

PURCHASE ORDER TERMS & CONDITIONS - VERSION 1: December 2019

These are the terms and conditions ("Conditions") on and subject to which the Supplier named on the purchase order accompanying these Conditions ("Purchase Order") agrees to supply the Salvation Army Housing Association ("saha") with the goods and/or services specified in the Purchase Order ("Goods" or "Services") in consideration for payment by saha of the sums specified in the Purchase Order.

Words or expressions stated in bold shall denote defined terms used throughout these Conditions and references in these Conditions to "writing" or "written" shall include email but not fax.

The term "Parties" in these Conditions shall mean saha and the Supplier and "Party" shall mean either one of them.

The term "Business Day" in these Conditions means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1. BASIS OF CONTRACT

- 1.1. The Supplier's quotation constitutes an offer by the Supplier to sell the Goods and/or provide the Services to saha.
- 1.2. saha shall be deemed to accept the Supplier's offer, and a contract shall come into existence between the Parties in accordance with these Conditions, upon saha issuing a Purchase Order to the Supplier (the "Contract"). Performance by the Supplier of its obligations under these Conditions shall not entitle the Supplier to claim any payment for the Goods and/or Services where a Purchase Order has not been issued by saha.
- 1.3. Where, at the date of the Purchase Order, there is already a signed or sealed contract in place between the Parties for the Goods and/or Services that are the subject of the Purchase Order then the terms of such contract (and not these Conditions) shall apply to the supply of the Goods and/or Services.
- 1.4. If there is conflict between these Conditions and any special conditions attached to the Purchase Order, then the latter shall take precedence.
- 1.5. These Conditions apply to the exclusion of any other terms or conditions that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or any course of dealing between the Parties. The Contract constitutes the entire agreement between the Parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the Parties.
- 1.6. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2. SUPPLY OF GOODS & SERVICES

- 2.1. The Supplier acknowledges and agrees that it is responsible for obtaining, reviewing and investigating any information necessary for the performance of its obligations under the Contract.
- 2.2. The Supplier shall notify saha of any assumptions and/or dependencies which must be met for the fulfilment of the Supplier's obligations under the Contract and saha shall not be liable for the Supplier's failure to identify the same nor shall the Supplier be relieved from performing its obligations as result of such failure.
- 2.3. The Supplier warrants to saha that:
 - (a) it has full capability, capacity, authority and all necessary consents to perform the Contract; and
 - (b) all personnel and sub-contractors used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 2.4. Conditions relating to the Goods
 - (a) The Goods shall be delivered to the address specified on the Purchase Order or notified to the Supplier by saha ("Delivery Location"), at the time and date(s) specified in the Purchase Order unless otherwise expressly agreed by the Parties. A delivery note must accompany the Goods and specify the type and quantity of Goods delivered and the Purchase Order number.
 - (b) Goods shall not be delivered by instalments without saha's consent or unless otherwise specified on the Purchase Order. If delivered by instalments, the Goods may be invoiced and paid for separately. Failure to deliver any instalment on time or at all or any defect in an instalment shall entitle saha to the remedies below.
 - (c) Delivery of the Goods shall be completed once the Goods have been unloaded at the agreed location ("Delivery").
 - (d) saha will be deemed to have accepted the Goods 10 Business Days from Delivery unless it gives notice to the Supplier under Condition 3. saha's signature on any delivery note is evidence only of the number of packages received and not evidence of acceptance of the Goods. Acceptance under this Condition (d) of the Goods shall not affect any rights or remedies that saha may have under the Contract (or otherwise).
 - (e) The Supplier warrants that the Goods (i) will be sold to saha with valid and unrestricted title; (ii) are of satisfactory quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by saha; (iii) are free from defects in design, materials and workmanship and will remain so for the longer of 12 months or any manufacturer's warranty period; (iv) comply with all applicable statutory and regulatory requirements; and (v) correspond with their description and any applicable specification referred to in the Purchase Order.
 - (f) To the extent that the Goods are to be installed by the Supplier, the Supplier shall install the Goods in a good and workmanlike manner and make good any damage caused as a result of installation. The Supplier shall test and inspect the Goods following installation and notify saha once installation has been completed. saha shall have accepted the Goods after completion of installation, provided saha has not exercised in writing any of the remedies below.
 - (g) Title and risk in the Goods shall pass to saha on Delivery of the Goods at the Delivery Location (where the Supplier is not to install the Goods) or upon acceptance of the Goods in accordance with Condition 2.3(f) (where the Supplier is to install the Goods).
 - (h) Where the Goods comprise or include substances hazardous to health, the Supplier will supply to saha on or before Delivery with all data (in English) necessary to allow saha to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable health and safety laws.
- 2.5. Conditions relating to the Services
 - (a) The Supplier warrants that the Services will (i) conform to saha's requirements made known to the Supplier; (ii) conform to specifications and/or acceptance criteria (if any) set out in the Purchase Order (iii) be performed with that standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all applicable statutory and regulatory requirements.
 - (b) The Supplier shall perform the Services in accordance with any timetable notified to the Supplier by saha in writing.
 - (c) Unless agreed otherwise in writing, the Supplier shall provide all equipment, consumables and other items required to provide the Services.
 - (d) Any defects, deficiencies or other faults in the delivery of the Services which become apparent within 12 months of the supply of the Services which are due to the erroneous execution of the Services shall be made good by the Supplier at no cost to saha.

3. REMEDIES

- 3.1. If the Goods and/or Services are not delivered on the date they are due as referred to in Condition 2.4(a) and/or Condition 2.5(b), or do not comply with

the warranties in Conditions 2.4 or 2.5, saha shall, without limiting any other remedies available to it, have the right to any one or more of these remedies:

- (a) Terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
- (b) reject the Goods and/or Services in full or in part and in the case of Goods, return them at the Supplier's own risk and expense;
- (c) require the Supplier to repair or replace the rejected Goods or re- perform the Services without further cost to saha;
- (d) refuse to accept any subsequent supply of the Goods and/or Services;
- (e) where saha has paid any sums in advance for the Goods and/or Services, to require such sums to be refunded by the Supplier; and/or
- (f) recover from the Supplier any costs and expenses reasonably incurred by saha in procuring replacement Goods and/or substitute Services which are substantially similar to those to be provided by the Supplier.

3.2. These Conditions apply to any repaired or replacement Goods and/or Services provided by the Supplier.

3.3. Any repaired and/or replaced Goods and/or Services are deemed to be warranted for the longer of 12 months or the manufacturer's warranty period.

4. INVOICING & PAYMENT

4.1. The amounts specified on the Purchase Order represent the full and exclusive remuneration and include every cost and expense of the Supplier in respect of the supply of the Goods and/or Services (including packaging, delivery, installation, import duties and taxes where applicable).

4.2. The Supplier may invoice saha for Goods supplied on or at any time after Delivery and for Services provided on or at any time after completion of the provision of the Services. Each invoice must correspond with the amount and currency specified on the Purchase Order and quote the Purchase Order number.

4.3. Purchase invoices to saha must be sent to the following email address: finance@saha.org.uk. saha will consider and verify each invoice in a timely manner with a view to confirming whether each invoice is valid and undisputed. saha shall pay each invoice in full and in cleared funds within 30 days from the date on which it determines each invoice to be valid and undisputed.

4.4. All fees and charges exclude VAT which saha shall, upon receipt of a valid VAT invoice from the Supplier, pay in addition.

4.5. If saha fails to make any payment due under the Contract by the due date for payment, saha shall pay interest on the overdue amount at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. saha shall pay the interest together with the overdue amount.

4.6. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against saha in order to justify withholding payment of any such amount in whole or in part. saha may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

5. CANCELLATION & CHANGES IN REQUIREMENTS

5.1. Without prejudice to any other provision of the Contract, saha may terminate the Purchase Order and the Contract in whole or in part at any time before delivery of the Goods or full and complete performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work in relation to the Purchase Order and the Contract.

5.2. Where saha exercises its rights under Condition 5.1, saha will pay such fees or charges for Goods which have been delivered or which are in transit or Services which have been performed together with the costs of materials which the Supplier has purchased to fulfil its obligations, provided they cannot be used for other customers or returned to the supplier of those materials for a refund.

5.3. saha shall not be liable to the Supplier for any loss of anticipated profits or any indirect or consequential loss suffered by the Supplier arising as a result of cancellation pursuant to Condition 5.1.

5.4. saha may from time to time notify the Supplier of any change to saha's requirements under a Purchase Order. The Supplier shall use its best endeavours to accommodate any such changes to the requirements of saha including re-sequencing and re-programming the Goods and/or Services at no cost to saha. If the Supplier has used best endeavours to the satisfaction of saha but such re-sequencing and re-programming is not possible without the Supplier incurring additional material costs then the Supplier shall be entitled to payment for any such additional material costs incurred as a result of any such changes. The amount of such additional costs is to be agreed between saha and the Supplier in writing prior to the Supplier undertaking any changes.

6. TERMINATION

6.1. saha may terminate the Contract immediately by written notice if the Supplier:

- (a) commits an irremediable material breach of any of its obligations under these Conditions;
- (b) commits a remediable material breach of any of its obligations under the Contract and fails to remedy that breach within a period of 10 Business Days of receiving written notice of such breach by saha; or
- (c) becomes insolvent or any similar insolvency event occurs or action or proceeding is taken to manage the affairs of or wind up the Supplier.

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

6.3. saha shall not be liable to the Supplier for any loss of profits, loss of contracts or other costs, losses and/or expenses incurred by the Supplier as a result of or in connection with termination pursuant to this Condition 6.

7. LIABILITY & INSURANCE

7.1. Nothing in these Conditions shall exclude or limit liability for damage to property or for death or personal injury caused by a Party's negligence or wilful default or for any other matter for which liability may not be excluded or limited by law.

7.2. saha's liability under the Contract shall not exceed the total value of the Goods and/or Services supplied under the Contract.

7.3. The Supplier's liability under the Contract shall not exceed 200% of the total value of the Goods and/or Services supplied under the Contract or the maximum sums assured under Condition 7.6 below, whichever is greater.

7.4. Neither Party shall be liable to the other for any indirect, special or consequential loss or loss of turnover, profits, business opportunities or anticipated savings (whether direct or indirect).

7.5. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with the Contract.

7.6. The Supplier shall take out and maintain public and product liability insurance (to include product liability) in the sum of at least five million pounds (£5,000,000) where Goods are supplied or, where Services are to be provided, either professional indemnity insurance or other appropriate insurance to cover the principal risks associated with the type of Services being provided, in the sum of at least one million pounds (£1,000,000).

8. ASSIGNMENT AND SUBCONTRACTING

- 8.1. saha may at any time assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the Supplier's consent being required.
- 8.2. The Supplier may not assign, transfer, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without saha's prior written consent. Where saha gives consent to any subcontracting, the Supplier shall:
- (a) be responsible for the acts or omissions of its subcontractors as though they are its own; and
 - (b) be liable to saha for any costs, losses, damages or expenses suffered or incurred by saha arising out of or in connection with any act or omission of its subcontractors.
- 8.3. The Supplier shall ensure that any subcontract it enters into for the performance of any of its obligations under the Contract contains a provision requiring the Supplier to consider and verify each invoice received from the subcontractor in a timely manner within a view to confirming whether each invoice is valid and undisputed and to pay each invoice received from the subcontractor within a specified period not exceeding 30 days from the date on which the Supplier determines each invoice to be valid and undisputed.
- 8.4. The Supplier shall pay each invoice received from its subcontractors within 30 days from the date on which the Supplier confirms each invoice to be valid and undisputed and at saha's request, the Supplier shall provide saha with evidence of compliance with this Condition 8.

9. INTELLECTUAL PROPERTY

- 9.1 All intellectual property rights in any specifications, instructions, plans, data, databases, patents, patterns, models, designs or other material:
- (a) provided to the Supplier by saha shall remain saha's property absolutely;
 - (b) prepared by or for the Supplier specifically for saha in relation to the performance of the Contract shall belong to saha.
 - (c) pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to saha insofar as it is necessary for saha to exercise its other rights under the Contract. Such a licence shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.
- 9.2 The Supplier indemnifies saha against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against saha for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the performance of the Contract by the Supplier save where such infringement or alleged infringement is caused by any act or omission on the part of saha.

10. HEALTH AND SAFETY

- 10.1 Where access to saha's premises is required by the Supplier to perform its obligations under the Contract, the Supplier and all the people employed or otherwise engaged by it (including but not limited to sub-suppliers), shall throughout the duration of the Contract comply fully with the requirements of all applicable health and safety laws and with all those other policies and procedures in connection with the operation of saha's business including but not limited to the reasonable requirements of saha's security and health and safety procedures and other reasonable instructions of any of saha's representatives appointed in respect of works at saha's premises.

11. DATA PROTECTION

- 11.1 To the extent that compliance with the Contract involves the Supplier processing personal data (such terms having the meanings given in the relevant Data Protection Legislation) the Supplier shall comply with the relevant Data Protection Legislation in relation to that personal data.
- 11.2 For the purposes of Condition 11.1 the term "Data Protection Legislation" shall mean the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679 (as varied by the Data Protection Act 2018), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof.

12. GENERAL PROVISIONS

- 12.1. Confidentiality: The Supplier undertakes that it shall not at any time disclose to any person (other than to those of its personnel who need to know such information for the performance of the Supplier's obligations under the Contract or as may be required by law or a court of competent jurisdiction) any confidential information concerning the business, affairs, customers, clients or suppliers of saha and shall not use such confidential information for any purpose other than to perform its obligations under the Contract.
- 12.2. Force majeure: Neither Party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under the Contract to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a continuous period of 30 days, the Party not affected may terminate the Contract by giving written notice to the other Party.
- 12.3. Severance: If any court or competent authority finds that any provision or part-provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.4. Waiver and Cumulative Remedies: (a) No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (b) Unless specifically provided otherwise, all rights arising under the Contract are cumulative (and may be exercised concurrently or separately) and do not exclude any rights provided by law.
- 12.5. Third party rights: A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.6. Notices: Any notice, request, instruction or other documentation to be given under the Contract shall be delivered or sent by first class post or by electronic mail to the address of the other Party set out in the Purchase Order (or such other address as the other may have notified the first Party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by electronic mail) upon transmission unless a notice of non-delivery is received within 2 hours after transmission.
- 12.7. Modern Slavery: The Supplier shall comply with all anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but limited to the Modern Slavery Act 2015.
- 12.8. No partnership or agency: Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute a Party the agent of the other Party, nor authorise a Party to make or enter into any commitments for or on behalf of the other Party.
- 12.9. Governing law and jurisdiction: The Contract and any dispute arising out of or in connection with it shall be governed by and interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.