

General Conditions of Purchase

1. Definitions

"We", "Us" and "our" means Queen Margaret University, Edinburgh. "You" and "Your" means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractors or agents of said person, firm or company. "Goods" means the materials, articles, works and services described in the Contract. "Package" means any type of package including bags, cases, cartboys, cylinders, drums, pallets, tank wagons and other containers.

"Authorised Officer" means Our employee authorised, either generally or specifically, by Us to sign Our Purchase Order. "Authorised" means stamped and dated by Our Authorised Officer. "Purchase Order" means Our Authorised Purchase Order having these General Conditions of Purchase on its reverse or attached to it or referring to these General Conditions of Purchase on its face. "Order Amendment" means Our Authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment. "Contract" has the meaning given in Condition 2 below. "Price" has the meaning given in Condition 3 below. "Sale of Goods Act 1979" shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994. "Supply of Goods and Services Act 1982" shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

2. The Contract

You agree to sell and We agree to purchase the Goods in accordance with the Contract. The Contract shall comprise (in order of precedence): any Order Amendments, the Purchase Order, these General Conditions of Purchase, any other document (or part document) referred to on the Purchase Order. The Contract shall not include any of Your conditions of sale, notwithstanding reference to them in any document. However, should this Contract be held by a court of competent jurisdiction to include Your terms and conditions of sale then in the event of any conflict or apparent conflict these General Conditions of Purchase shall always prevail over Your terms and conditions of sale. Delivery of Goods in response to a Purchase Order or Order Amendment shall be taken to imply that You have accepted the terms and conditions of this Contract.

3. Price

You will sell Us the Goods for the firm and fixed Price stated in the Contract. If no Price is stated in the Contract then the Price shall be a fair price, taking into account prevailing market conditions. The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) together with any duties, customs or levies (as applicable) but shall exclude VAT, which shall be payable by Us subject to a receipt of the VAT Invoice.

4. Variations

We shall have the right, before delivery, to send You an Order Amendment adding to, deleting or modifying the Goods. If the Order Amendment will cause a change to the Price or delivery date then You must suspend performance of the Contract and notify Us without delay, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. You must allow Us at least 10 working days to consider any new Price and delivery date. The Order Amendment shall take effect when but only if Our Authorised Officer accepts in writing the new Price and delivery date within the time You stipulate. If Our Authorised Officer fails to confirm the Order Amendment within the time You stipulate then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that We may still exercise Our right of cancellation in accordance with Condition 5).

5. Our Right of Cancellation

In addition to Our other rights of cancellation under this Contract, We may cancel the Purchase Order and any Order Amendment thereto at any time by sending You a notice of termination. You will comply with any instructions that We may issue with regard to the Goods. If You submit a termination claim then We will pay to You the cost of any commitments, liabilities or expenditure which in Our reasonable opinion were a consequence of this Contract at the time of termination. The total of all payments made or due to You under this Contract, including any termination payment, shall not exceed the Price, if You fail to submit a termination claim within 3 months of the date of Our notice of termination then We shall have no further liability under the Contract.

6. Quality and Description

(a) The Goods shall:

- conform in every respect with the provisions of the Contract;
- be capable of all standards of performance specified in the Contract;
- be fit for any purpose made known to You expressly or by implication and in this respect We rely on Your skill and judgement;
- be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship;
- correspond with their description or any samples, patterns, drawings, plans and specifications referred to in the Contract;
- be of satisfactory quality;
- comply with any current legislation.

(b) Unless specifically required under the Contract, there shall be no asbestos content in the Goods.

7. Work on Our Premises

If the Contract involves any works or services which You perform on Our premises then the following conditions shall apply:

- You shall ensure that You and Our employees, Your sub-contractors and their employees and any other person associated with You will adhere in every respect to the obligations imposed on You by current safety legislation.
- You shall ensure that You and Our employees, Your sub-contractors and their employees and any other person associated with You will comply with any regulations that We may notify to You in writing.

8. Progress and Inspection

- You shall at Your expense provide any programmes of manufacture and delivery that We may reasonably require. You shall notify Us without delay in writing if Your progress falls behind or may fall behind any of these programmes.
- We shall have the right to check progress at Your Works or the Works of sub-contractors at all reasonable times, to inspect and to reject Goods that do not comply with the Contract. Your sub-contractors shall reserve such right for Us.
- Any inspection, or approval shall not relieve You from Our obligations under this Contract.

9. Packages

Unless otherwise stated in the Contract, all Package shall be non-returnable. If the Contract states that Package is returnable, You must give Us full disposal instructions before the time of delivery. The Package must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of Package. We shall not be liable for any package lost or damaged in transit.

10. Safety

You shall observe all legal requirements of the United Kingdom, European Union and relevant International agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food.

11. Delivery

- The Goods shall be properly packed, secured and despatched at Your expense to arrive in good condition at the time or times and the place or places specified in the Contract.
- If You or Your carrier deliver any Goods at the wrong time or to the wrong place then We may deduct from the Price any resulting costs of storage or transport.

12. Late Delivery

If the Goods or any parts of them are not delivered by the time or times specified in the Contract then We may by written notice cancel any undelivered balance of the Goods. We may also return for full credit and at Your expense any Goods that in Our opinion cannot be utilised owing to this cancellation. In the case of services, We may have the work performed by alternative means and any additional costs reasonably so incurred shall be at Your expense. This shall not affect any other rights that We have.

13. Property and Risk

- You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- Without prejudice to 13(a) above, Ownership of the Goods shall pass to Us:

 - when the Goods have been delivered but without prejudice to Our right of rejection under this Contract, and
 - if We make any advance or stage payment, at the time such payment is made, in which case You must as soon as possible mark the Goods as Our property.

14. Acceptance

We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of this Contract. It is agreed that We may exercise the right of rejection notwithstanding any provision contained in section 15B or section 30(sub-section 2D) of the Sale of Goods Act 1979. We shall give You a reasonable opportunity to replace the Goods with new Goods that conform with this Contract, after which time We shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods elsewhere. Replacement Goods shall be of a similar nature and value to those rejected by Us. In the event of cancellation under this condition You shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense.

15. Payment

Unless stated otherwise in the Contract We shall pay You within 30 days of receipt of a correctly rendered invoice. Your invoice must be addressed to the department indicated on the Purchase Order and must quote the full Purchase Order number. We shall not be held responsible for delays in payment caused by Your failure to comply with Our invoicing instructions. Unless expressly agreed in writing by Us, You shall not be entitled to charge interest on late payment by Us.

16. Your Warranty

It is expressly agreed between us that:

- You shall promptly make good at Your expense any defect in the Goods that We discover under proper usage during the first of 12 months of actual use or 18 months from the date of acceptance by Us whichever period shall expire first. Such defects may arise from Your faulty design, Your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law.
- Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by Us.
- You will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of delivery of the Goods.

17. Indemnity and Insurance

(a) You shall indemnify and keep indemnified Us against all loss. Actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute in respect of personal injury to death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any

default or neglect of Ourselves or of any person for whom We are responsible) which shall have occurred in connection with any work executed by You under this Contract or shall be alleged to be attributable to some defect in the Goods.

(b) This Purchase Order is given on the condition that (without prejudice to the generality of Condition 17(a)) You will indemnify and keep indemnified Us against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute (other than as a result of any default or neglect of Ourselves or of any person for whom We are responsible) in respect of personal injury to or death of any of Your or Our employees, agents, sub-contractors or other representatives while on Our premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.

(c) You will indemnify and keep indemnified Us against any and all loss, costs, expenses and liabilities caused to Us whether directly or as a result of the action, claim or demand of any third party by reason of any breach by You of these conditions or of any terms or obligations on Your part implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of Our rights under Condition 14.

(d) You shall hold satisfactory insurance cover with a reputable insurer to fulfill Your insurance obligations for the duration of this Contract including public liability insurance cover of at least £2M (two million pounds Sterling). You shall effect insurance against all those risks arising from Your indemnity in Condition 17(c). Satisfactory evidence of such insurance and payment of current premiums shall be shown to Us upon request.

18. Recovery of Sums Due

Whenever under the Contract any sums of money shall be recoverable from or payable by You, they may at Our sole option be deducted from any sums then due, or which at any later time may become due, to You under this Contract or under any other contract You may have with Us.

19. Matters Beyond Control

If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party, (including without limitation any form of Government intervention, strikes and lock-outs relevant to the Purchase Order or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the Purchase Order then the Contract may be cancelled by either party. We shall pay to You such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by You under the Purchase Order prior to cancellation but only in respect of work that We have received full benefit as originally contemplated in the Contract. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

20. Articles on Loan and Use of Information

(a) All tools, materials, drawings, specifications and other equipment and data ("the Articles") loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer. Until You return the Articles to Us they shall be at Your risk and insured by You at Your own expense against the risk of loss, theft or damage. Any loss of or damage to the Articles shall be made good by You at Your expense. All scrap arising from the supply of the Articles must be disposed of at Our discretion and all proceeds of sales of such scrap must promptly be paid to Us in full.

(b) Any information derived from Our property or otherwise communicated to You in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of Our Authorised Officer, be published or disclosed to any third party, or made use of by You except for the purpose of implementing the Contract.

21. Ownership of Results

If the Contract involves design and/or development Work:

- All rights in the results of work arising out of or deriving from this Contract, including inventions, designs, copyright and knowledge shall be Our property and We shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.
- You shall promptly communicate to Us all such results and shall if requested and at Our expense do all acts and things necessary to enable Us or Our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to Us or Our nominee.
- You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

22. Infringement of Patents

With the exception of Goods made to Our design or instructions, You warrant that neither the Goods nor Our use of them will infringe any patent registered design trade mark copyright or other protected right and undertake to indemnify Us against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

23. Non-Observance of Conditions

If You breach or fail to observe any provision of this Contract We may give You written notice of such breach or non-observance and You shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should You fail to rectify the Breach or non-observance, then We shall have the right to give You written notice terminating the Contract with immediate effect.

24. Your Insolvency

If You become apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985 or (being a company) make an arrangement with Your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purposes of amalgamation or reconstruction previously approved by Us in writing) We may without replacing or reducing any other of Our rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

25. Assignment and Sub-letting

The Contract shall not be assigned by You nor sub-let as a whole. You shall not sub-let any part of the Contract without Our written consent, but We shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods supplied by all sub-contractors.

26. Bribery

You warrant and confirm by your acceptance hereof that you will comply with all obligations imposed by the Bribery Act 2010. In particular, You 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 (or amendment thereto) if such activity, practice or conduct had been carried out in the UK. You further undertake to promptly report any activity, practice or conduct that could be considered to constitute an offence under the Bribery Act 2010 and confirm you will comply with Our policies relating to anti-bribery. In the event of any breach of this Condition, We shall, without prejudice to any other rights We may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.

27. Waiver

A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

28. Notice

Any notice required in terms of this Contract may be delivered personally or sent by first class recorded delivery post or transmitted by fax and, in each case, if sent by Us, sent to Your Registered or Head Office and, if sent by You, sent to the Finance Department, Queen Margaret University, Edinburgh, Queen Margaret University Drive, Musselburgh, EH21 6UU and any such notice shall be deemed to have been validly served sent by post on the expiry of 24 hours from the time of posting and, if delivered personally or transmitted by fax, at the time of delivery or transmission.

29. General

Any provision of this Contract which is or may be void or unenforceable shall, to the extent of such invalidity or unenforceability, be deemed severable and shall not affect any other provision of this Contract. You hereby acknowledge that We are subject to the requirements of the Freedom of Information (Scotland) Act 2002 ("FOISA") and We will promptly inform You of any request that we receive under FOISA which will require Us to disclose details of the contractual arrangements between You and Us. You agree that You shall co-operate and provide (at Your own reasonable expense) all necessary assistance as may reasonably be requested by Us to enable Us to comply with Our obligations under FOISA.

30. Arbitration Clause

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or in relation to the Contract, other than a matter or thing to which Our decision is final and conclusive under the Contract and, except to the extent to which special provision is made elsewhere in the Contract, shall be referred to the arbitration of two persons, (the Arbiters) one to be appointed by Us and one by You. In the case of difference of opinion between the Arbiters, reference shall be made to an Oversman who shall be chosen by the Arbiters before they enter on the business of any submission in pursuance of this condition. The decision of the Arbiters or Oversman (including as to who bears their costs) shall be final and binding on the parties.

31. Amendment

No addition alteration or substitution of these conditions will bind Us or form part of the Contract unless and until accepted in writing by Our Authorised Officer.

32. Law

This Contract shall be subject to Scots Law and the jurisdiction of the Scottish Courts. **33. BACS**
The BACS method of payment, made directly into Your bank accounts, is available. Should You wish to use this method of payment, please provide Us with the following details with your invoice:

Name, Position, Company Address with postcode.
Signature/Company stamp
Your bank's name
Your bank's address
Branch sorting code and Account number