

TERMS & CONDITIONS OF PURCHASE**1. GENERAL**

- (i) In these Conditions the following expressions shall have the following meanings unless the context requires otherwise:
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| Business Day | any day which is not a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. |
| Conditions | the terms and conditions set out in this document, which may only be amended as set out in clause 2(iii). |
| Contract | the contract between the Purchaser and the Supplier for the supply of Goods incorporating the Order, these Conditions and any Specification. |
| Goods | the goods (or any part of them) described in the Order and any Specification. |
| Order | the Purchaser's order for the Goods, as set out on the Purchaser's purchase order form. |
| Purchaser | Simpson (York) Limited (company number 00847721). |
| Specification | any specification for the Goods, including any related plans and drawings, that is referred to in the Order or otherwise agreed in writing by the Purchaser and the Supplier. |
| Supplier | the person or firm from whom the Purchaser purchases the Goods, as identified in the Order. |
- (ii) In these Conditions:
- (a) any term importing the singular includes the plural and vice versa;
 - (b) a reference to a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns; and
 - (c) clause headings are for ease of reference only and shall not affect the interpretation of these Conditions.

2. BASIS OF CONTRACT

- (i) The Order constitutes an offer by the Purchaser to purchase Goods from the Supplier in accordance with these Conditions.
- (ii) The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence. The Contract shall constitute the entire agreement and understanding between the parties in relation to the Goods and shall supersede all previous agreements between the parties relating to the Goods.
- (iii) These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. No amendment to these Conditions shall be made without the express written consent of the Purchaser.

3. SUPPLY OF GOODS

- (i) The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgement; and
 - (c) be free from defects in design, materials and workmanship and remain so for 12 months after delivery.
- (ii) The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- (iii) The Purchaser may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing. No inspection or testing shall reduce or affect the Supplier's obligations under the Contract.
- (iv) If following any inspection or testing the Purchaser considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings in clause 3(i), the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Purchaser may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- (v) In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes and regulations from time to time in force.

4. DELIVERY OF GOODS

- (i) The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods, any special storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) it states clearly on the delivery note any requirement for the Purchaser to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- (ii) The Supplier shall deliver the Goods:
- (a) on the date specified in the Order or as otherwise agreed by the parties in writing;
 - (b) to such location as is set out in the Order or otherwise instructed by the Purchaser before delivery (the "**Delivery Location**"); and
 - (c) during the Purchaser's normal hours of business on a Business Day, or as instructed by the Purchaser.
- (iii) Delivery of the Goods shall be completed on completion of unloading of the Goods at the Delivery Location.
- (iv) If the Supplier delivers more or less than the quantity of Goods ordered, the Customer may at its discretion reject all the Goods or any excess quantity of Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Purchaser accepts delivery of the incorrect quantity of Goods, a pro rata adjustment shall be made to the invoice for the Goods.
- (v) The Supplier shall not deliver the Goods in instalments without the Purchaser's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Purchaser to the remedies set out in clause 5.
- (vi) Title to the Goods shall pass to the Purchaser on completion of delivery or, if earlier, upon the Purchaser making payment to the Supplier.

(vii) Risk of loss or damage to the Goods shall pass to Purchaser on completion of delivery.

5. **PURCHASER REMEDIES**

- (i) If the Supplier fails to deliver the Goods by the applicable date as set out in clause 4(ii)(a), the Purchaser shall, without limiting or affecting other rights or remedies available to it, have any or all of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods from a third party;
 - (d) to require a refund from the Supplier of sums paid in advance for Goods that the Supplier has not delivered; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to meet such dates.
- (ii) If the Supplier has delivered Goods that do not comply with clause 3(i), then, without limiting or affecting other rights or remedies available to it, the Purchaser shall have any or all of the following rights, whether or not it has accepted the Goods:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods, or, where the Purchaser has already made payment for the Goods (or any part thereof), to provide a full refund of the price paid for the rejected Goods;
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by the Purchaser in obtaining substitute goods from a third party;
 - (f) to claim damages for any additional costs, loss or expenses incurred by the Purchaser arising from the Supplier's failure to supply Goods in accordance with clause 3(i).
- (iii) These Conditions shall extend to any repaired or replacement goods supplied by the Supplier.
- (iv) The Purchaser's rights and remedies under the Contract are in addition to any rights and remedies implied by statute and common law.

6. **CHARGES AND PAYMENT**

- (i) The price for the Goods:
- (a) shall be as set out in the Order; and
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods.
- No extra charges shall be effective unless agreed in writing and signed by the Purchaser.
- (ii) The Supplier may invoice the Purchaser on or at any time after completion of delivery of the Goods. Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice, including but not limited to the Order number and the Supplier's VAT registration number.
- (iii) The Purchaser shall pay the Supplier at the end of the month following ("EOMF") the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- (iv) All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- (v) If the Purchaser fails to make a payment due to the Supplier under the Contract by the due date, the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% a year above the Bank of England's base rate from time to time.
- (vi) The Purchaser may at any time, without notice to the Supplier, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Purchaser of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. **INDEMNITY**

- (i) The Supplier shall indemnify the Purchaser against all liabilities, costs, expenses, damages and losses suffered or incurred by the Purchaser arising out of or in connection with:
- (a) any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods;
 - (b) any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods; and
 - (c) any claim made against the Purchaser by a third party arising out of or in connection with the supply of the Goods, to the extent that the liability, cost, expense, damage and/or loss is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.

8. **INSURANCE**

During the term of the Contract and for a period of 6 years after the completion of the Contract, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Purchaser's request, provide documentary evidence that the insurance required pursuant to this clause is being maintained.

9. **CONFIDENTIAL INFORMATION**

- (i) All information and data disclosed by the Purchaser or otherwise developed or obtained under the Contract shall be deemed to be confidential.
- (ii) The Supplier agrees not to disclose any information or data disclosed by the Purchaser or otherwise developed or obtained under the Contract without the Purchaser's written consent. The Supplier agrees not to use any such information or data for any purpose other than for the proper performance of the Contract.
- (iii) The obligations imposed on the Supplier by this clause 9 shall not apply in respect of information or data which:
- (a) is in the public domain without breach of the Contract;
 - (b) was developed independently by the Supplier;
 - (c) was legitimately disclosed to the Supplier on a non-confidential basis without any restriction on its further disclosure;
- or

- (d) the Supplier is legally required to disclose, provided the Supplier has taken all reasonable steps to allow the Purchaser to have a reasonable opportunity to challenge or to attempt to reduce in scope the requirement for further disclosure.
- (iv) The Supplier shall ensure that its personnel comply with the obligations imposed on the Supplier under this clause 9.

10. **TERMINATION**

- (i) Without affecting any other right or remedy available to it, the Purchaser may terminate the Contract for convenience with immediate effect by giving the Supplier notice at any time. The Purchaser 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.
- (ii) Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any the Contract and fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- (iii) On termination under clause 10(ii) the Supplier's entitlement to payment shall be limited to payment for any Goods delivered prior to termination (if not already paid for) and, if the notice of termination is given by 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.
- (iv) Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry. Any provision of the Contract that by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one month, the party not affected may terminate the Contract by giving 10 Business Days' notice to the affected party.

12. **ASSIGNMENT AND SUB-LETTING**

- (i) The Purchaser shall be entitled to assign the benefit of the Contract without the Supplier's consent.
- (ii) The Supplier shall not assign the benefit of the Contract nor sub-let the whole or any part of its obligations under the Contract without the prior written permission of the Purchaser.

13. **SERVICE OF NOTICE**

- (i) Any notice to be given by the Supplier under the Contract shall be in writing and shall delivered by hand or sent by first class post to the Purchaser's correspondence address stated in the Order, or such other address as may be notified by the Purchaser in writing. Notices shall be deemed to have been received by the Purchaser, if delivered by hand, on the date and at the time of delivery, as evidenced by a signed delivery receipt, and if sent by first class post, at 9:00am on the second Business Day after the date of posting.
- (ii) Any notice to be given by the Purchaser under the Contract shall be in writing and shall be sent by email to the Supplier email address stated in the Order or as otherwise notified by the Supplier in writing. The Purchaser may, in its discretion, send hard copies of emailed notices to the Supplier's registered office address, or such other address as may be stated in the Order, by hand delivery or first class post. Notices shall be deemed to have been received by the Supplier on the date and at the time of sending of the email.

14. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding any other provision in the Contract nothing in the Contract confers nor purports to confer any right to enforce any of its terms on any person who is not a party to it.

15. **SEVERANCE**

If any court or other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted or modified to the extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of the Contract shall not be affected.

16. **NO WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

17. **GOVERNING LAW**

The Contract is subject to English law and the exclusive jurisdiction of the English courts.