its discretion and in addition to any other rights or remedies which it may have) set off any charges referred to in 12.1 and 12.2. against any payment, which may be due from the Company to any holding company, subsidiary or other associated company of the Supplier, whether or not such payment relates to this particular Order.

## **13 LIABILITY AND INSURANCE**

13.1 The Supplier shall remain responsible for the breach of any of its obligations under this Agreement for a period of 12 years following the date of the relevant breach (including without limitation a breach of any of the warranties in clause 6).

## **14 TERMINATION**

14.1 Without limiting its other rights or remedies, the Company may terminate the Contract:

14.2 If the Goods to be supplied under the Contract are supplied for re-supply to an employer under a main contract between the Company and a third party employer, the Company may terminate the Contract by notice in writing to the Supplier in any circumstances where the main contract is terminated. In such circumstances, the Supplier shall discontinue all work on the Contract and the Company shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

14.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 14.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 working days of receipt of notice in writing to do so;
- 14.3.2 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 14.3.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 14.3.4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- 14.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 14.3.6 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 14.3.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 14.3.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 14.3.9 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.3.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 14.3.11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3.3 to clause 15.3.10 (inclusive);

14.3.12 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;

14.3.13 the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

14.3.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

14.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **15 CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Company all Deliverables whether or not then complete, and return all Company materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## **16 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

17.1 Notwithstanding any other provision of the Order, nothing in this Order confers or is intended to confer any right to enforce any of its terms on any person(s) who is not a party to it.

## **17 APPLICABLE LAW**

17.1 The Order shall be governed by and construed in accordance with the laws of England and or Northern Ireland.

## **18 SETTLEMENT OF DISPUTES**

18.1 If a dispute or difference arises under this Order which cannot be resolved by direct negotiations, each party shall give serious consideration to any request by the other to refer the matter to mediation.

18.2 In the event mediation does not provide a satisfactory means of resolution the dispute or difference may be resolved through litigation.

18.3 If Walsin Limited is the Company named on the Order, the courts of England and or Northern Ireland have exclusive jurisdiction to settle any dispute arising from or connected with the Order including a dispute regarding the existence, validity or termination of the Contract or the consequences of its nullity.

